

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



**Regular Session, 2010**  
**First Extraordinary Session, 2010**  
**Second Extraordinary Session, 2010**  
**Fourth Extraordinary Session, 2009**

**Volume I**  
**Chapters 1 - 132**

**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 and Second Extraordinary Sessions of the 79<sup>th</sup> Legislature, 2010, and the Fourth Extraordinary Session, 2009.

### Second Regular Session, 2010

The Second Regular Session of the 79th Legislature convened on January 13, 2010. The Constitutional sixty-day limit on the duration of the session was midnight, March 13, 2010. The Governor issued a proclamation on March 10, 2010, extending the session for a period not to exceed seven days for the purpose of considering the Budget and supplementary appropriation bills, and the Legislature adjourned *sine die* on March 20, 2010.

Bills totaling 2,079 were introduced in the two houses during the session (1,378 House, 708 of which were carryover bills from the 2009 Regular Session, and 701 Senate). The Legislature passed 218 bills, 97 House and 121 Senate.

The Governor vetoed seventeen bills (**H. B. 3110**, Renaming conservation officers to be natural resources police officers; **Com. Sub. for H. B. 4187**, Continuing the current hazardous waste management fee until 2015; **Com. Sub. for H. B. 4281**, Replacing references to "mental retardation" with "intellectual disability"; **Com. Sub. for H. B. 4397**, Requiring the Superintendent of the State Police to implement a plan to increase the number of troopers; **Com. Sub. for H. B. 4557**, Reviewing all of the Department of Health and Human Resources requests for proposals or change orders valued at over \$500,000 prior to their release; **Com. Sub. for H. B. 4604**, Increasing the criminal penalties for persons who obstruct, flee from or make false statements to law-enforcement officers; **Com. Sub. for H. B. 4652**, Establishing a school calendar committee for each county; **S. B. 42**, Revising Municipal Economic Opportunity Development District Act; **S. B. 122**, Increasing mental health treatment refusal age of consent; **S. B. 169**, Relating to Economic Development Authority loans' criteria; **Com. Sub. for S.**

**B. 336**, Authorizing Division of Wildlife Resources recover possession or restitution value of certain animals; **Com. Sub. for S. B. 376**, Relating to residential mortgage foreclosure data; **Com. Sub. for S. B. 483**, Authorizing HMOs offer point of service option; **Com. Sub. for S. B. 507**, Creating WV Innovative Mine Safety Technology Tax Credit Act; **Com. Sub. for S. B. 515**, Relating to firearms' purchases and licensing; and **Com. Sub. for S. B. 651**, Providing state bid preference for certain current license or permit holders). The Legislature amended and again passed Com. Sub. for H. B. 4187, Com. Sub. for H. B. 4604, Com. Sub. for S. B. 336, Com. Sub. for S. B. 376 and Com. Sub. for S. B. 483, leaving a net total of 206 bills, 91 House and 115 Senate, which became law.

There were 220 Concurrent Resolutions introduced during the session, 134 House and 86 Senate, of which 45 House and 30 Senate were adopted. Thirty-six House Joint Resolutions (of which twenty-four were carryover House Joint Resolutions) and 14 Senate Joint Resolutions were introduced, none of which were adopted by the Legislature. The House introduced 32 House Resolutions, and the Senate introduced 59 Senate Resolutions, of which 26 House and 58 Senate were adopted.

The Senate failed to pass 36 House bills passed by the House, and 60 Senate bills failed passage by the House. Two House bills died in conference: **Com. Sub. for H. B. 4207**, Making it unlawful to send obscene, anonymous, harassing and threatening communications by computer, mobile phone, personal digital assistant or other mobile device; and **Com. Sub. for H. B. 4513**, Establishing requirements for Marcellus gas well operations use of water resources.

\* \* \* \* \*

### **First Extraordinary Session, 2010**

The Proclamation calling the Legislature into Extraordinary Session at 12:00 NOON, contained sixteen items for consideration.

The Legislature passed 15 bills, all of which were Senate Bills. There were 9 Concurrent Resolutions introduced during the session, 8 House and 1 Senate, of which H. C. R. 107, Providing for the issuance of not to exceed \$45 million of refunding bonds pursuant to the “Safe Roads Amendment of 1996”, was adopted by both houses. The House adopted 1 House Resolution and the Senate adopted 5 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on May 19, 2010.

\* \* \* \* \*

### **Second Extraordinary Session, 2010**

The Proclamation calling the Legislature into Extraordinary Session at 12:00 NOON, July 15, 2010, contained two items for consideration. Subsequent Proclamations were submitted by the Governor, dated July 15, 2010 and July 19, 2010, increasing the items for consideration to seventeen.

Thirty-one bills were introduced during the Extraordinary Session, 16 House Bills and 15 Senate Bills. The Legislature passed 11 bills, 7 House Bills and 4 Senate Bills. The House of Delegates adopted 2 House Resolutions, and the Senate adopted 4 Senate Resolutions.

The Legislature completed the business of the Session and adjourned *sine die* on July 21, 2010.

\* \* \* \* \*

### **Fourth Extraordinary Session, 2009**

The Proclamation calling the Legislature into Extraordinary Session at 1:00 P.M., November 17, 2009, contained twelve items for consideration.

The Legislature passed 10 bills, 5 House and 5 Senate. The House adopted 2 House Resolution and the Senate adopted 9 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on November 20, 2009.

\* \* \* \* \*

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, 2010

### 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	Pat McGeehan (D)	Chester	79 <sup>th</sup>
	Randy Swartzmiller (D)	Chester	75 <sup>th</sup> - 79 <sup>th</sup>
Second	Timothy R. Ennis (D)	Wellsburg	72 <sup>nd</sup> - 79 <sup>th</sup>
	Roy E. Givens (D)	Wellsburg	64 <sup>th</sup> - 69 <sup>th</sup> ; 72 <sup>nd</sup> - 75 <sup>th</sup> ; 79 <sup>th</sup>
Third	Tal Hutchins (D)	Wheeling	72 <sup>nd</sup> - 74 <sup>th</sup> ; 78 <sup>th</sup> - 79 <sup>th</sup>
	Orphy Klempa (D)	Wheeling	78 <sup>th</sup> - 79 <sup>th</sup>
Fourth	Michael T. Ferro (D)	McMechen	79 <sup>th</sup>
	Scott G. Varner (D)	Moundsville	71 <sup>st</sup> - 79 <sup>th</sup>
Fifth	Dave Pethel (D)	Hundred	69 <sup>th</sup> - 71 <sup>st</sup> ; 74 <sup>th</sup> - 79 <sup>th</sup>
	William Roger Romine (R)	Sistersville	75 <sup>th</sup> - 79 <sup>th</sup>
Seventh	Lynwood "Woody" Ireland (R)	Pullman	78 <sup>th</sup> - 79 <sup>th</sup>
Eighth	Everette W. Anderson, Jr. (R)	Williamstown	71 <sup>st</sup> - 79 <sup>th</sup>
	Larry W. Border (R)	Davisville	70 <sup>th</sup> - 79 <sup>th</sup>
Tenth	Tom Azinger (R)	Vienna	72 <sup>nd</sup> - 79 <sup>th</sup>
	John Ellem (R)	Parkersburg	75 <sup>th</sup> - 79 <sup>th</sup>
Eleventh	Daniel Poling (D)	Parkersburg	Appt. 1/07, 78 <sup>th</sup> ; 79 <sup>th</sup>
	Bob Ashley (R)	Spencer	67 <sup>th</sup> - 73 <sup>rd</sup> ; 75 <sup>th</sup> - 79 <sup>th</sup>
Twelfth	Mitch Carmichael (R)	Ripley	75 <sup>th</sup> - 79 <sup>th</sup>
	Dale Martin (D)	Poca	75 <sup>th</sup> - 79 <sup>th</sup>
Thirteenth	Brady Paxton (D)	Liberty	71 <sup>st</sup> ; Appt. 4/22/99, 74 <sup>th</sup> ; 75 <sup>th</sup> - 79 <sup>th</sup>
	Troy Andes (R)	Hurricane	78 <sup>th</sup> - 79 <sup>th</sup>
Fourteenth	Patti Eagloski Schoen (R)	Scott Depot	76 <sup>th</sup> - 79 <sup>th</sup>
	Kevin J. Craig (D)	Huntington	75 <sup>th</sup> - 79 <sup>th</sup>
Fifteenth	Carol Miller (R)	Huntington	78 <sup>th</sup> - 79 <sup>th</sup>
	Jim Morgan (D)	Huntington	Appt. 201, 75 <sup>th</sup> ; 76 <sup>th</sup> - 79 <sup>th</sup>
Sixteenth	Doug Reynolds (D)	Huntington	78 <sup>th</sup> - 79 <sup>th</sup>
	Kelli Sobonya (R)	Huntington	76 <sup>th</sup> - 79 <sup>th</sup>
Seventeenth	Dale Stephens (D)	Huntington	75 <sup>th</sup> ; 77 <sup>th</sup> - 79 <sup>th</sup>
	Don C. Perdue (D)	Prichard	74 <sup>th</sup> - 79 <sup>th</sup>
Eighteenth	Richard Thompson (D)	Lavelette	65 <sup>th</sup> ; Resigned 6/81; 76 <sup>th</sup> - 79 <sup>th</sup>
	Larry W. Barker (D)	Madison	77 <sup>th</sup> - 79 <sup>th</sup>
Nineteenth	Greg Butcher (D)	Chapmanville	73 <sup>rd</sup> - 77 <sup>th</sup> ; 79 <sup>th</sup>
	Jeff Eldridge (D)	Harts	77 <sup>th</sup> - 79 <sup>th</sup>
Twentieth	Ralph Rodighiero (D)	Logan	78 <sup>th</sup> - 79 <sup>th</sup>
	Josh Stowers (D)	Alum Creek	79 <sup>th</sup>
Twenty-first	K. Steven Kominar (D)	Kermit	72 <sup>nd</sup> - 79 <sup>th</sup>
	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70 <sup>th</sup> ; 71 <sup>st</sup> - 79 <sup>th</sup>
Twenty-second	Daniel J. Hall (D)	Oceana	79 <sup>th</sup>
	Linda Goode Phillips (D)	Pineville	79 <sup>th</sup>
Twenty-third	Clif Moore (D)	Thorpe	77 <sup>th</sup> - 79 <sup>th</sup>
Twenty-fourth	John H. Shott (R)	Bluefield	79 <sup>th</sup>
Twenty-fifth	John R. Frazier (D)	Princeton	65 <sup>th</sup> ; 79 <sup>th</sup>
	Thomas Mike Porter (R)	Princeton	77 <sup>th</sup> - 79 <sup>th</sup>
Twenty-sixth	Gerald Crosier (D)	Union	76 <sup>th</sup> - 79 <sup>th</sup>
Twenty-seventh	Virginia Mahan (D)	Green Sulphur Springs	73 <sup>rd</sup> - 79 <sup>th</sup>
	Ricky Moye (D)	Crab Orchard	78 <sup>th</sup> - 79 <sup>th</sup>
Twenty-eighth	Linda Sumner (R)	Beckley	76 <sup>th</sup> - 79 <sup>th</sup>
	Sally Susman (D)	Beckley	74 <sup>th</sup> - 77 <sup>th</sup> ; 79 <sup>th</sup>
Twenty-ninth	William R. Wooton (D)	Beckley	63 <sup>rd</sup> - 67 <sup>th</sup> ; 69 <sup>th</sup> ; (Senate 70 <sup>th</sup> - 75 <sup>th</sup> ); 79 <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> - 79 <sup>th</sup>	
	Ray Canterbury (R)	Ronceverte	75 <sup>th</sup> - 79 <sup>th</sup>	
Twenty-ninth	Tom Louisos (D)	Oak Hill	67 <sup>th</sup> - 68 <sup>th</sup> ; 70 <sup>th</sup> - 77 <sup>th</sup> ; 79 <sup>th</sup>	
	David G. Perry (D)	Oak Hill	75 <sup>th</sup> - 79 <sup>th</sup>	
	Margaret Anne Stagers (D)	Fayetteville	78 <sup>th</sup> - 79 <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> - 79 <sup>th</sup>	
	Nancy Peoples Guthrie (D)	Charleston	78 <sup>th</sup> - 79 <sup>th</sup>	
	Barbara Burruss Hatfield (D)	South Charleston	67 <sup>th</sup> - 69 <sup>th</sup> ; 74 <sup>th</sup> - 79 <sup>th</sup>	
	Mark Hunt (D)	Charleston	72 <sup>nd</sup> - 74 <sup>th</sup> ; 77 <sup>th</sup> ; 79 <sup>th</sup>	
	Doug Skaff (D)	South Charleston	79 <sup>th</sup>	
	Sharon Spencer (D)	Charleston	66 <sup>th</sup> ; 68 <sup>th</sup> - 71 <sup>st</sup> ; 73 <sup>rd</sup> - 79 <sup>th</sup>	
	Danny Wells	Charleston	77 <sup>th</sup> - 79 <sup>th</sup>	
	Thirtieth-first	<sup>1</sup> Meshea L. Poore (D)	Charleston	Appt. 12/18/09, 79 <sup>th</sup>
	Thirtieth-second	Tim Armstead (R)	Elkview	Appt. 9/5/98, 73 <sup>rd</sup> ; 74 <sup>th</sup> - 79 <sup>th</sup>
		Patrick Lane (R)	Cross Lanes	77 <sup>th</sup> - 79 <sup>th</sup>
Thirtieth-third	Ron Walters (R)	Cross Lanes	71 <sup>st</sup> - 73 <sup>rd</sup> ; 75 <sup>th</sup> - 79 <sup>th</sup>	
	David Walker (D)	Prociuous	79 <sup>th</sup>	
Thirtieth-fourth	Brent Boggs (D)	Gassaway	73 <sup>rd</sup> - 79 <sup>th</sup>	
Thirtieth-fifth	Sam J. Argento (D)	Mt. Nebo	77 <sup>th</sup> - 79 <sup>th</sup>	
Thirtieth-sixth	Joe Talbott (D)	Webster Springs	71 <sup>st</sup> - 72 <sup>nd</sup> ; 76 <sup>th</sup> - 79 <sup>th</sup>	
Thirtieth-seventh	William G. Hartman (D)	Elkins	76 <sup>th</sup> - 79 <sup>th</sup>	
	<sup>2</sup> Mike Ross (D)	Coalton	(Senate 71 <sup>st</sup> - 76 <sup>th</sup> ); 79 <sup>th</sup>	
Thirtieth-eighth	Margaret (Peggy) D. Smith (D)	Weston	79 <sup>th</sup>	
Thirtieth-ninth	Bill Hamilton (R)	Buckhannon	76 <sup>th</sup> - 79 <sup>th</sup>	
Fortieth	Mary M. Poling (D)	Moatsville	75 <sup>th</sup> - 79 <sup>th</sup>	
Fortieth-first	Samuel J. Cann (D)	Clarksburg	72 <sup>nd</sup> - 79 <sup>th</sup>	
	Ron Fragale (D)	Clarksburg	70 <sup>th</sup> - 73 <sup>rd</sup> ; 75 <sup>th</sup> - 79 <sup>th</sup>	
Fortieth-second	Richard J. Iaquina (D)	Clarksburg	76 <sup>th</sup> - 79 <sup>th</sup>	
	Tim Miley (D)	Bridgeport	77 <sup>th</sup> - 79 <sup>th</sup>	
Fortieth-third	Mike Manypenny (D)	Grafton	79 <sup>th</sup>	
Fortieth-fourth	Michael Caputo (D)	Fairmont	73 <sup>rd</sup> - 79 <sup>th</sup>	
	Linda Longstreth (D)	Fairmont	77 <sup>th</sup> - 79 <sup>th</sup>	
Fortieth-fifth	Tim Manchin (D)	Fairmont	76 <sup>th</sup> - 79 <sup>th</sup>	
	Robert D. Beach (D)	Morgantown	Appt. 5/98, 73 <sup>rd</sup> ; 74 <sup>th</sup> - 79 <sup>th</sup>	
	Barbara Evans Fleischauer (D)	Morgantown	72 <sup>nd</sup> - 75 <sup>th</sup> ; 78 <sup>th</sup> - 79 <sup>th</sup>	
	Charlene Marshall (D)	Morgantown	74 <sup>th</sup> - 79 <sup>th</sup>	
Fortieth-sixth	Alex J. Shook (D)	Morgantown	78 <sup>th</sup> - 79 <sup>th</sup>	
	Larry A. Williams (D)	Tunnelton	Appt. 10/8/93, 71 <sup>st</sup> ; 72 <sup>nd</sup> - 79 <sup>th</sup>	
Fortieth-seventh	Stan Shaver (D)	Tunnelton	74 <sup>th</sup> - 75 <sup>th</sup> ; 78 <sup>th</sup> - 79 <sup>th</sup>	
Fortieth-eighth	Harold K. Michael (D)	Moorefield	69 <sup>th</sup> - 79 <sup>th</sup>	
Fortieth-ninth	Allen V. Evans (R)	Dorcas	70 <sup>th</sup> - 79 <sup>th</sup>	
Fiftieth	Robert A. Schadler (R)	Keyser	69 <sup>th</sup> - 70 <sup>th</sup> ; 74 <sup>th</sup> - 79 <sup>th</sup>	
Fiftieth-first	Ruth Rowan (R)	Points	77 <sup>th</sup> - 79 <sup>th</sup>	
Fiftieth-second	Daryl E. Cowles (R)	Berkeley Springs	78 <sup>th</sup> - 79 <sup>th</sup>	
Fiftieth-third	Craig P. Blair (R)	Martinsburg	76 <sup>th</sup> - 79 <sup>th</sup>	
Fiftieth-fourth	Jonathan Miller (R)	Bunker Hill	78 <sup>th</sup> - 79 <sup>th</sup>	
Fiftieth-fifth	Walter E. Duke (R)	Martinsburg	76 <sup>th</sup> - 79 <sup>th</sup>	
Fiftieth-sixth	John Overington (R)	Martinsburg	67 <sup>th</sup> - 79 <sup>th</sup>	
Fiftieth-seventh	<sup>3</sup> Terry Walker (D)	Kearneysville	Appt. 11/18/09, 79 <sup>th</sup>	
Fiftieth-eighth	John Doyle (D)	Shepherdstown	66 <sup>th</sup> ; 71 <sup>st</sup> - 79 <sup>th</sup>	
Fiftieth-ninth	Tiffany Lawrence (D)	Ranson	79 <sup>th</sup>	

1 Appointed December 18, 2009, to fill the vacancy created by the resignation of the Honorable Carrie Webster.

2 Appointed January 9, 2009, to fill the vacancy created by the death of the Honorable Bill Proudfoot.

3 Appointed November 18, 2009 to fill the vacancy created by the resignation of the Honorable Robert C. Tabb.

(D) Democrats	71
(R) Republicans	29

TOTAL 100

[XXXVIII]

# MEMBERS OF THE SENATE

## REGULAR SESSION, 2010

### OFFICERS

*President*— Earl Ray Tomblin, Chapmanville

*Clerk*—Darrell E. Holmes, Charleston

*Sergeant at Arms*—Howard Wellman, Bluefield

*Doorkeeper*— Billy L. Bevino, Charleston

District	Name	Address	Legislative Service
First	Edwin J. Bowman (D)	Weirton	72 <sup>nd</sup> - 79 <sup>th</sup>
	Jack Yost (D)	Wellsburg	(House 76 <sup>th</sup> - 78 <sup>th</sup> ); 79 <sup>th</sup>
Second	Larry J. Edgell (D)	New Martinsburg	74 <sup>th</sup> - 79 <sup>th</sup>
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 11/97,73 <sup>rd</sup> ; 74 <sup>th</sup> - 79 <sup>th</sup>
Third	Donna J. Boley (R)	St. Marys	Appt. 5/14/85, 67 <sup>th</sup> ; 68 <sup>th</sup> - 79 <sup>th</sup>
	J. Frank Deem (R)	Vienna	(House 52 <sup>nd</sup> -56 <sup>th</sup> ); 57 <sup>th</sup> - 62 <sup>nd</sup> ; 64 <sup>th</sup> - 65 <sup>th</sup> ; (House 69 <sup>th</sup> ); 72 <sup>nd</sup> - 79 <sup>th</sup>
Fourth	Karen L. Facemyer (R)	Ripley	(House 71 <sup>st</sup> - 74 <sup>th</sup> ); 75 <sup>th</sup> - 79 <sup>th</sup>
	Mike Hall (R)	Hurricane	(House 72 <sup>nd</sup> - 77 <sup>th</sup> ); 78 <sup>th</sup> - 79 <sup>th</sup>
Fifth	Evan H. Jenkins (D)	Huntington	(House 72 <sup>nd</sup> - 74 <sup>th</sup> ); 76 <sup>th</sup> - 79 <sup>th</sup>
	Robert H. Plymale (D)	Ceredo	71 <sup>st</sup> - 79 <sup>th</sup>
Sixth	H. Truman Chafin (D)	Williamson	66 <sup>th</sup> - 79 <sup>th</sup>
	John Pat Fanning (D)	Iaeger	58 <sup>th</sup> - 64 <sup>th</sup> ; 67 <sup>th</sup> -68 <sup>th</sup> ; 73 <sup>rd</sup> - 79 <sup>th</sup>
Seventh	Ron Stollings (D)	Madison	78 <sup>th</sup> - 79 <sup>th</sup>
	Earl Ray Tomblin (D)	Chapmanville	(House 62 <sup>nd</sup> -64 <sup>th</sup> ); 65 <sup>th</sup> - 79 <sup>th</sup>
Eighth	Corey J. Palumbo (D)	Charleston	(House 76 <sup>th</sup> - 78 <sup>th</sup> ); 79 <sup>th</sup>
	Erik P. Wells (D)	Charleston	78 <sup>th</sup> - 79 <sup>th</sup>
Ninth	D. Richard Browning (D)	Oceana	(House 69 <sup>th</sup> - 72 <sup>nd</sup> ; 75 <sup>th</sup> - 78 <sup>th</sup> ); 79 <sup>th</sup>
	Mike Green (D)	Daniels	78 <sup>th</sup> - 79 <sup>th</sup>
Tenth	Donald T. Caruth (R)	Mercer	(House 76 <sup>th</sup> ) 77 <sup>th</sup> - 79 <sup>th</sup>
	Jesse O. Guills (R)	Lewisburg	76 <sup>th</sup> - 79 <sup>th</sup>
Eleventh	William R. Laird, IV (D)	Oak Hill	(House 74 <sup>th</sup> ); 79 <sup>th</sup>
	C. Randy White (D)	Webster Springs	(House 73 <sup>rd</sup> - 75 <sup>th</sup> ); 76 <sup>th</sup> - 79 <sup>th</sup>
Twelfth	Douglas Eugene Facemire (D)	Sutton	79 <sup>th</sup>
	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/83, 66 <sup>th</sup> ; 67 <sup>th</sup> -69 <sup>th</sup> ); 70 <sup>th</sup> - 71 <sup>st</sup> ; 75 <sup>th</sup> - 79 <sup>th</sup>
Thirteenth	Michael A. Oliverio, II (D)	Morgantown	(House 71 <sup>st</sup> ); 72 <sup>nd</sup> - 79 <sup>th</sup>
	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69 <sup>th</sup> - 72 <sup>nd</sup> ); 73 <sup>rd</sup> -79 <sup>th</sup>
Fourteenth	Dave Sypolt (R)	Kingwood	78 <sup>th</sup> -79 <sup>th</sup>
	Bob Williams (D)	Grafton	79 <sup>th</sup>
Fifteenth	Clark Barnes (R)	Randolph	77 <sup>th</sup> - 79 <sup>th</sup>
	Walt Helmick (D)	Marlinton	(House 1 yr.,69 <sup>th</sup> ); Appt.9/89, 69 <sup>th</sup> ; 70 <sup>th</sup> - 79 <sup>th</sup>
Sixteenth	Herb Snyder (D)	Shenandoah Junction	73 <sup>rd</sup> - 76 <sup>th</sup> ; 79 <sup>th</sup>
	John R. Unger II (D)	Martinsburg	74 <sup>th</sup> - 79 <sup>th</sup>
Seventeenth	Dan Foster (D)	Charleston	(House 76 <sup>th</sup> ); 77 <sup>th</sup> - 79 <sup>th</sup>
	Brooks F. McCabe, Jr. (D)	Charleston	74 <sup>th</sup> - 79 <sup>th</sup>

( D ) Democrats . . . . . 26  
 ( R ) Republicans . . . . . 8

TOTAL . . . . . 34

**COMMITTEES OF THE HOUSE OF DELEGATES**  
**Regular Session, 2010**

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**STANDING**

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**AGRICULTURE**

Argento, (*Chair*), Butcher (*Vice Chair*), Beach, Boggs, Campbell, Caputo, Eldridge, Guthrie, Hall, Manypenny, Martin, Morgan, Moye, M. Poling, Rodighiero, Swartzmiller, Wells, Williams, Evans (*Minority Chair*), Canterbury (*Minority Vice Chair*), Anderson, Border, Ireland, C. Miller, and Overington.

**BANKING AND INSURANCE**

Moore (*Chair of Banking*), Reynolds (*Vice Chair of Banking*), Perry (*Chair of Insurance*), Shook (*Vice Chair of Insurance*), Cann, Frazier, Hartman, Hunt, Hutchins, Iaquinta, Louisos, Mahan, Manchin, Michael, Shaver, Skaff, T. Walker, Wooton, Azinger (*Minority Chair of Banking*), Schoen (*Minority Vice Chair of Banking*), Ashley (*Minority Chair of Insurance*), Walters (*Minority Vice Chair of Insurance*), Andes, Carmichael and J. Miller.

**CONSTITUTIONAL REVISION**

Fleischauer (*Chair*), Hutchins (*Vice Chair*), Brown, Caputo, Doyle, Ferro, Frazier, Guthrie, Hatfield, Hunt, Kominar, Marshall, Moore, Morgan, Staggers, Varner, Wells, Webster, Overington (*Minority Chair*), Romine (*Minority Vice Chair*), Blair, Ellem, Lane, McGeehan and Sobonya.

**EDUCATION**

M. Poling (*Chair*), Paxton (*Vice Chair*), Beach, Crosier, Ennis, Fragale, Lawrence, Louisos, Moye, Perry, Pethel, Rodighiero, Shaver, Smith, Stowers, D. Walker, Williams, Duke (*Minority*

## HOUSE OF DELEGATES COMMITTEES

*Chair*), Sumner (*Minority Vice Chair*), Andes, Canterbury, Ireland, Romine, Rowan and Shott.

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

Barker (*Chair of Energy, Industry and Labor*), Shaver (*Vice Chair of Energy, Industry and Labor*), Kominar (*Chair of Economic Development and Small Business*), Craig (*Vice Chair of Economic Development and Small Business*), Brown, Butcher, Caputo, Fleischauer, Guthrie, Klempa, Mahan, Manypenny, Martin, Marshall, Paxton, Skaff, Walker, Sobonya (*Minority Chair of Energy, Industry and Labor*), C. Miller (*Minority Vice Chair of Energy, Industry and Labor*), Blair (*Minority Chair of Economic Development and Small Business*), Andes (*Minority Vice Chair of Economic Development and Small Business*), Hamilton, McGeehan, Schoen and Shott.

### **FINANCE**

White (*Chair*), Campbell (*Vice Chair*), Craig, Doyle, Eldridge, Guthrie, Iaquina, Klempa, Kominar, Mahan, Manchin, Marshall, Perdue, Phillips, M. Poling, Reynolds, Spencer, Varner, Anderson (*Minority Chair*), Carmichael (*Minority Vice Chair*), Ashley, Blair, Border, Evans and Walters.

### **GOVERNMENT ORGANIZATION**

Morgan (*Chair*), Stephens (*Vice Chair*), Argento, Boggs, Butcher, Cann, Givens, Hall, Hartman, Hatfield, Manypenny, Martin, D. Poling, Poore, Staggers, Swartzmiller, Talbott, T. Walker C. Miller (*Minority Chair*), Porter (*Minority Vice Chair*), Azinger, Cowles, Rowan, McGeehan and J. Miller.

HOUSE OF DELEGATES COMMITTEES  
**HEALTH AND HUMAN RESOURCES**

Perdue (*Chair*), Hatfield (*Vice Chair*), Campbell, Eldridge, Fleischauer, Lawrence, Manypenny, Marshall, Moore, Moye, Perry, Phillips, D. Poling, Rodighiero, Spencer, Staggers, Susman, Wooton, Border (*Minority Chair*), J. Miller (*Minority Vice Chair*), Andes, Carmichael, Lane, C. Miller and Rowan.

**JUDICIARY**

Miley (*Chair*), Hunt (*Vice Chair*), Barker, Brown, Caputo, Ferro, Fleischauer, Frazier, Hutchins, Longstreth, Michael, Moore, Ross, Shook, Skaff, Susman, Wells, Wooton, Ellem (*Minority Chair*), Lane (*Minority Vice Chair*), Hamilton, Overington, Schoen, Schadler and Sobonya.

**NATURAL RESOURCES**

Talbott (*Chair*), Crosier (*Vice Chair*), Argento, Beach, Caputo, Craig, Eldridge, Fragale, Guthrie, Hall, Manypenny, Martin, Moye, Phillips, Rodighiero, Shaver, Swartzmiller, Varner, Hamilton (*Minority Chair*), Anderson (*Minority Vice Chair*) Duke, Ellem, Evans, Ireland and Romine.

**PENSIONS AND RETIREMENT**

Spencer (*Chair*), Pethtel (*Vice Chair*), Givens, Reynolds, Williams, Canterbury and Duke.

**POLITICAL SUBDIVISIONS**

Manchin (*Chair*), Beach (*Vice Chair*), Cann, Doyle, Fragale, Hartman, Lawrence, Longstreth, Louisos, D. Poling, Poore, Ross, Susman, Tabb, Varner, T. Walker, Williams, Sumner (*Minority Chair*), Cowles (*Minority Vice Chair*) Anderson, Duke, Ellem, J. Miller, Schadler and Shott.



## HOUSE OF DELEGATES COMMITTEES

### **ROADS AND TRANSPORTATION**

Martin (*Chair*), Klempa (*Vice Chair*), Argento, Barker, Butcher, Craig, Crosier, Ennis, Ferro, Hall, Kominar, Michael, Shook, Smith, Stephens, Stowers, Walker, Wells, Schadler (*Minority Chair*), Canterbury (*Minority Vice Chair*), Armstead, Cowles, Evans, Porter and Rowan.

### **COMMITTEE ON SENIOR CITIZEN ISSUES**

Williams (*Chair*), Ennis (*Vice Chair*), Argento, Butcher, Hatfield, Longstreth, Manchin, Manypenny, Marshall, Moore, Moye, Perdue, Pethtel, D. Poling, Ross, Spencer, Stephens, Susman, Rowan (*Minority Chair*), Evans (*Minority Vice Chair*), Azinger, Duke, Hamilton, Shott and Sumner.

### **RULES**

Thompson (*Chair*), Boggs, Caputo, Fragale, Hatfield, Marshall, Miley, Morgan, Paxton, M. Poling, Talbott, Varner, White, Anderson, Armstead, Border, Carmichael and Overington.

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

Iaquinta (*Chair of Veterans' Affairs*), Longstreth, (*Vice Chair of Veterans' Affairs*), Swartzmiller (*Chair of Homeland Security*), Moye (*Vice Chair of Homeland Security*), Cann, Ennis, Ferro, Fleischauer, Givens, Hatfield, Hutchins, Paxton, Pethtel, Spencer, Staggers, Smith, Stephens, Stowers, Azinger (*Minority Chair of Veterans' Affairs*), Porter (*Minority Vice Chair Veterans' Affairs*), Ireland (*Minority Chair Homeland Security*), Ashley (*Minority Vice Chair of Homeland Security*), Armstead, Sumner and Walters.

### **ENROLLED BILLS**

Wells (*Chair*), Staggers (*Vice Chair*), Fragale and Overington.

HOUSE OF DELEGATES COMMITTEES  
**LEGISLATIVE RULE-MAKING REVIEW**

Brown (*Chair*), D. Poling (*Vice Chair*), Talbott, Overington  
and Sobonya.

**FOREST MANAGEMENT REVIEW**

Michael (*Chair*), Hartman (*Vice Chair*).

**PARKS AND RECREATION**

Eldridge (*Co-Chair*), Wells (*Co-Chair*).

**COMMITTEES OF THE SENATE**  
**Regular Session, 2010**

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**STANDING**

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**AGRICULTURE**

Senators White (*Chair*), Williams (*Vice Chair*), Helmick, Laird, Minard, Palumbo, Snyder, Unger, K. Facemyer, Guills and Sypolt.

**BANKING AND INSURANCE**

Senators Minard (*Chair*), Jenkins (*Vice Chair*), Chafin, Fanning, Green, Helmick, Kessler, McCabe, Palumbo, Prezioso, Deem, K. Facemyer and Hall.

**CONFIRMATIONS**

Senators Stollings (*Chair*), Chafin (*Vice Chair*), Bowman, Green, Minard, Plymale, Prezioso, Hall and Sypolt.

**ECONOMIC DEVELOPMENT**

Senators Browning (*Chair*), Unger (*Vice Chair*), D. Facemire, Helmick, Kessler, McCabe, Oliverio, Snyder, Stollings, Wells, Williams, Caruth, K. Facemyer and Hall.

**EDUCATION**

Senators Plymale (*Chair*), Wells (*Vice Chair*), Browning, Edgell, Foster, Green, Laird, Oliverio, Stollings, Unger, White, Barnes, Boley and Guills.

**ENERGY, INDUSTRY AND MINING**

Senators Green (*Chair*), D. Facemire (*Vice Chair*), Fanning, Helmick, Jenkins, Kessler, Minard, Stollings, Williams, Yost, Deem, Guills and Sypolt.

## SENATE COMMITTEES

### **FINANCE**

Senators Helmick (*Chair*), McCabe (*Vice Chair*), Bowman, Chafin, Edgell, D. Facemire, Fanning, Green, Plymale, Prezioso, Unger, Wells, White, Boley, K. Facemyer, Guills and Sypolt.

### **GOVERNMENT ORGANIZATION**

Senators Bowman (*Chair*), Snyder (*Vice Chair*), Browning, Foster, Kessler, McCabe, Minard, Palumbo, White, Williams, Yost, Boley, Caruth and Sypolt.

### **HEALTH AND HUMAN RESOURCES**

Senators Prezioso (*Chair*), Stollings (*Vice Chair*), Browning, Foster, Jenkins, Laird, Palumbo, Snyder, Unger, Yost, Boley, Guills and Hall.

### **INTERSTATE COOPERATION**

Senators Jenkins (*Chair*), Snyder (*Vice Chair*), Browning, Palumbo, Wells, Caruth and Sypolt.

### **JUDICIARY**

Senators Kessler (*Chair*), Oliverio (*Vice Chair*), Browning, Chafin, Foster, Jenkins, Laird, Minard, Palumbo, Snyder, Stollings, Williams, Yost, Barnes, Caruth, Deem and Hall.

### **LABOR**

Senators Oliverio (*Chair*), Williams (*Vice Chair*), Bowman, Foster, Green, Snyder, White, Yost, Barnes, Deem and Guills.

## SENATE COMMITTEES

### **MILITARY**

Senators Wells (*Chair*), Yost (*Vice Chair*), Edgell, D. Facemire, Laird, Oliverio, Williams, Boley and Sypolt.

### **NATURAL RESOURCES**

Senators Fanning (*Chair*), Laird (*Vice Chair*), Bowman, Edgell, D. Facemire, Helmick, McCabe, Prezioso, Unger, White, Barnes, Deem and K. Facemyer.

### **PENSIONS**

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

### **RULES**

Senators Tomblin (*Chair*), Bowman, Chafin, Fanning, Helmick, Kessler, Plymale, Prezioso, Boley and Caruth.

### **TRANSPORTATION AND INFRASTRUCTURE**

Senators Unger (*Chair*), Jenkins (*Vice Chair*), D. Facemire, Fanning, Plymale, Stollings, White, Barnes and K. Facemyer.

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## **JOINT COMMITTEES**

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### **ENROLLED BILLS**

Senators Palumbo (*Cochair*), D. Facemire, Laird, Wells and Barnes.

SENATE COMMITTEES

**GOVERNMENT AND FINANCE**

Senators Tomblin (*Cochair*), Chafin, Helmick, Kessler, Plymale, Caruth and Deem.

**GOVERNMENT OPERATIONS**

Senators Bowman (*Cochair*), Helmick, McCabe, Snyder and Barnes.

**LEGISLATIVE RULE-MAKING REVIEW**

Senators Minard (*Cochair*), Snyder (*Vice Cochair*), Prezioso, Unger, Boley, K. Facemyer and Tomblin (*ex officio*).

**PENSIONS AND RETIREMENT**

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

**RULES**

Senators Tomblin (*Cochair*), Chafin and Caruth.

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**STATUTORY LEGISLATIVE COMMISSIONS**

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**COMMISSION ON ECONOMIC DEVELOPMENT**

Senators Browning (*Cochair*), Helmick, Kessler, McCabe, Oliverio, Plymale, Prezioso, Stollings, Unger, Barnes, Caruth and K. Facemyer.

**COMMISSION ON INTERSTATE COOPERATION**

Senators Jenkins (*Cochair*), Foster (*Vice Cochair*), Minard, Stollings, Wells, Caruth, Sypolt and Tomblin (*ex officio*).

SENATE COMMITTEES

**COMMISSION ON SPECIAL INVESTIGATIONS**

Senators Tomblin (*Cochair*), Chafin, Helmick, Boley and Caruth.

**FOREST MANAGEMENT REVIEW COMMISSION**

Senators Helmick (*Cochair*), Bowman, D. Facemire, Williams and K. Facemyer.

**LEGISLATIVE OVERSIGHT COMMISSION  
ON EDUCATION ACCOUNTABILITY**

Senators Plymale (*Cochair*), Wells, Edgell, Green, Unger and Boley.

**LEGISLATIVE OVERSIGHT COMMISSION  
ON HEALTH AND HUMAN RESOURCES  
ACCOUNTABILITY**

Senators Prezioso (*Cochair*), Foster, Jenkins, Stollings, Unger, Boley, Caruth and Tomblin (*ex officio*).

**LEGISLATIVE OVERSIGHT COMMISSION ON  
STATE WATER RESOURCES**

Senators Unger (*Cochair*), Green (*Vice Cochair*), Fanning, Helmick and Hall.

**LEGISLATIVE OVERSIGHT COMMISSION  
ON WORKFORCE INVESTMENT FOR ECONOMIC  
DEVELOPMENT**

Senators McCabe (*Cochair*), Kessler, Stollings and Deem.

SENATE COMMITTEES

**LEGISLATIVE OVERSIGHT COMMITTEE ON THE  
REGIONAL JAIL AND CORRECTIONAL FACILITY  
AUTHORITY**

Senators White (*Cochair*), Green, Laird, Yost and Barnes.



# LEGISLATURE OF WEST VIRGINIA

# ACTS

SECOND REGULAR SESSION, 2010

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## CHAPTER 1

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(Com. Sub. for S. B. 238 - By Senators White,  
Green, Laird, Yost, Deem, Stollings,  
Chafin and D. Facemire)

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[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §5A-11-3 and §5A-11-6 of the Code of West Virginia, 1931, as amended, all relating to management of state lands; authorizing the use of mineral rights to benefit state agencies, institutions or departments; providing that the royalties and payments from land sales and exchanges made by the Adjutant General's Department be retained in the fund managed by the Adjutant General; and providing an exemption for providing a performance bond when an agency is entering into a mineral lease.

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

That §5A-11-3 and §5A-11-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 11. PUBLIC LAND CORPORATION.**

§5A-11-3. Public Land Corporation, powers and duties.

§5A-11-6. Competitive bidding and notice requirements before the development or extraction of minerals on certain lands; related standards.

**§5A-11-3. Public Land Corporation, powers and duties.**

1 (a) The corporation is hereby authorized and empowered to:

2 (1) Acquire from any persons or the State Auditor or any  
3 local, state or federal agency, by purchase, lease or other  
4 agreement, any lands necessary and required for public use;

5 (2) Acquire by purchase, condemnation, lease or agreement,  
6 receive by gifts and devises or exchange, rights-of-way,  
7 easements, waters and minerals suitable for public use;

8 (3) Sell or exchange public lands where it is determined  
9 that the sale or exchange of such tract meets any or all of the  
10 following disposal criteria:

11 (A) The tract was acquired for a specific purpose and the  
12 tract is no longer required for that or any other state purpose;

13 (B) Disposal of the tract serves important public  
14 objectives including, but not limited to, expansion of  
15 communities and economic development which cannot be  
16 achieved on lands other than public lands and which clearly  
17 outweigh other public objectives and values including, but  
18 not limited to, recreation and scenic values which would be  
19 served by maintaining the tract in state ownership; or

20 (C) The tract, because of its location or other  
21 characteristics, is difficult and uneconomic to manage as part  
22 of the public lands and is not suitable for management by  
23 another state department or agency.

24 (4) Sell, purchase or exchange lands or stumpage for the  
25 purpose of consolidating lands under state or federal  
26 government administration subject to the disposal criteria  
27 specified in subdivision (3) of this subsection;

28 (5) Negotiate and effect loans or grants from the  
29 government of the United States or any agency thereof for  
30 acquisition and development of lands as may be authorized  
31 by law to be acquired for public use;

32 (6) Expend the income from the use and development of  
33 public lands for the following purposes:

34 (A) Liquidate obligations incurred in the acquisition,  
35 development and administration of lands, until all obligations  
36 have been fully discharged;

37 (B) Purchase, develop, restore and preserve for public  
38 use, sites, structures, objects and documents of prehistoric,  
39 historical, archaeological, recreational, architectural and  
40 cultural significance to the State of West Virginia; and

41 (C) Obtain grants or matching moneys available from the  
42 government of the United States or any of its  
43 instrumentalities for prehistoric, historic, archaeological,  
44 recreational, architectural and cultural purposes.

45 (7) Designate lands, to which it has title, for development  
46 and administration for the public use including recreation,  
47 wildlife stock grazing, agricultural rehabilitation and  
48 homesteading or other conservation activities;

49 (8) Enter into leases as a lessor for the development and  
50 extraction of minerals, including coal, oil, gas, sand or gravel  
51 except as otherwise circumscribed herein: *Provided*, That  
52 leases for the development and extraction of minerals shall be  
53 made in accordance with the provisions of sections five and  
54 six of this article. The corporation shall reserve title and  
55 ownership to the mineral rights in all cases;

56 (9) Convey, assign or allot lands to the title or custody of  
57 proper departments or other agencies of state government for  
58 administration and control within the functions of  
59 departments or other agencies as provided by law;

60 (10) Make proper lands available for the purpose of  
61 cooperating with the government of the United States in the  
62 relief of unemployment and hardship or for any other public  
63 purpose.

64 (b) There is hereby continued in the state Treasury a  
65 special Public Land Corporation Fund into which shall be  
66 paid all proceeds from public land sales and exchanges and  
67 rents, royalties and other payments from mineral leases:  
68 *Provided*, That all royalties and payments derived from  
69 rivers, streams or public lands acquired or managed by the  
70 Division of Natural Resources pursuant to section seven,  
71 article one, chapter twenty of this code and section two,  
72 article five, chapter twenty of this code shall be retained by  
73 the Division of Natural Resources: *Provided, however*, That  
74 all proceeds, rents, royalties and other payments from land  
75 sales, exchanges and mineral rights leasing for public lands  
76 owned, managed or controlled by the Adjutant General's  
77 Department will be retained in a fund managed by the  
78 Adjutant General in accordance with article six, chapter  
79 fifteen of the code: *Provided, further*, That all free gas, sand,  
80 gravel or other natural resources derived from a lease or  
81 contract made pursuant to this article will be used to benefit  
82 the state agencies, institutions, or departments located on the  
83 affected public lands, or for which the corporation was acting  
84 or to benefit any state agencies, institutions, or departments  
85 having adjacent property. The corporation may acquire  
86 public lands from use of the payments made to the fund,  
87 along with any interest accruing to the fund. The corporation  
88 shall report annually, just prior to the beginning of the regular  
89 session of the Legislature, to the finance committees of the  
90 Legislature on the financial condition of the special fund.  
91 The corporation shall report annually to the Legislature on its  
92 public land holdings and all its leases, its financial condition  
93 and its operations and shall make such recommendations to  
94 the Legislature concerning the acquisition, leasing,  
95 development, disposition and use of public lands.

96 (c) All state agencies, institutions, divisions and  
97 departments shall make an inventory of the public lands of  
98 the state as may be by law specifically allocated to and used  
99 by each and provide to the corporation a list of such public  
100 lands and minerals, including their current use, intended use  
101 or best use to which lands and minerals may be put:  
102 *Provided*, That the Division of Highways need not provide  
103 the inventory of public lands allocated to and used by it, and  
104 the Division of Natural Resources need not provide the  
105 inventory of rivers, streams and public lands acquired or  
106 managed by it. The inventory shall identify those parcels of  
107 land which have no present or foreseeable useful purpose to  
108 the State of West Virginia. The inventory shall be submitted  
109 annually to the corporation by August 1. The corporation  
110 shall compile the inventory of all public lands and minerals  
111 and report annually to the Legislature by no later than  
112 January 1, on its public lands and minerals and the lands and  
113 minerals of the other agencies, institutions, divisions or  
114 departments of this state which are required to report their  
115 holdings to the corporation as set forth in this subsection, and  
116 its financial condition and its operations.

117 (d) Except as otherwise provided by law, when the  
118 corporation exercises its powers, the corporation will  
119 coordinate with other state agencies, institutions, and  
120 departments in order to develop and execute plans to utilize  
121 mineral rights which benefit their operations or the  
122 operations of any other state agencies, institutions, or  
123 departments.

**§5A-11-6. Competitive bidding and notice requirements before  
the development or extraction of minerals on  
certain lands; related standards.**

1 (a) The corporation may enter into a lease or contract for  
2 the development of minerals, including, but not limited to,  
3 coal, gas, oil, sand or gravel on or under lands in which the  
4 corporation holds any right, title or interest: *Provided*, That  
5 no lease or contract may be entered into for the extraction

6 and removal of minerals by surface mining or auger mining  
7 of coal: *Provided, however,* That the corporation or the state  
8 agencies, institutions or departments for which it is acting  
9 will not be required to post any type of surety or performance  
10 bond with the West Virginia Department of Environmental  
11 Protection or any other state agency when executing a lease  
12 for the development of minerals.

13 (b) With the exception of deep mining operations which  
14 are already in progress and permitted as of July 5, 1989, the  
15 extraction of coal by deep mining methods under state forests  
16 or wildlife refuges may be permitted only if the lease or  
17 contract provides that no entries, portals, air shafts or other  
18 incursions upon and into the land incident to the mining  
19 operations may be placed or constructed upon the lands or  
20 within three thousand feet of its boundary.

21 (c) Any lease or contract entered into by the corporation  
22 for the development of minerals shall reserve to the state all  
23 rights to subjacent surface support with which the state is  
24 seized or possessed at the time of such lease or contract.

25 (d) Notwithstanding any other provisions of the code to  
26 the contrary, nothing herein may be construed to permit  
27 extraction of minerals by any method from, on or under any  
28 state park or state recreation area, nor the extraction of  
29 minerals by strip or auger mining upon any state forest or  
30 wildlife refuge.

31 (e) The corporation may enter into a lease or contract for  
32 the development of minerals where the lease or contract is  
33 not prohibited by any other provisions of this code, only after  
34 receiving sealed bids therefor, after notice by publication as  
35 a Class II legal advertisement in compliance with the  
36 provisions of article three, chapter fifty-nine of this code.  
37 The area for publication shall be each county in which the  
38 minerals are located.

39 (f) The minerals so advertised may be leased or  
40 contracted for development at not less than the fair market  
41 value, as determined by an appraisal made by an independent  
42 person or firm chosen by the corporation, to the highest  
43 responsible bidder, who shall give bond for the proper  
44 performance of the contract or lease as the corporation  
45 designates: *Provided*, That the corporation may reject any  
46 and all bids and to readvertise for bids.

47 (g) If the provisions of this section have been complied  
48 with, and no bid equal to or in excess of the fair market value  
49 is received, the corporation may, at any time during a period  
50 of six months after the opening of the bids, lease or contract  
51 for the development of the minerals, but the lease or contract  
52 price may not be less than the fair market value.

53 (h) Any lease or contract for the development of minerals  
54 entered into after the effective date of this section shall be  
55 made in accordance with the provisions of this section and  
56 section five of this article.

57 (i) The corporation will consult with the office of the  
58 Attorney General to assist the corporation in carrying out the  
59 provisions of this section.

60 (j) The corporation shall consult with an independent  
61 mineral consultant and any other competent third parties with  
62 experience and expertise in the leasing of minerals, to assist  
63 the corporation in carrying out the provisions of this section,  
64 including determining fair market value and negotiating  
65 terms and conditions of mineral leases.

66 (k) Once the lessee commences the production of  
67 minerals and royalties become due and are paid to the Public  
68 Land Corporation, the Public Land Corporation shall hire an  
69 independent auditing firm to periodically review the lessee's  
70 books and accounts for compliance of payment of  
71 appropriate royalties due the Public Land Corporation for its  
72 minerals as produced under the lease agreement.

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## CHAPTER 2

**(Com. Sub. for H. B. 4201 - By Delegates Eldridge,  
Butcher, Stowers, Louisos, Border, Lawrence,  
Williams, Varner, Evans and Kominar)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-1C-1, §19-1C-2, §19-1C-3, §19-1C-4, §19-1C-5 and §19-1C-6, all relating to establishing the Livestock Care Standards Board; defining terms; specifying conditions of membership and the qualifications, terms and compensation of members; authoring legislative rulemaking; and providing for meetings of the board.

*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 §19-1C-1, §19-1C-2, §19-1C-3, §19-1C-4, §19-1C-5 and §19-1C-6, all to read as follows:

### **ARTICLE 1C. CARE OF LIVESTOCK.**

- §19-1C-1. Legislative findings.
- §19-1C-2. Definitions.
- §19-1C-3. Livestock Care Standards Board.
- §19-1C-4. Powers and duties of the board.
- §19-1C-5. Compensation of board members.
- §19-1C-6. Meetings of the board.

#### **§19-1C-1. Legislative findings.**



1 (a) The Legislature finds that the following are important  
2 to protect the health and welfare of the citizens of West  
3 Virginia:

4 (1) Establishing standards governing the care and well-  
5 being of livestock in this state;

6 (2) Maintaining food safety;

7 (3) Encouraging locally grown and raised food; and

8 (4) Protecting West Virginia farms and families.

9 (b) Therefore, to protect the public interest, the  
10 Legislature finds that it is necessary to create a Livestock  
11 Care Standards Board.

#### **§19-1C-2. Definitions.**

1 For the purposes of this article:

2 (1) "Board" means the Livestock Care Standards Board.

3 (2) "Livestock" has the same definition as set out in  
4 subsection (d), section two, article ten-b of this chapter.

#### **§19-1C-3. Livestock Care Standards Board.**

1 (a) On July 1, 2010, there is hereby created the Livestock  
2 Care Standards Board.

3 (b) Prior to July 1, 2010, the Governor shall appoint, by  
4 and with the advice and consent of the Senate, the following  
5 eleven members:

6 (1) One member who is a veterinarian licensed in this state  
7 engaging in large animal practice, for a term of two years;

8 (2) The dean of the agriculture department of a college or  
9 university located in this state, for a term of three years;

10 (3) One member representing a county humane society  
11 that is organized under state law, for a term of four years;

12 (4) One member who is knowledgeable about food safety  
13 in this state, for a term of five years;

14 (5) Two members of the public representing West  
15 Virginia consumers, one for a term of two years and one for  
16 a term of four years;

17 (6) Two members representing state agricultural  
18 organizations that represent farmers, one of whom must be a  
19 member of the largest organization in the state representing  
20 farmers for a term of three years, and the other must be a  
21 member of a statewide livestock organization, for a term of  
22 five years; and

23 (7) Three members representing family farms engaged in  
24 animal production, at least two of whom are family farmers,  
25 for the following terms: one for three years, one for four  
26 years and one for five years.

27 (c) After the initial appointment terms, the appointment  
28 term is five years. Appointed members may be reappointed  
29 for additional terms.

30 (d) Commencing July 1, 2010, the board consists of the  
31 following thirteen members:

32 (1) The Commissioner of the Department of Agriculture  
33 or his or her designee, ex officio non-voting, who is the  
34 chairperson of the board;

35 (2) The Director of the Animal Health Division, ex  
36 officio non-voting;

37 (3) One member who is a veterinarian licensed in this  
38 state engaging in large animal practice;

39 (4) The dean of the agriculture department of a college or  
40 university located in this state;

41 (5) One member representing a county humane society  
42 that is organized under state law;

43 (6) One member who is knowledgeable about food safety  
44 in this state;

45 (7) Two members of the public representing West  
46 Virginia consumers;

47 (8) Two members representing state agricultural  
48 organizations that represent farmers, one of whom must be a  
49 member of the largest organization in the state representing  
50 farmers, and the other must be a member of a statewide  
51 livestock organization; and

52 (9) Three members representing family farms engaged in  
53 animal production, at least two of whom are family farmers.

54 (e) All members must be residents of this state during  
55 their terms. No more than seven members of the board may  
56 be of the same political party and no more than five may be  
57 from the same congressional district at any given time.

58 (f) All appointed members serve until their successor has  
59 been appointed and qualified. Vacancies shall be filled in the  
60 same manner as the original appointment for the remainder  
61 of the unexpired term.

#### **§19-1C-4. Powers and duties of the board.**

1 (a) The board has the following powers and duties to:

2 (1) Establish standards governing the care and well-being  
3 of livestock in this state;

4 (2) Maintain food safety;

5 (3) Encourage locally grown and raised food; and

6 (4) Protect West Virginia farms and families.

7 (b) The board is also authorized to establish standards by  
8 legislative rule, pursuant to the provisions of article three,  
9 chapter twenty-nine-a of this code, governing the care and  
10 well-being of livestock in this state, including:

11 (1) The agricultural best management practices for the  
12 care and well-being of livestock and poultry in this state;

13 (2) Biosecurity, disease prevention, animal morbidity and  
14 mortality data;

15 (3) Food safety practices; and

16 (4) The protection of local, affordable food supplies for  
17 consumers.

18 (c) The Department of Agriculture shall administer and  
19 enforce the standards established by the board that are  
20 approved by the Legislature.

**§19-1C-5. Compensation of board members.**

1 (a) The ex officio members of the board may not receive  
2 compensation for serving on the board.

3 (b) The appointed members of the board shall receive  
4 compensation for each day or portion of a day engaged in the  
5 discharge of official duties, which compensation may not  
6 exceed the amount paid to members of the Legislature for

7 their interim duties as recommended by the Citizens  
8 Legislative Compensation Commission and authorized by  
9 law.

10 (c) Each member of the board shall be reimbursed actual  
11 and necessary expenses incurred for each day or portion of a  
12 day engaged in the discharge of official duties in a manner  
13 consistent with the guidelines of the Travel Management  
14 Office of the Department of Administration.

#### **§19-1C-6. Meetings of the board.**

1 The board shall meet at least annually, and the  
2 chairperson may call additional meetings of the board upon  
3 the written request of three members.

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## CHAPTER 3

**(Com. Sub. for H. B. 4527 - By Delegates Morgan,  
C. Miller, Canterbury, Williams and Campbell)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on April 1, 2010.]

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AN ACT to amend and reenact §19-13-4 of the Code of West Virginia, 1931, as amended, relating to limiting the liability of apiary owners and operators; requiring the Department of Agriculture to promulgate best practices rules; and authorizing emergency rulemaking power.

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

That §19-13-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 13. INSPECTION AND PROTECTION OF AGRICULTURE.**

**§19-13-4. Registration of bees; identification of apiaries; limitation on liability.**

1 (a) All persons keeping bees in this state shall apply for  
2 a certificate of registration for bee keeping from the  
3 commissioner, within ten days of the date that bees are  
4 acquired, by notifying the commissioner, in writing, of the  
5 number and location of colonies they own or rent, or which  
6 they keep for someone else, whether the bees are located on  
7 their own property or someone else's property. All apiary  
8 certificates of registration expire on December 31, of each  
9 year and must be renewed annually.

10 (b) All persons owning or operating an apiary which is  
11 not located on their own property must post the name and  
12 address of the owner or operator in a conspicuous place in  
13 the apiary.

14 (c) A person who:

15 (1) Owns and operates an apiary;

16 (2) Is registered with the Commissioner; and

17 (3) Operates the apiary in a reasonable manner and in  
18 conformance with the West Virginia Department of  
19 Agriculture's written best management practices provided by  
20 rule, is not liable for any personal injury or property damage  
21 that occurs in connection with the keeping and maintaining  
22 of bees, bee equipment, queen breeding equipment, apiaries  
23 and appliances. The limitation of liability established by this

24 section does not apply to intentional tortious conduct or acts  
25 or omissions constituting gross negligence.

26 The limitation on liability in this subsection shall not take  
27 effect until legislative rules promulgated by the Commissioner  
28 of Agriculture are authorized by the Legislature. However, the  
29 Commissioner of Agriculture shall have the authority to  
30 promulgate emergency rules under this subsection.

31 (d) In order to effectuate the purposes of subsection (c),  
32 the commissioner shall propose for promulgation, legislative  
33 rules in accordance with article three, chapter twenty-nine-a  
34 of this code: *Provided*, That the initial promulgation may be  
35 by emergency rule. The rule shall include best management  
36 standards for the operation of apiaries. The limitation on  
37 liability contained in subsection (c) shall not take effect until  
38 legislative rules are promulgated in accordance with article  
39 three, chapter twenty-nine-a of this code.



## CHAPTER 4

**(Com. Sub. for S. B. 236 - By Senators Williams,  
White, Stollings, Chafin, D. Facemire and Kessler)**

[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new article, designated §19-32-1, §19-32-2,  
§19-32-3, §19-32-4 and §19-32-5, all relating to promoting  
aquacultural development in West Virginia; creating the  
Aquaculture Development Act; providing definitions; setting  
forth Legislative findings and purpose; setting forth the powers

and duties of the Department of Agriculture; creating the Aquaculture Advisory Board; and setting forth the duties of the board.

*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 §19-32-1, §19-32-2, §19-32-3, §19-32-4 and §19-32-5, all to read as follows:

## **ARTICLE 32. AQUACULTURE DEVELOPMENT.**

- §19-32-1. Legislative findings and purpose.
- §19-32-2. Short title.
- §19-32-3. Definitions.
- §19-32-4. Lead agency; powers and duties.
- §19-32-5. Advisory board.

### **§19-32-1. Legislative findings and purpose.**

1       The Legislature finds and declares that aquaculture has  
2 the potential for reducing the United States trade deficit in  
3 fisheries products, for augmenting food supplies, for  
4 expanding employment, for promoting economic activity, for  
5 improving public health, for augmenting existing commercial  
6 and recreational fisheries and for producing other renewable  
7 resources, thereby assisting West Virginia and the United  
8 States in meeting its future food needs and contributing to the  
9 solution of world resource problems. It is, therefore, in the  
10 state's interest and it is state policy to recognize aquaculture as  
11 agriculture and to encourage the development of aquaculture  
12 in West Virginia.

### **§19-32-2. Short title.**

1       This article shall be known as the Aquaculture  
2 Development Act.

### **§19-32-3. Definitions.**



1 As used in this article:

2 (1) “Aquaculture” means the propagation, rearing, and/or  
3 use of aquatic species in controlled or selected environments  
4 for private and or commercial purposes related to food  
5 production, recreation, research, importation, exportation,  
6 marketing, transportation and science.

7 (2) “Aquaculture facility” means any land, structure or other  
8 appurtenance that is used for aquaculture, including, but not  
9 limited to, any laboratory, hatchery, rearing pond, raceway, pen,  
10 incubator, or other equipment used in aquaculture;

11 (3) “Aquatic species” means any species of finfish,  
12 mollusk, crustacean, or other aquatic invertebrate, amphibian,  
13 reptile, or aquatic plant, and including, but not limited to,  
14 “fish” and “fishes” as defined in this chapter.

15 (4) “Commissioner” means the Commissioner of  
16 Agriculture;

17 (5) “Department” means the West Virginia Department  
18 of Agriculture.

#### **§19-32-4. Lead agency; powers and duties.**

1 (a) Aquaculture is a form of agriculture and thus the  
2 Department of Agriculture is designated as the lead state  
3 agency in matters pertaining to aquaculture.

4 (b) The department shall have the following powers and  
5 duties:

6 (1) To provide aquaculturalists with information and  
7 assistance in obtaining permits related to aquacultural  
8 activities;

9 (2) To promote investment in aquaculture facilities in  
10 order to expand production and processing capacity;

11 (3) To work with appropriate state and federal agencies  
12 to review, develop and implement rules, policies and  
13 procedures to facilitate aquacultural development;

14 (4) To facilitate the formation of an Aquaculture  
15 Advisory Board consistent with the provisions of section five  
16 of this article;

17 (5) To coordinate the development and implementation  
18 of a state aquaculture plan which shall include prioritized  
19 recommendations for research and development as suggested  
20 by the Aquaculture Advisory Board, the department, public  
21 and private research institutions and the West Virginia  
22 University Extension Service;

23 (6) To develop memoranda of agreement, as needed, with  
24 the Department of Environmental Protection, the Division of  
25 Natural Resources, the Department of Agriculture and other  
26 groups as provided in the state aquaculture plan; and

27 (7) To develop and propose to the Legislature, if  
28 necessary, legislation required to implement the state  
29 aquaculture plan and to otherwise encourage the development  
30 of aquaculture in the state.

#### **§19-32-5. Advisory board.**

1 (a) There is created within the Department of Agriculture  
2 the Aquaculture Advisory Board, to consist of the following  
3 representatives:

4 (1) The Commissioner of Agriculture or the commissioner's  
5 designee who shall serve as chairman of the board;

6 (2) A representative from the Division of Natural  
7 Resources;

8 (3) A representative from the Department of Environmental  
9 Protection;

10 (4) A representative from the West Virginia University  
11 Extension Service;

12 (5) Two industry representatives currently conducting  
13 for-profit aquaculture or aquaculture related activities in  
14 West Virginia; and

15 (6) One at-large member appointed at the discretion of  
16 the commissioner.

17 (b) Clerical and other assistance shall be provided by the  
18 Department of Agriculture.

19 (c) The board shall review state and federal policies, laws  
20 and regulations affecting aquaculture and recommend  
21 changes which may be necessary or useful to carry out the  
22 purposes of this article.

23 (d) The board shall present its recommendations to the  
24 Department of Agriculture.

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## CHAPTER 5

**(Com. Sub. for H. B. 4167 - By Delegates Miley,  
Wooton, Barker, Moore, Shook, Ferro,  
Ellem, Schoen and Sobonya)**

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[Passed March 11, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 19, 2010.]

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AN ACT to amend and reenact §17C-5A-3 of the Code of West Virginia, 1931, as amended, relating to creation of a special revenue account, known as the Department of Health and Human Resources Safety and Treatment Fund; making a one-

time transfer of moneys into the fund; providing rule-making authority; and control and use of the fund by the agency.

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

That §17C-5A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5A. ADMINISTRATIVE PROCEDURE FOR  
SUSPENSION AND REVOCATION OF  
LICENSES FOR DRIVING UNDER  
THE INFLUENCE OF ALCOHOL,  
CONTROLLED SUBSTANCES OR  
DRUGS.**

**\*§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 administer a  
3 comprehensive safety and treatment program for persons  
4 whose licenses have been revoked under the provisions of  
5 this article or section seven, article five of this chapter or  
6 subsection (6), section five, article three, chapter seventeen-b  
7 of this code and shall also establish the minimum  
8 qualifications for mental health facilities, day report centers,  
9 community correction centers or other public agencies or  
10 private entities conducting the safety and treatment program:  
11 *Provided*, That the Department of Health and Human  
12 Resources, Division of Alcoholism and Drug Abuse may  
13 establish standards whereby the division will accept or  
14 approve participation by violators in another treatment  
15 program which provides the same or substantially similar  
16 benefits as the safety and treatment program established  
17 pursuant to this section.

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\*CLERK'S NOTE: This section was also amended by S. B. 186 (Chapter 136) which passed subsequent to this act.

18 (b) The program shall include, but not be limited to,  
19 treatment of alcoholism, alcohol and drug abuse, psychological  
20 counseling, educational courses on the dangers of alcohol  
21 and drugs as they relate to driving, defensive driving or other  
22 safety driving instruction and other programs designed to  
23 properly educate, train and rehabilitate the offender.

24 (c) The Department of Health and Human Resources,  
25 Division of Alcoholism and Drug Abuse shall provide for the  
26 preparation of an educational and treatment program for  
27 each person whose license has been revoked under the  
28 provisions of this article or section seven, article five of this  
29 chapter or subsection (6), section five, article three, chapter  
30 seventeen-b of this code which shall contain the following:  
31 (1) A listing and evaluation of the offender's prior traffic  
32 record; (2) the characteristics and history of alcohol or drug  
33 use, if any; (3) his or her amenability to rehabilitation through  
34 the alcohol safety program; and (4) a recommendation as to  
35 treatment or rehabilitation and the terms and conditions of the  
36 treatment or rehabilitation. The program shall be prepared by  
37 persons knowledgeable in the diagnosis of alcohol or drug  
38 abuse and treatment.

39 (d) There is hereby created a special revenue account  
40 within the State Treasury known as the Department of Health  
41 and Human Resources Safety and Treatment Fund. The  
42 account shall be administered by the Secretary of the  
43 Department of Health and Human Resources for the purpose  
44 of administering the comprehensive safety and treatment  
45 program established by subsection (a) of this section. The  
46 account may be invested, and all earnings and interest  
47 accruing shall be retained in the account. The Auditor shall  
48 conduct an audit of the fund at least every three fiscal years.

49 Effective July 1, 2010, the State Treasurer shall make a  
50 one-time transfer of \$250,000 from the Motor Vehicle Fees  
51 Fund into the Department of Health and Human Resources  
52 Safety and Treatment Fund.

53 (e) The program provider shall collect the established fee  
54 from each participant upon enrollment unless the department  
55 has determined that the participant is an indigent based upon  
56 criteria established pursuant to legislative rule authorized in  
57 this section. Program providers shall remit to the Department  
58 of Health and Human Resources a portion of the fee  
59 collected, which shall be deposited by the Secretary of the  
60 Department of Health and Human Resources into the  
61 Department of Health and Human Resources Safety and  
62 Treatment Fund. The Department of Health and Human  
63 Resources shall reimburse enrollment fees to program  
64 providers for each eligible indigent offender.

65 (f) On or before January 15 of each year, the Secretary of  
66 the Department of Health and Human Resources shall report  
67 to the Legislature on:

68 (1) The total number of offenders participating in the  
69 safety and treatment program during the prior year;

70 (2) The total number of indigent offenders participating  
71 in the safety and treatment program during the prior year;

72 (3) The total number of program providers during the  
73 prior year; and

74 (4) The total amount of reimbursements paid to program  
75 provider during the prior year.

76 (g) The Commissioner of the Division of Motor Vehicles,  
77 after giving due consideration to the program developed for  
78 the offender, shall prescribe the necessary terms and  
79 conditions for the reissuance of the license to operate a motor  
80 vehicle in this state revoked under this article or section  
81 seven, article five of this chapter or subsection (6), section  
82 five, article three, chapter seventeen-b of this code which  
83 shall include successful completion of the educational,  
84 treatment or rehabilitation program, subject to the following:

85 (1) When the period of revocation is six months, the  
86 license to operate a motor vehicle in this state may not be  
87 reissued until: (A) At least ninety days have elapsed from the  
88 date of the initial revocation, during which time the  
89 revocation was actually in effect;(B) the offender has  
90 successfully completed the program; (C) all costs of the  
91 program and administration have been paid; and (D) all costs  
92 assessed as a result of a revocation hearing have been paid.

93 (2) When the period of revocation is for a period of one  
94 year or for more than a year, the license to operate a motor  
95 vehicle in this state may not be reissued until: (A) At least  
96 one-half of the time period has elapsed from the date of the  
97 initial revocation, during which time the revocation was  
98 actually in effect; (B) the offender has successfully completed the  
99 program; (C) all costs of the program and administration  
100 have been paid; and (D) all costs assessed as a result of a  
101 revocation hearing have been paid. Notwithstanding any  
102 provision in this code, a person whose license is revoked for  
103 refusing to take a chemical test as required by section seven,  
104 article five of this chapter for a first offense is not eligible to  
105 reduce the revocation period by completing the safety and  
106 treatment program.

107 (3) When the period of revocation is for life, the license  
108 to operate a motor vehicle in this state may not be reissued  
109 until: (A) At least ten years have elapsed from the date of the  
110 initial revocation, during which time the revocation was  
111 actually in effect; (B) the offender has successfully  
112 completed the program; (C) all costs of the program and  
113 administration have been paid; and (D) all costs assessed as  
114 a result of a revocation hearing have been paid.

115 (4) Notwithstanding any provision of this code or any  
116 rule, any mental health facilities or other public agencies or  
117 private entities conducting the safety and treatment program  
118 when certifying that a person has successfully completed a

119 safety and treatment program shall only have to certify that  
120 the person has successfully completed the program.

121 (h) (1) The Department of Health and Human Resources,  
122 Division of Alcoholism and Drug Abuse shall provide for the  
123 preparation of an educational program for each person whose  
124 license has been suspended for sixty days pursuant to the  
125 provisions of subsection (n), section two, article five-a of this  
126 chapter. The educational program shall consist of not less  
127 than twelve nor more than eighteen hours of actual classroom  
128 time.

129 (2) When a sixty-day period of suspension has been  
130 ordered, the license to operate a motor vehicle may not be  
131 reinstated until: (A) At least sixty days have elapsed from  
132 the date of the initial suspension, during which time the  
133 suspension was actually in effect; (B) the offender has  
134 successfully completed the educational program; (C) all costs  
135 of the program and administration have been paid; and (D)  
136 all costs assessed as a result of a suspension hearing have  
137 been paid.

138 (i) A required component of the treatment program  
139 provided in subsection (b) of this section and the education  
140 program provided for in subsection (c) of this section shall be  
141 participation by the violator with a victim impact panel  
142 program providing a forum for victims of alcohol and drug-  
143 related offenses and offenders to share first-hand experiences  
144 on the impact of alcohol and drug-related offenses in their  
145 lives. The Department of Health and Human Resources,  
146 Division of Alcoholism and Drug Abuse shall propose and  
147 implement a plan for victim impact panels where appropriate  
148 numbers of victims are available and willing to participate  
149 and shall establish guidelines for other innovative programs  
150 which may be substituted where the victims are not available  
151 to assist persons whose licenses have been suspended or  
152 revoked for alcohol and drug-related offenses to gain a full



153 understanding of the severity of their offenses in terms of the  
154 impact of the offenses on victims and offenders. The plan  
155 shall require, at a minimum, discussion and consideration of  
156 the following:

157 (A) Economic losses suffered by victims or offenders;

158 (B) Death or physical injuries suffered by victims or  
159 offenders;

160 (C) Psychological injuries suffered by victims or  
161 offenders;

162 (D) Changes in the personal welfare or familial  
163 relationships of victims or offenders; and

164 (E) Other information relating to the impact of alcohol  
165 and drug-related offenses upon victims or offenders.

166 The Department of Health and Human Resources,  
167 Division of Alcoholism and Drug Abuse shall ensure that any  
168 meetings between victims and offenders shall be  
169 nonconfrontational and ensure the physical safety of the  
170 persons involved.

171 (j)(1) The Secretary of the Department of Health and  
172 Human Resources shall promulgate a rule for legislative  
173 approval in accordance with article three, chapter twenty-  
174 nine-a of this code to administer the provisions of this section  
175 and establish a fee to be collected from each offender  
176 enrolled in the safety and treatment program. The rule shall  
177 include: (A) A reimbursement mechanism to program  
178 providers of required fees for the safety and treatment  
179 program for indigent offenders, criteria for determining  
180 eligibility of indigent offenders, and any necessary  
181 application forms; and (B) program standards that encompass  
182 provider criteria including minimum professional training

183 requirements for providers, curriculum approval, minimum  
184 course length requirements and other items that may be  
185 necessary to properly implement the provisions of this  
186 section.

187 (2) The Legislature finds that an emergency exists and,  
188 therefore, the secretary shall file by July 1, 2010, an  
189 emergency rule to implement this section pursuant to the  
190 provisions of section fifteen, article three, chapter twenty-  
191 nine-a of this code.

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## CHAPTER 6

**(H. B. 4524 - By Delegates Martin, Kominar,  
Reynolds, D. Walker and Morgan)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 25, 2010.]

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AN ACT to amend and reenact §17A-1-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §17A-6-1 of said code; and to amend and reenact §17F-1-9 of said code, all relating to a revision of the definition of “all-terrain vehicle” ; the inclusion of a definition for utility-terrain vehicle and authorizing the same restrictions and conditions on the use of utility-terrain vehicles as on all-terrain vehicles.

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

That §17A-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17A-6-1 of said code be amended and reenacted; and that §17F-1-9 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 17A. **Motor Vehicle Administration, Registration, Certification of Title, and Antitheft Provisions.**
- 17F. **All-Terrain Vehicles.**

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,  
REGISTRATION, CERTIFICATE OF TITLE, AND  
ANTITHEFT PROVISIONS.**

**Article**

- 1. **Words and Phrases Defined.**
- 6. **Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers.**

**ARTICLE 1. WORDS AND PHRASES DEFINED.**

**§17A-1-1. Definitions.**

1 Except as otherwise provided in this chapter, the  
2 following words and phrases, when used in this chapter, shall  
3 have the meanings respectively ascribed to them in this  
4 article:

5 (a) "Vehicle" means every device in, upon or by which  
6 any person or property is or may be transported or drawn  
7 upon a highway, excepting devices moved by human power  
8 or used exclusively upon stationary rails or tracks.

9 (b) "Motor vehicle" means every vehicle which is self-  
10 propelled and every vehicle which is propelled by electric  
11 power obtained from overhead trolley wires, but not operated  
12 upon rails.

13 (c) "Motorcycle" means every motor vehicle, including  
14 motor-driven cycles and mopeds as defined in sections five  
15 and five-a, article one, chapter seventeen-c of this code,  
16 having a saddle for the use of the rider and designed to travel  
17 on not more than three wheels in contact with the ground, but  
18 excluding a tractor.

19 (d) "School bus" means every motor vehicle owned by a  
20 public governmental agency and operated for the  
21 transportation of children to or from school or privately  
22 owned and operated for compensation for the transportation  
23 of children to or from school.

24 (e) "Bus" means every motor vehicle designed to carry  
25 more than seven passengers and used to transport persons;  
26 and every motor vehicle, other than a taxicab, designed and  
27 used to transport persons for compensation.

28 (f) "Truck tractor" means every motor vehicle designed  
29 and used primarily for drawing other vehicles and not so  
30 constructed as to carry a load other than a part of the weight  
31 of the vehicle and load so drawn.

32 (g) "Farm tractor" means every motor vehicle designed  
33 and used primarily as a farm implement for drawing plows,  
34 mowing machines and other implements of husbandry.

35 (h) "Road tractor" means every motor vehicle designed,  
36 used or maintained for drawing other vehicles and not so  
37 constructed as to carry any load thereon either independently  
38 or any part of the weight of a vehicle or load so drawn.

39 (i) "Truck" means every motor vehicle designed, used or  
40 maintained primarily for the transportation of property.

41 (j) "Trailer" means every vehicle with or without motive  
42 power designed for carrying persons or property and for  
43 being drawn by a motor vehicle and so constructed that no  
44 part of its weight rests upon the towing vehicle, but excluding  
45 recreational vehicles.

46 (k) "Semitrailer" means every vehicle with or without  
47 motive power designed for carrying persons or property and  
48 for being drawn by a motor vehicle and so constructed that

49 some part of its weight and that of its load rests upon or is  
50 carried by another vehicle.

51 (l) "Pole trailer" means every vehicle without motive  
52 power designed to be drawn by another vehicle and attached  
53 to the towing vehicle by means of a reach, or pole, or by  
54 being boomed or otherwise secured to the towing vehicle and  
55 ordinarily used for transporting long or irregularly shaped  
56 loads such as poles, pipes or structural members capable,  
57 generally, of sustaining themselves as beams between the  
58 supporting connections.

59 (m) "Specially constructed vehicles" means every vehicle  
60 of a type required to be registered hereunder not originally  
61 constructed under a distinctive name, make, model or type by  
62 a generally recognized manufacturer of vehicles and not  
63 materially altered from its original construction.

64 (n) "Reconstructed vehicle" means every vehicle of a  
65 type required to be registered hereunder materially altered  
66 from its original construction by the removal, addition or  
67 substitution of essential parts, new or used.

68 (o) "Essential parts" means all integral and body parts of  
69 a vehicle of a type required to be registered hereunder, the  
70 removal, alteration or substitution of which would tend to  
71 conceal the identity of the vehicle or substantially alter its  
72 appearance, model, type or mode of operation.

73 (p) "Foreign vehicle" means every vehicle of a type  
74 required to be registered hereunder brought into this state  
75 from another state, territory or country other than in the  
76 ordinary course of business by or through a manufacturer or  
77 dealer and not registered in this state.

78 (q) "Implement of husbandry" means every vehicle  
79 which is designed for or adapted to agricultural purposes and

80 used by the owner thereof primarily in the conduct of his or  
81 her agricultural operations, including, but not limited to,  
82 trucks used for spraying trees and plants: *Provided*, That the  
83 vehicle may not be let for hire at any time.

84 (r) "Special mobile equipment" means every self-  
85 propelled vehicle not designed or used primarily for the  
86 transportation of persons or property and incidentally  
87 operated or moved over the highways, including, without  
88 limitation, road construction or maintenance machinery,  
89 ditch-digging apparatus, stone crushers, air compressors,  
90 power shovels, graders, rollers, well-drillers, wood-sawing  
91 equipment, asphalt spreaders, bituminous mixers, bucket  
92 loaders, ditchers, leveling graders, finishing machines, motor  
93 graders, road rollers, scarifiers, earth-moving carryalls,  
94 scrapers, drag lines, rock-drilling equipment and earth-  
95 moving equipment. The foregoing enumeration shall be  
96 deemed partial and may not operate to exclude other such  
97 vehicles which are within the general terms of this  
98 subdivision.

99 (s) "Pneumatic tire" means every tire in which  
100 compressed air is designed to support the load.

101 (t) "Solid tire" means every tire of rubber or other  
102 resilient material which does not depend upon compressed air  
103 for the support of the load.

104 (u) "Metal tire" means every tire the surface of which in  
105 contact with the highway is wholly or partly of metal or other  
106 hard, nonresilient material.

107 (v) "Commissioner" means the Commissioner of Motor  
108 Vehicles of this state.

109 (w) "Division" means the Division of Motor Vehicles of  
110 this state acting directly or through its duly authorized  
111 officers and agents.

112 (x) "Person" means every natural person, firm,  
113 copartnership, association or corporation.

114 (y) "Owner" means a person who holds the legal title to  
115 a vehicle, or in the event a vehicle is the subject of an  
116 agreement for the conditional sale or lease thereof with the  
117 right of purchase upon performance of the conditions stated  
118 in the agreement and with an immediate right of possession  
119 vested in the conditional vendee or lessee, or in the event a  
120 mortgagor of a vehicle is entitled to possession, then the  
121 conditional vendee or lessee or mortgagor shall be deemed  
122 the owner for the purpose of this chapter.

123 (z) "Nonresident" means every person who is not a  
124 resident of this state.

125 (aa) "Dealer" or "dealers" is a general term meaning,  
126 depending upon the context in which used, either a new  
127 motor vehicle dealer, used motor vehicle dealer, factory-built  
128 home dealer, recreational vehicle dealer, trailer dealer or  
129 motorcycle dealer, as defined in section one, article six of  
130 this chapter, or all of the dealers or a combination thereof  
131 and, in some instances, a new motor vehicle dealer or dealers  
132 in another state.

133 (bb) "Registered dealer" or "registered dealers" is a  
134 general term meaning, depending upon the context in which  
135 used, either a new motor vehicle dealer, used motor vehicle  
136 dealer, house trailer dealer, trailer dealer, recreational vehicle  
137 dealer or motorcycle dealer, or all of the dealers or a  
138 combination thereof, licensed under the provisions of article  
139 six of this chapter.

140 (cc) "Licensed dealer" or "licensed dealers" is a general  
141 term meaning, depending upon the context in which used,  
142 either a new motor vehicle dealer, used motor vehicle dealer,  
143 house trailer dealer, trailer dealer, recreational vehicle dealer

144 or motorcycle dealer, or all of the dealers or a combination  
145 thereof, licensed under the provisions of article six of this  
146 chapter.

147 (dd) "Transporter" means every person engaged in the  
148 business of delivering vehicles of a type required to be  
149 registered hereunder from a manufacturing, assembling or  
150 distributing plant to dealers or sales agents of a manufacturer.

151 (ee) "Manufacturer" means every person engaged in the  
152 business of constructing or assembling vehicles of a type  
153 required to be registered hereunder at a place of business in  
154 this state which is actually occupied either continuously or at  
155 regular periods by the manufacturer where his or her books  
156 and records are kept and a large share of his or her business  
157 is transacted.

158 (ff) "Street" or "highway" means the entire width  
159 between boundary lines of every way publicly maintained  
160 when any part thereof is open to the use of the public for  
161 purposes of vehicular travel.

162 (gg) "Motorboat" means any vessel propelled by an  
163 electrical, steam, gas, diesel or other fuel propelled or driven  
164 motor, whether or not the motor is the principal source of  
165 propulsion, but may not include a vessel which has a valid  
166 marine document issued by the bureau of customs of the  
167 United States government or any federal agency successor  
168 thereto.

169 (hh) "Motorboat trailer" means every vehicle designed  
170 for or ordinarily used for the transportation of a motorboat.

171 (ii) "All-terrain vehicle" (ATV) means any motor vehicle  
172 designed for off-highway use and designed to travel on not  
173 less than three low-pressure tires, having a seat or saddle  
174 designed to be straddled by the operator and handlebars for



175 steering control and intended by the manufacturer to be used  
176 by a single operator or by an operator and no more than one  
177 passenger.

178 (jj) "Travel trailer" means every vehicle, mounted on  
179 wheels, designed to provide temporary living quarters for  
180 recreational, camping or travel use of such size or weight as  
181 not to require special highway movement permits when  
182 towed by a motor vehicle and of gross trailer area less than  
183 four hundred square feet.

184 (kk) "Fold down camping trailer" means every vehicle  
185 consisting of a portable unit mounted on wheels and  
186 constructed with collapsible partial sidewalls which fold for  
187 towing by another vehicle and unfold at the camp site to  
188 provide temporary living quarters for recreational, camping  
189 or travel use.

190 (ll) "Motor home" means every vehicle, designed to  
191 provide temporary living quarters, built into an integral part  
192 of or permanently attached to a self-propelled motor vehicle,  
193 chassis or van including: (1) Type A motor home built on an  
194 incomplete truck chassis with the truck cab constructed by  
195 the second stage manufacturer; (2) Type B motor home  
196 consisting of a van-type vehicle which has been altered to  
197 provide temporary living quarters; and (3) Type C motor  
198 home built on an incomplete van or truck chassis with a cab  
199 constructed by the chassis manufacturer.

200 (mm) "Snowmobile" means a self-propelled vehicle  
201 intended for travel primarily on snow and driven by a track  
202 or tracks in contact with the snow and steered by a ski or skis  
203 in contact with the snow.

204 (nn) "Recreational vehicle" means a motorboat,  
205 motorboat trailer, all-terrain vehicle, travel trailer, fold down  
206 camping trailer, motor home or snowmobile.

207 (oo) "Mobile equipment" means every self-propelled  
208 vehicle not designed or used primarily for the transportation  
209 of persons or property over the highway but which may  
210 infrequently or incidentally travel over the highways among  
211 job sites, equipment storage sites or repair sites, including  
212 farm equipment, implements of husbandry, well-drillers,  
213 cranes and wood-sawing equipment.

214 (pp) "Factory-built home" includes mobile homes, house  
215 trailers and manufactured homes.

216 (qq) "Manufactured home" has the same meaning as the  
217 term is defined in section two, article nine, chapter twenty-  
218 one of this code which meets the federal Manufactured  
219 Housing Construction and Safety Standards Act of 1974 (42  
220 U.S.C. §5401, *et seq.*), effective on June 15, 1976, and the  
221 federal manufactured home construction and safety standards  
222 and regulations promulgated by the secretary of the United  
223 States department of housing and urban development.

224 (rr) "Mobile home" means a transportable structure that  
225 is wholly, or in substantial part, made, fabricated, formed or  
226 assembled in manufacturing facilities for installation or  
227 assembly and installation on a building site and designed for  
228 long-term residential use and built prior to enactment of the  
229 federal Manufactured Housing Construction and Safety  
230 Standards Act of 1974 (42 U.S.C. §5401, *et seq.*), effective  
231 on June 15, 1976, and usually built to the voluntary industry  
232 standard of the American National Standards Institute  
233 (ANSI) -- A119.1 standards for mobile homes.

234 (ss) "House trailers" means all trailers designed and used  
235 for human occupancy on a continual nonrecreational basis,  
236 but may not include fold down camping and travel trailers,  
237 mobile homes or manufactured homes.

238 (tt) "Parking enforcement vehicle" means a motor vehicle  
239 which does not fit into any other classification of vehicle in

240 this chapter, has three or four wheels and is designed for use  
241 in an incorporated municipality by a city, county, state or  
242 other governmental entity primarily for parking enforcement  
243 or other governmental purposes with an operator area with  
244 sides permanently enclosed with rigid construction and a top  
245 which may be convertible, sealed beam headlights, turn  
246 signals, brake lights, horn, at least one rear view mirror on  
247 each side and such other equipment that will enable it to pass  
248 a standard motorcycle vehicle inspection.

249 (uu) “Low-speed vehicle” means a four-wheeled motor  
250 vehicle whose attainable speed in one mile on a paved level  
251 surface is more than twenty miles per hour but not more than  
252 twenty-five miles per hour.

253 (vv) “Utility terrain vehicle” means any motor vehicle  
254 with four or more low-pressure tires designed for off-  
255 highway use having bench or bucket seating for each  
256 occupant and a steering wheel for control.

## **ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.**

### **§17A-6-1. Definitions.**

1 (a) Unless the context in which used clearly requires a  
2 different meaning, as used in this article:

3 (1) “New motor vehicle dealer” means every person  
4 (other than agents and employees, if any, while acting within  
5 the scope of their authority or employment), engaged in, or  
6 held out to the public to be engaged in, the business in this  
7 state of selling five or more new motor vehicles or new and  
8 used motor vehicles in any fiscal year of a type required to be  
9 registered under the provisions of this chapter, except, for the  
10 purposes of this article only, motorcycles.

11 (2) “Used motor vehicle dealer” means every person  
12 (other than agents and employees, if any, while acting within  
13 the scope of their authority or employment), engaged in, or  
14 held out to the public to be engaged in, the business in this  
15 state of selling five or more used motor vehicles in any fiscal  
16 year of a type required to be registered under the provisions  
17 of this chapter, except, for the purposes of this article only,  
18 motorcycles.

19 (3) “House trailer dealer” means every person (other than  
20 agents and employees, if any, while acting within the scope  
21 of their authority or employment), engaged in, or held out to  
22 the public to be engaged in, the business in this state of  
23 selling new or used house trailers, or both, or new or used, or  
24 both, house trailers and trailers or new or used, or both,  
25 manufactured homes and mobile homes.

26 (4) “Trailer dealer” means every person (other than  
27 agents and employees, if any, while acting within the scope  
28 of their authority or employment), engaged in, or held out to  
29 the public to be engaged in, the business in this state of  
30 selling new or used trailers.

31 (5) “Motorcycle dealer” means every person (other than  
32 agents and employees, if any, while acting within the scope  
33 of their authority or employment), engaged in, or held out to  
34 the public to be engaged in, the business in this state of  
35 selling new or used motorcycles.

36 (6) “Used parts dealer” means every person (other than  
37 agents and employees, if any, while acting within the scope  
38 of their authority or employment), engaged in, or held out to  
39 the public to be engaged in, the business in this state of  
40 selling any used appliance, accessory, member, portion or  
41 other part of any vehicle.

42 (7) “Wrecker/dismantler/rebuilder” means every person  
43 (other than agents and employees, if any, while acting within

44 the scope of their authority or employment), engaged in, or  
45 held out to the public to be engaged in, the business in this  
46 state of dealing in wrecked or damaged motor vehicles or  
47 motor vehicle parts for the purpose of selling the parts  
48 thereof or scrap therefrom or who is in the business of  
49 rebuilding salvage motor vehicles for the purpose of resale to  
50 the public.

51 (8) "New motor vehicles" means all motor vehicles,  
52 except motorcycles and used motor vehicles, of a type  
53 required to be registered under the provisions of this chapter.

54 (9) "Used motor vehicles" means all motor vehicles,  
55 except motorcycles, of a type required to be registered under  
56 the provisions of this chapter which have been sold and  
57 operated, or which have been registered or titled, in this or  
58 any other state or jurisdiction.

59 (10) "House trailers" means all trailers designed and used  
60 for human occupancy on a continual nonrecreational basis,  
61 but may not include fold down camping and travel trailers,  
62 mobile homes or manufactured homes.

63 (11) "Trailers" means all types of trailers other than  
64 house trailers, and shall include, but not be limited to, pole  
65 trailers and semitrailers but excluding recreational vehicles.

66 (12) "Sales instrument" means any document resulting  
67 from the sale of a vehicle, which shall include, but not be  
68 limited to, a bill of sale, invoice, conditional sales contract,  
69 chattel mortgage, chattel trust deed, security agreement or  
70 similar document.

71 (13) "Sell", "sale" or "selling," in addition to the ordinary  
72 definitions of the terms, includes offering for sale, soliciting  
73 sales of, negotiating for the sale of, displaying for sale or  
74 advertising for sale, any vehicle, whether at retail, wholesale

75 or at auction. "Selling," in addition to the ordinary definition  
76 of that term, also includes buying and exchanging.

77 (14) "Applicant" means any person making application  
78 for an original or renewal license certificate under the  
79 provisions of this article.

80 (15) "Licensee" means any person holding any license  
81 certificate issued under the provisions of this article.

82 (16) "Predecessor" means the former owner or owners or  
83 operator or operators of any new motor vehicle dealer  
84 business or used motor vehicle dealer business.

85 (17) "Established place of business" means, in the case  
86 of a new motor vehicle dealer, a permanent location, not a  
87 temporary stand or other temporary quarters, owned or leased  
88 by the licensee or applicant and actually occupied or to be  
89 occupied by him or her, as the case may be, which is or is to  
90 be used exclusively for the purpose of selling new motor  
91 vehicles or new and used motor vehicles, which shall have  
92 space under roof for the display of at least one new motor  
93 vehicle and facilities and space therewith for the servicing  
94 and repair of at least one motor vehicle, which servicing and  
95 repair facilities and space is adequate and suitable to carry  
96 out servicing and to make repairs necessary to keep and carry  
97 out all representations, warranties and agreements made or to  
98 be made by the dealer with respect to motor vehicles sold by  
99 him or her, which is easily accessible to the public, which  
100 conforms to all applicable laws of this state and the  
101 ordinances of the municipality in which it is located, if any,  
102 which displays thereon at least one permanent sign, clearly  
103 visible from the principal public street or highway nearest the  
104 location and clearly stating the business which is or shall be  
105 conducted thereat, and which has adequate facilities to keep,  
106 maintain and preserve records, papers and documents  
107 necessary to carry on the business and to make the business

108 available to inspection by the commissioner at all reasonable  
109 times: *Provided*, That each established place of business shall  
110 have a display area which may be outside or inside or a  
111 combination thereof of at least twelve hundred square feet  
112 which is to be used exclusively for the display of vehicles  
113 which are offered for sale by the dealer, office space of at  
114 least one hundred forty-four square feet and a telephone  
115 listed in the name of the dealership. Each established place  
116 of business shall be open to the public a minimum of twenty  
117 hours per week at least forty weeks per calendar year with at  
118 least ten of those hours being between the hours of nine thirty  
119 a.m. and eight thirty p.m., Monday through Saturday:  
120 *Provided, however*, That the requirement of exclusive use is  
121 met even though: (A) Some new and any used motor  
122 vehicles sold or to be sold by the dealer or sold or are to be  
123 sold at a different location or locations not meeting the  
124 definition of an established place of business of a new motor  
125 vehicle dealer, if each location is or is to be served by other  
126 facilities and space of the dealer for the servicing and repair  
127 of at least one motor vehicle, adequate and suitable as  
128 aforesaid, and each location used for the sale of some new  
129 and any used motor vehicles otherwise meets the definition  
130 of an established place of business of a used motor vehicle  
131 dealer; (B) house trailers, trailers or motorcycles are sold or  
132 are to be sold thereat, if, subject to the provisions of section  
133 five of this article, a separate license certificate is obtained  
134 for each type of vehicle business, which license certificate  
135 remains unexpired, unsuspended and unrevoked; (C) farm  
136 machinery is sold thereat; (D) accessory, gasoline and oil, or  
137 storage departments are maintained thereat, if the  
138 departments are operated for the purpose of furthering and  
139 assisting in the licensed business or businesses; and (E) the  
140 established place of business has an attached single  
141 residential rental unit with an outside separate entrance and  
142 occupied by a person or persons with no financial or  
143 operational interest in the dealership where the established  
144 place of business has space under roof for the display of at

145 least three new motor vehicles and facilities and space  
146 therewith for the concurrent servicing and repair of at least  
147 two motor vehicles and otherwise meets the requirements set  
148 forth in this subdivision.

149 (18) "Farm machinery" means all machines and tools  
150 used in the production, harvesting or care of farm products.

151 (19) "Established place of business," in the case of a used  
152 motor vehicle dealer, means a permanent location, not a  
153 temporary stand or other temporary quarters, owned or leased  
154 by the licensee or applicant and actually occupied or to be  
155 occupied by him or her, as the case may be, which is or is to  
156 be used exclusively for the purpose of selling used motor  
157 vehicles, which shall have facilities and space therewith for  
158 the servicing and repair of at least one motor vehicle, which  
159 servicing and repair facilities and space shall be adequate and  
160 suitable to carry out servicing and to make repairs necessary  
161 to keep and carry out all representations, warranties and  
162 agreements made or to be made by the dealer with respect to  
163 used motor vehicles sold by him or her, which is easily  
164 accessible to the public, conforms to all applicable laws of  
165 this state, and the ordinances of the municipality in which it  
166 is located, if any, which displays thereon at least one  
167 permanent sign, clearly visible from the principal public  
168 street or highway nearest the location and clearly stating the  
169 business which is or shall be conducted thereat, and which  
170 has adequate facilities to keep, maintain and preserve  
171 records, papers and documents necessary to carry on the  
172 business and to make the business available to inspection by  
173 the commissioner at all reasonable times: *Provided*, That  
174 each established place of business shall have a display area  
175 which may be outside or inside or a combination thereof of  
176 at least twelve hundred square feet which is to be used  
177 exclusively for the display of vehicles which are offered for  
178 sale by the dealer, office space of at least one hundred forty-  
179 four square feet and a telephone listed in the name of the



180 dealership. Each established place of business shall be open  
181 to the public a minimum of twenty hours per week at least  
182 forty weeks per calendar year with at least ten of those hours  
183 being between the hours of nine thirty a.m. and eight thirty  
184 p.m., Monday through Saturday: *Provided, however,* That if  
185 a used motor vehicle dealer has entered into a written  
186 agreement or agreements with a person or persons owning or  
187 operating a servicing and repair facility or facilities adequate  
188 and suitable as aforesaid, the effect of which agreement or  
189 agreements is to provide the servicing and repair services and  
190 space in like manner as if the servicing and repair facilities  
191 and space were located in or on the dealer's place of  
192 business, then, so long as the agreement or agreements are in  
193 effect, it is not necessary for the dealer to maintain the  
194 servicing and repair facilities and space at the place of  
195 business in order for the place of business to be an  
196 established place of business as herein defined: *Provided*  
197 *further,* That the requirement of exclusive use is met even  
198 though: (A) House trailers, trailers or motorcycles are sold  
199 or are to be sold thereat, if, subject to the provisions of  
200 section five of this article, a separate license certificate is  
201 obtained for each type of vehicle business, which license  
202 certificate remains unexpired, unsuspended and unrevoked;  
203 (B) farm machinery is sold thereat; (C) accessory, gasoline  
204 and oil, or storage departments are maintained thereat, if the  
205 departments are operated for the purpose of furthering and  
206 assisting in the licensed business or businesses; and (D) the  
207 established place of business has an attached single  
208 residential rental unit with an outside separate entrance and  
209 occupied by a person or persons with no financial or  
210 operational interest in the dealership where the established  
211 place of business has space under roof for the display of at  
212 least three motor vehicles and facilities and space therewith  
213 for the concurrent servicing and repair of at least two motor  
214 vehicles and otherwise meets the requirements set forth  
215 herein.

216 (20) "Established place of business," in the case of a  
217 house trailer dealer, trailer dealer, recreational vehicle dealer,  
218 motorcycle dealer, used parts dealer and wrecker or  
219 dismantler, means a permanent location, not a temporary  
220 stand or other temporary quarters, owned or leased by the  
221 licensee or applicant and actually occupied or to be occupied  
222 by the licensee, as the case may be, which is easily accessible  
223 to the public, which conforms to all applicable laws of this  
224 state and the ordinances of the municipality in which it is  
225 located, if any, which displays thereon at least one permanent  
226 sign, clearly visible from the principal public street or  
227 highway nearest the location and clearly stating the business  
228 which is or shall be conducted thereat, and which has  
229 adequate facilities to keep, maintain and preserve records,  
230 papers and documents necessary to carry on the business and  
231 to make the business available to inspection by the  
232 commissioner at all reasonable times.

233 (21) "Manufacturer" means every person engaged in the  
234 business of reconstructing, assembling or reassembling  
235 vehicles with a special type body required by the purchaser  
236 if the vehicle is subject to the title and registration provisions  
237 of this code.

238 (22) "Transporter" means every person engaged in the  
239 business of transporting vehicles to or from a manufacturing,  
240 assembling or distributing plant to dealers or sales agents of  
241 a manufacturer, or purchasers.

242 (23) "Recreational vehicle dealer" means every person  
243 (other than agents and employees, if any, while acting within  
244 the scope of their authority or employment), engaged in, or  
245 held out to the public to be engaged in, the business in this  
246 state of selling new or used recreational vehicles, or both.

247 (24) "Motorboat" means any vessel propelled by an  
248 electrical, steam, gas, diesel or other fuel propelled or driven

249 motor, whether or not the motor is the principal source of  
250 propulsion, but does not include a vessel which has a valid  
251 marine document issued by the bureau of customs of the  
252 United States government or any federal agency successor  
253 thereto.

254 (25) "Motorboat trailer" means every vehicle designed  
255 for or ordinarily used for the transportation of a motorboat.

256 (26) "All-terrain vehicle" (ATV) means any motor  
257 vehicle designed for off-highway use and designed to travel  
258 on not less than three low-pressure tires and designed for  
259 operator use only with no passengers, having a seat or saddle  
260 designed to be straddled by the operator, and handlebars for  
261 steering control and intended by the manufacturer to be used  
262 by a single operator or by an operator and no more than one  
263 passenger.

264 (27) "Travel trailer" means every vehicle, mounted on  
265 wheels, designed to provide temporary living quarters for  
266 recreational, camping or travel use of such size or weight as  
267 not to require special highway movement permits when  
268 towed by a motor vehicle and of gross trailer area less than  
269 four hundred square feet.

270 (28) "Fold down camping trailer" means every vehicle  
271 consisting of a portable unit mounted on wheels and  
272 constructed with collapsible partial sidewalls which fold for  
273 towing by another vehicle and unfold at the camp site to  
274 provide temporary living quarters for recreational, camping  
275 or travel use.

276 (29) "Motor home" means every vehicle, designed to  
277 provide temporary living quarters, built into an integral part  
278 of or permanently attached to a self-propelled motor vehicle,  
279 chassis or van including: (1) Type A motor home built on an  
280 incomplete truck chassis with the truck cab constructed by

281 the second stage manufacturer; (2) Type B motor home  
282 consisting of a van-type vehicle which has been altered to  
283 provide temporary living quarters; and (3) Type C motor  
284 home built on an incomplete van or truck chassis with a cab  
285 constructed by the chassis manufacturer.

286 (30) "Snowmobile" means a self-propelled vehicle  
287 intended for travel primarily on snow and driven by a track  
288 or tracks in contact with the snow and steered by a ski or skis  
289 in contact with the snow.

290 (31) "Recreational vehicle" means a motorboat,  
291 motorboat trailer, all-terrain vehicle, travel trailer, fold down  
292 camping trailer, motor home, snowmobile or utility-terrain  
293 vehicle.

294 (32) "Major component" means any one of the following  
295 subassemblies of a motor vehicle: (A) Front clip assembly  
296 consisting of fenders, grille, hood, bumper and related parts;  
297 (B) engine; (C) transmission; (D) rear clip assembly  
298 consisting of quarter panels and floor panel assembly; or (E)  
299 two or more doors.

300 (33) "Factory-built home" includes mobile homes, house  
301 trailers and manufactured homes.

302 (34) "Manufactured home" has the same meaning as the  
303 term is defined in section two, article nine, chapter twenty-  
304 one of this code which meets the National Manufactured  
305 Housing Construction and Safety Standards Act of 1974 (42  
306 U.S.C. §5401 et seq.), effective on June 15, 1976, and the  
307 federal manufactured home construction and safety standards  
308 and regulations promulgated by the secretary of the United  
309 States department of housing and urban development.

310 (35) "Mobile home" means a transportable structure that  
311 is wholly, or in substantial part, made, fabricated, formed or

312 assembled in manufacturing facilities for installation or  
313 assembly and installation on a building site and designed for  
314 long-term residential use and built prior to enactment of the  
315 federal manufactured housing construction and safety  
316 standards institute (ANSI) -- A119.1 standards for mobile  
317 homes.

318 (36) "Utility terrain vehicle" means any motor vehicle  
319 with four or more low-pressure tires designed for off-  
320 highway use having bench or bucket seating for each  
321 occupant and a steering wheel for control.

322 (b) Under no circumstances whatever may the terms  
323 "new motor vehicle dealer", "used motor vehicle dealer",  
324 "house trailer dealer", "trailer dealer", "recreational vehicle  
325 dealer", "motorcycle dealer", "used parts dealer" or  
326 "wrecker/dismantler/rebuilder" be construed or applied under  
327 this article in such a way as to include a banking institution,  
328 insurance company, finance company, or other lending or  
329 financial institution, or other person, the state or any agency  
330 or political subdivision thereof, or any municipality, who or  
331 which owns or comes in possession or ownership of, or  
332 acquires contract rights, or security interests in or to, any  
333 vehicle or vehicles or any part thereof and sells the vehicle or  
334 vehicles or any part thereof for purposes other than engaging  
335 in and holding out to the public to be engaged in the business  
336 of selling vehicles or any part thereof.

337 (c) It is recognized that throughout this code the term  
338 "trailer" or "trailers" is used to include, among other types of  
339 trailers, house trailers. It is also recognized that throughout  
340 this code the term "trailer" or "trailers" is seldom used to  
341 include semitrailers or pole trailers. However, for the  
342 purposes of this article only, the term "trailers" has the  
343 meaning ascribed to it in subsection (a) of this section.

**CHAPTER 17F. ALL-TERRAIN VEHICLES.****ARTICLE 1. REGULATION OF ALL-TERRAIN VEHICLES.****§17F-1-9. Definition of all-terrain and utility terrain vehicle.**

1 (a) As used in this chapter, “all-terrain vehicle” or  
2 “ATV” shall mean any motor vehicle, designed for off-  
3 highway use and designed to travel on not less than three  
4 low-pressure tires, having a seat or saddle designed to be  
5 straddled by the operator and handlebars for steering control  
6 and intended by the manufacturer to be used by a single  
7 operator or by an operator and no more than one passenger.

8 (b) “Utility-terrain vehicle” shall mean any motor vehicle  
9 with four or more low-pressure tires designed for off-  
10 highway use having bench or bucket seating for each  
11 occupant and a steering wheel for control.

12 (c) As used in this article, all-terrain vehicles shall mean  
13 all-terrain vehicles and utility-terrain vehicles.

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**CHAPTER 7**

**(Com. Sub. for H. B. 4407 - By Delegates Guthrie,  
Butcher and Manypenny)**

[Passed March 8, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §19-20A-2 and §19-20A-5 of the Code of West Virginia, 1931, as amended, all relating to requiring rabies vaccination of dogs and cats of a certain age;

requiring that administered rabies vaccinations be capable of producing immunity for three years; requiring that dogs and cats receive necessary boosters; providing for the appointment of a qualified person to vaccinate when there is no licensed veterinarian in the county; and requiring rabies vaccinations for dogs and cats prior to entering the state.

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

That §19-20A-2 and §19-20A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 20A. VACCINATION OF DOGS AND CATS FOR RABIES.**

§19-20A-2. Vaccination of dogs and cats.

§19-20A-5. Type of vaccine to be furnished; fee.

**§19-20A-2. Vaccination of dogs and cats.**

1 (a) A person who owns, obtains or possesses a dog or cat  
2 within the State of West Virginia shall have the dog or cat  
3 properly vaccinated against rabies with a vaccine capable of  
4 producing immunity for three years, boosted one year after  
5 initial vaccination and every third year thereafter. Dogs and  
6 cats need not be vaccinated before the age of three months,  
7 but must be vaccinated by the age of six months.

8 (b) Dogs and cats over six months of age entering the  
9 State of West Virginia must have been vaccinated for rabies  
10 as set forth in subsection (a) of this section prior to entry.

11 (c) A dog or cat may be vaccinated by any licensed  
12 veterinarian or his or her assistant. If there is no licensed  
13 veterinarian practicing in the county, a qualified person may  
14 be appointed by the county health department to administer  
15 vaccinations.

**§19-20A-5. Type of vaccine to be furnished; fee.**

1 It is the duty of the veterinarian, or person vaccinating  
 2 each animal to furnish vaccine of a type capable of  
 3 establishing and maintaining immunity for a period of not  
 4 less than thirty-six months and he or she shall charge and  
 5 collect a fee of not more than \$8 for each animal vaccinated,  
 6 if done at a clinic established by a county commission or, if  
 7 vaccinated at any other place, he or she shall charge and  
 8 collect a reasonable fee for his or her services.

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## CHAPTER 8

**(Com. Sub. for S. B. 213 - By Senators Tomblin  
 (Mr. President) and Caruth)  
 [By Request of the Executive]**

[Passed March 20, 2010; in effect from passage.]  
 [Approved by the Governor on March 25, 2010.]

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 - General Provisions.

- §1. General policy.
- §2. Definitions.



§3. Classification of appropriations.

§4. Method of expenditure.

§5. Maximum expenditures.

**Section 1. General policy.** — The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year 2011.

**Sec. 2. Definitions.** — For the purpose of this bill:

“Governor” shall mean the Governor of the State of West Virginia.

“Code” shall mean the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

“Spending unit” shall mean the department, bureau, division, office, board, commission, agency or institution to which an appropriation is made.

The “fiscal year 2011” shall mean the period from July 1, 2010, through June 30, 2011.

“General revenue fund” shall mean the general operating fund of the state and includes all moneys received or collected by the state except as provided in W.Va. Code §12-2-2 or as otherwise provided.

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

“From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the

collections. If the amount collected exceeds the amount designated “from collections,” the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by Article 2, Chapter 11B of the Code.

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

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

Unless otherwise specified, appropriations for “personal services” shall include salaries of heads of spending units.

“Annual increment” shall mean funds appropriated for “eligible employees” and shall be disbursed only in accordance with Article 5, Chapter 5 of the Code.

Funds appropriated for “annual increment” shall be transferred to “personal services” or other designated items only as required.

“Employee benefits” shall mean social security matching, workers’ compensation, unemployment compensation, pension and retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be transferred by each spending unit from its “personal services” line item or its “unclassified” line item or other appropriate line item to its “employee benefits” line item. If there is no appropriation for “employee benefits,” such costs shall be paid by each spending unit from its “personal services” line item, its “unclassified” line item or other appropriate line item. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of Article 2, Chapter 11B of the Code.

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

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

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

“Current expenses” shall mean operating costs other than personal services and shall not include equipment, repairs and alterations, buildings or lands.

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

“Equipment” shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

“Repairs and alterations” shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

“Buildings” shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.

“Lands” shall mean the purchase of real property or interest in real property.

“Capital outlay” shall mean and include buildings, lands or buildings and lands, with such category or item of appropriation to remain in effect as provided by W.Va. Code §12-3-12.

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

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: *Provided*, That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: *Provided, however*, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: and no funds may be transferred to a “personal services” line unless the source funds are also wholly from a “personal services” line, or unless the source funds are from another activity that has exclusively funded employment expenses (any of object codes 001 through 016, 160 and 163) for at least twelve consecutive months prior to the time of transfer and the position(s) supported by the transferred funds are also permanently transferred to the receiving agency or board within the department: *Provided further*, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by Chapter 5F of the Code shall have the

authority to transfer funds appropriated to “personal services” and “employee benefits” to other lines within the same account and no funds from other lines shall be transferred to the “personal services” line: *And provided further*, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by Chapter 5F of the Code shall have the authority to transfer general revenue funds appropriated to “annual increment” to other general revenue accounts within the same department, bureau or commission for the purpose of providing an annual increment in accordance with Article 5, Chapter 5 of the Code: *And provided further*, That no authority exists hereunder to transfer funds into line-items to which no funds are legislatively appropriated: *And provided further*, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary or other appropriate agency head may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. No funds may be transferred from a Special Revenue Account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the State Road Fund for the office of the Secretary of the Department of Transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

**Sec. 4. Method of expenditure.** — Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of Article 3, Chapter 12 of the Code or according to any law detailing a procedure specifically limiting that article.

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

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## §14. Sinking fund deficiencies.

## §15. Appropriations for local governments.

## §16. Total appropriations.

## §17. General school fund.

**Section 1. Appropriations from general revenue.** — From the State Fund, General Revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B the following amounts, as itemized, for expenditure during the fiscal year 2011.

**LEGISLATIVE***1—Senate*Fund 0165 FY 2011 Org 2100

	<b>Activity</b>	<b>General Revenue Fund</b>
1 Compensation of Members (R) . . . .	003	\$ 1,010,000
2 Compensation and Per Diem of Officers 3 and Employees (R) . . . . .	005	3,003,210
4 Employee Benefits (R) . . . . .	010	597,712
5 Current Expenses and Contingent 6 Fund (R) . . . . .	021	561,392
7 Repairs and Alterations (R) . . . . .	064	210,410
8 Computer Supplies (R) . . . . .	101	40,000
9 Computer Systems (R) . . . . .	102	150,000
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 . . . . .		\$6,452,206

14 The appropriations for the Senate for the fiscal year 2010  
15 are to remain in full force and effect and are hereby  
16 reappropriated to June 30, 2011. Any balances so  
17 reappropriated may be transferred and credited to the fiscal  
18 year 2011 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 of  
40 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  
45 be 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  
52 of the Senate shall be paid a monthly salary as provided by  
53 the Senate resolution, unless increased between sessions  
54 under 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 2011 Org 2200

1	Compensation of Members (R) . . . .	003	\$ 3,000,000
2	Compensation and Per Diem of Officers		
3	and Employees (R) . . . . .	005	700,000
4	Current Expenses and Contingent		
5	Fund (R) . . . . .	021	3,954,031
6	Expenses of Members (R) . . . . .	399	1,700,000
7	BRIM Premium (R) . . . . .	913	<u>50,000</u>
8	Total . . . . .		\$ 9,404,031

9 The appropriations for the House of Delegates for the  
 10 fiscal year 2010 are to remain in full force and effect and are  
 11 hereby reappropriated to June 30, 2011. Any balances so  
 12 reappropriated may be transferred and credited to the fiscal  
 13 year 2011 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  
 20 upon 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  
35 the session, or fixed by the Speaker, with the approval of the  
36 House committee on rules, during and between sessions of  
37 the 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  
40 of 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  
49 of the appropriation for Compensation and Per Diem of  
50 Officers and Employees or Current Expenses and Contingent  
51 Fund of the House of Delegates.

### 3—*Joint Expenses*

(WV Code Chapter 4)

Fund 0175 FY 2011 Org 2300

1	Joint Committee on		
2	Government and Finance (R) . . .	104	\$ 6,758,015
3	Legislative Printing (R) . . . . .	105	760,000
4	Legislative Rule-Making		
5	Review Committee (R) . . . . .	106	147,250



6	Legislative Computer System (R) . .	107	902,500
7	Joint Standing Committee		
8	on Education (R) . . . . .	108	83,600
9	BRIM Premium (R) . . . . .	913	<u>20,900</u>
10	Total . . . . .		\$ 8,672,265

11       The appropriations for the joint expenses for the fiscal  
 12 year 2010 are to remain in full force and effect and are  
 13 hereby reappropriated to June 30, 2011. Any balances so  
 14 reappropriated may be transferred and credited to the fiscal  
 15 year 2011 accounts.

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

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

## JUDICIAL

*4—Supreme Court—  
 General Judicial*

Fund 0180 FY 2011 Org 2400

1	Personal Services (R) . . . . .	001	\$ 66,799,069
2	Annual Increment (R) . . . . .	004	870,250
3	Employee Benefits (R) . . . . .	010	21,498,841

## APPROPRIATIONS

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4	Children's Protection Act (R) . . . . .	090	2,590,038
5	Unclassified (R) . . . . .	099	22,819,979
6	Judges' Retirement System (R) . . . .	110	2,763,000
7	Retirement Systems -		
8	Unfunded Liability (R) . . . . .	775	1,191,000
9	BRIM Premium (R) . . . . .	913	<u>374,015</u>
10	Total . . . . .		\$118,906,192

11       The appropriations to the supreme court of appeals for  
12 the fiscal years 2009 and 2010 are to remain in full force and  
13 effect and are hereby reappropriated to June 30, 2011 with  
14 the exception of fund 0180, fiscal year 2010, activity 099  
15 (\$2,000,000) which shall expire on June 30, 2010. Any  
16 balances so reappropriated may be transferred and credited  
17 to the fiscal year 2011 accounts.

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

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

**EXECUTIVE***5—Governor's Office*

(WV Code Chapter 5)

Fund 0101 FY 2011 Org 0100

1	Personal Services .....	001	\$	2,405,813
2	Salary of Governor .....	002		150,000
3	Annual Increment .....	004		28,500
4	Employee Benefits .....	010		735,821
5	Office of Economic Opportunity ...	034		125,340
6	Unclassified (R) .....	099		1,026,908
7	GO HELP (R) .....	116		501,663
8	National Governors' Association ...	123		60,700
9	Southern States Energy Board .....	124		28,732
10	Southern Governors' Association ..	314		25,000
11	BRIM Premium .....	913		156,851
12	P20 Jobs Cabinet .....	954		<u>38,000</u>
13	Total .....		\$	5,283,328

14 Any unexpended balances remaining in the  
 15 appropriations for Unclassified (fund 0101, activity 099), GO  
 16 HELP (fund 0101, activity 116), JOBS Fund (fund 0101,  
 17 activity 665), and Pharmaceutical Cost Management Council  
 18 (fund 0101, activity 796) at the close of the fiscal year 2010  
 19 are hereby reappropriated for expenditure during the fiscal  
 20 year 2011 with the exception of fund 0101, fiscal year 2010,  
 21 activity 099 (\$169,607) and fund 0101, fiscal year 2010,  
 22 activity 116 (\$17,796) which shall expire on June 30, 2010.

*6—Governor's Office —  
Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2011 Org 0100

1 Unclassified - Total .....

096	\$	597,099
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2 Any unexpended balance remaining in the appropriation  
 3 for Unclassified (fund 0102, activity 099) at the close of the  
 4 fiscal year 2010 is hereby reappropriated for expenditure

5 during the fiscal year 2011 with the exception of fund 0102,  
6 fiscal year 2010, activity 099 (\$21,210) which shall expire on  
7 June 30, 2010.

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

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

(WV Code Chapter 5)

Fund 0105 FY 2011 Org 0100

1 Any unexpended balances remaining in the appropriation  
2 for Business and Economic Development Stimulus —  
3 Surplus (fund 0105, activity 084), Civil Contingent Fund —  
4 Total (fund 0105, activity 114), May 2009 Flood Recovery -  
5 Surplus (fund 0105, activity 236), Civil Contingent Fund —  
6 Total — Surplus (fund 0105, activity 238), Civil Contingent  
7 Fund — Surplus (fund 0105, activity 263), Business and  
8 Economic Development Stimulus (fund 0105, activity 586),  
9 and Civil Contingent Fund (fund 0105, activity 614) at the  
10 close of the fiscal year 2010 are hereby reappropriated for  
11 expenditure during the fiscal year 2011.

12 From this appropriation there may be expended, at the  
13 discretion of the Governor, an amount not to exceed \$1,000  
14 as West Virginia's contribution to the interstate oil compact  
15 commission.

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

*8—Auditor's Office —  
General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2011 Org 1200

1	Personal Services .....	001	\$	2,264,450
2	Salary of Auditor .....	002		95,000
3	Annual Increment .....	004		47,686
4	Employee Benefits .....	010		777,614
5	Unclassified (R) .....	099		458,307
6	BRIM Premium .....	913		<u>15,428</u>
7	Total .....		\$	3,658,485

8 Any unexpended balance remaining in the appropriation  
9 for Unclassified (fund 0116, activity 099) at the close of the  
10 fiscal year 2010 is hereby reappropriated for expenditure  
11 during the fiscal year 2011 with the exception of fund 0116,  
12 fiscal year 2010, activity 099 (\$125,793) which shall expire  
13 on June 30, 2010.

*9—Treasurer's Office*

(WV Code Chapter 12)

Fund 0126 FY 2011 Org 1300

1	Personal Services .....	001	\$	1,963,952
2	Salary of Treasurer .....	002		95,000
3	Annual Increment .....	004		23,200
4	Employee Benefits .....	010		641,510
5	Unclassified (R) .....	099		694,918
6	Abandoned Property Program .....	118		250,899
7	Personal Finance Education Program			
8	for 21 <sup>st</sup> Century Skills .....	313		0
9	Tuition Trust Fund (R) .....	692		144,351
10	BRIM Premium .....	913		<u>30,809</u>

11 Total ..... \$ 3,844,639

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 2010 are hereby reappropriated for expenditure during the  
 16 fiscal year 2011 with the exception of fund 0126, fiscal year  
 17 2010, activity 692 (\$27,547) which shall expire on June 30,  
 18 2010.

*10—Department of Agriculture*

(WV Code Chapter 19)

Fund 0131 FY 2011 Org 1400

1	Personal Services .....	001	\$	4,073,184
2	Salary of Commissioner .....	002		95,000
3	Annual Increment .....	004		101,842
4	Employee Benefits .....	010		1,739,116
5	Animal Identification Program ....	039		203,246
6	State Farm Museum .....	055		104,500
7	Unclassified (R) .....	099		782,473
8	Gypsy Moth Program (R) .....	119		1,524,287
9	Huntington Farmers Market .....	128		47,500
10	Black Fly Control (R) .....	137		721,301
11	Donated Foods Program .....	363		50,000
12	Predator Control (R) .....	470		247,000
13	Logan Farmers Market .....	501		44,486
14	Bee Research .....	691		75,453
15	Microbiology Program (R) .....	785		162,316
16	Moorefield Agriculture Center (R) .	786		1,178,312
17	BRIM Premium .....	913		130,202
18	4-H Camp Improvements .....	941		*0

\*CLERK'S NOTE: The Governor reduced the amount on line 18 from \$650,000 to \$0. The total does NOT reflect the reduction made by the Governor.

19	Threat Preparedness .....	942	78,775
20	WV Food Banks .....	969	95,000
21	Senior's Farmers' Market Nutrition		
22	Coupon Program .....	970	<u>62,173</u>
23	Total .....		\$ 12,166,166

24 Any unexpended balances remaining in the appropriations  
 25 for Unclassified (fund 0131, activity 099), Gypsy Moth  
 26 Program (fund 0131, activity 119), Black Fly Control (fund  
 27 0131, activity 137), Predator Control (fund 0131, activity  
 28 470), Microbiology Program (fund 0131, activity 785), and  
 29 Moorefield Agriculture Center (fund 0131, activity 786) at  
 30 the close of the fiscal year 2010 are hereby reappropriated for  
 31 expenditure during the fiscal year 2011 with the exception of  
 32 fund 0131, fiscal year 2010, activity 099 (\$266,337), fund  
 33 0131, fiscal year 2010, activity 119 (\$52,000), fund 0131,  
 34 fiscal year 2010, activity 137 (\$32,340), fund 0131, fiscal  
 35 year 2010, activity 470 (\$8,800), fund 0131, fiscal year 2010,  
 36 activity 785 (\$42,600) and fund 0131, fiscal year 2010,  
 37 activity 786 (\$19,500) which shall expire on June 30, 2010.

38 A portion of the Unclassified appropriation may be  
 39 transferred to a special revenue fund for the purpose of  
 40 matching federal funds for marketing and development  
 41 activities.

42 From the above appropriation for WV Food Banks  
 43 (activity 969), the full appropriation shall be allocated to the  
 44 Huntington Food Bank and the Mountaineer Food Bank in  
 45 Braxton County.

*11—West Virginia Conservation Agency*

(WV Code Chapter 19)

Fund 0132 FY 2011 Org 1400

1	Personal Services . . . . .	001	\$	502,380
2	Annual Increment . . . . .	004		10,726
3	Employee Benefits . . . . .	010		221,984
4	Unclassified (R) . . . . .	099		442,292
5	Soil Conservation Projects (R) . . . . .	120		8,263,911
6	Marlinton Flood Wall (R) . . . . .	757		1,500,000
7	BRIM Premium . . . . .	913		<u>12,969</u>
8	Total . . . . .		\$	10,954,262

9 Any unexpended balances remaining in the appropriations  
 10 for Unclassified (fund 0132, activity 099), Soil Conservation  
 11 Projects (fund 0132, activity 120), and Marlinton Flood Wall  
 12 (fund 0132, activity 757) at the close of the fiscal year 2010  
 13 are hereby reappropriated for expenditure during the fiscal  
 14 year 2011 with the exception of fund 0132, fiscal year 2010,  
 15 activity 120 (\$453,621) which shall expire on June 30, 2010.

*12—Department of Agriculture —  
 Meat Inspection*

(WV Code Chapter 19)

Fund 0135 FY 2011 Org 1400

1	Unclassified - Total . . . . .	096	\$	700,433
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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 2011 Org 1400



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

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

(WV Code Chapter 8A)

Fund 0607 FY 2011 Org 1400

1	Unclassified - Total (R) .....	096	\$	102,743
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2 Any unexpended balance remaining in the appropriation  
3 for Unclassified - Total (fund 0607, activity 096) at the close  
4 of the fiscal year 2010 is hereby reappropriated for  
5 expenditure during the fiscal year 2011 with the exception of  
6 fund 0607, fiscal year 2010, activity 096 (\$3,677) which shall  
7 expire on June 30, 2010.

*15—Attorney General*

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

Fund 0150 FY 2011 Org 1500

1	Personal Services (R) .....	001	\$	2,230,679
2	Salary of Attorney General .....	002		95,000
3	Annual Increment .....	004		58,175
4	Employee Benefits (R) .....	010		986,811
5	Unclassified (R) .....	099		680,357
6	Better Government Bureau .....	740		317,964
7	BRIM Premium .....	913		<u>118,590</u>
8	Total .....		\$	4,487,576

9 Any unexpended balances remaining in the above  
10 appropriations for Personal Services (fund 0150, activity

11 001), Employee Benefits (fund 0150, activity 010),  
 12 Unclassified (fund 0150, activity 099), and Agency Client  
 13 Revolving Liquidity Pool (fund 0150, activity 362) at the  
 14 close of the fiscal year 2010 are hereby reappropriated for  
 15 expenditure during the fiscal year 2011 with the exception of  
 16 fund 0150, fiscal year 2010, activity 001 (\$158,115) which  
 17 shall expire on June 30, 2010.

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

*16—Secretary of State*

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2011 Org 1600

1	Personal Services . . . . .	001	\$	684,299
2	Salary of Secretary of State . . . . .	002		95,000
3	Annual Increment . . . . .	004		7,000
4	Employee Benefits . . . . .	010		275,862
5	Unclassified (R) . . . . .	099		202,804
6	BRIM Premium . . . . .	913		<u>15,393</u>
7	Total . . . . .		\$	1,280,358

8 Any unexpended balances remaining in the appropriations  
 9 for Unclassified - Surplus (fund 0155, activity 097) and  
 10 Unclassified (fund 0155, activity 099) at the close of the

11 fiscal year 2010 are hereby reappropriated for expenditure  
 12 during the fiscal year 2011 with the exception of fund 0155,  
 13 fiscal year 2010, activity 099 (\$42,142) which shall expire on  
 14 June 30, 2010.

*17—State Election Commission*

(WV Code Chapter 3)

Fund 0160 FY 2011 Org 1601

1 Unclassified — Total . . . . . 096 \$ 9,761

**DEPARTMENT OF ADMINISTRATION**

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

(WV Code Chapter 5F)

Fund 0186 FY 2011 Org 0201

1	Personal Services . . . . .	001	\$	437,200
2	Annual Increment . . . . .	004		3,026
3	Employee Benefits . . . . .	010		130,218
4	Unclassified . . . . .	099		116,553
5	Financial Advisor (R) . . . . .	304		200,000
6	Lease Rental Payments . . . . .	516		16,000,000
7	Design-Build Board . . . . .	540		19,068
8	BRIM Premium . . . . .	913		<u>3,990</u>
9	Total . . . . .			\$16,910,055

10 Any unexpended balances remaining in the  
 11 appropriations for Financial Advisor (fund 0186, activity  
 12 304) and Debt Reduction (fund 0186, activity 635) at the  
 13 close of the fiscal year 2010 are hereby reappropriated for  
 14 expenditure during the fiscal year 2011.

15 The appropriation for Lease Rental Payments shall be  
 16 disbursed as provided by W.Va. Code §31-15-6b.

*19—Consolidated Public Retirement Board*

(WV Code Chapter 5)

Fund 0195 FY 2011 Org 0205

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

*20—Division of Finance*

(WV Code Chapter 5A)

Fund 0203 FY 2011 Org 0209

1	Personal Services . . . . .	001	\$	82,411
2	Annual Increment . . . . .	004		1,101
3	Employee Benefits . . . . .	010		32,416
4	Unclassified . . . . .	099		120,500
5	GAAP Project (R) . . . . .	125		670,687
6	BRIM Premium . . . . .	913		<u>4,526</u>
7	Total . . . . .		\$	911,641

8 Any unexpended balance remaining in the appropriation  
 9 for GAAP Project (fund 0203, activity 125) at the close of  
 10 the fiscal year 2010 is hereby reappropriated for expenditure  
 11 during the fiscal year 2011 with the exception of fund 0203,  
 12 fiscal year 2010, activity 125 (\$47,421) which shall expire on  
 13 June 30, 2010.

*21—Division of General Services*

(WV Code Chapter 5A)

Fund 0230 FY 2011 Org 0211

1	Personal Services .....	001	\$ 1,466,406
2	Annual Increment .....	004	20,000
3	Employee Benefits .....	010	626,142
4	Unclassified .....	099	626,747
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 .....		\$ 2,933,776

11 From the above appropriation for Preservation and  
 12 Maintenance of Statues and Monuments on Capitol Grounds  
 13 (activity 371), the Division shall consult the Culture and  
 14 History and Capitol Building Commission in all aspects of  
 15 planning, assessment, maintenance and restoration.

*22-Division of Purchasing*

(WV Code Chapter 5A)

Fund 0210 FY 2011 Org 0213

1	Personal Services .....	001	\$ 710,848
2	Annual Increment .....	004	12,095
3	Employee Benefits .....	010	274,359
4	Unclassified .....	099	144,403
5	BRIM Premium .....	913	<u>6,167</u>
6	Total .....		\$ 1,147,872

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 W.Va. Code §17-2A-13.

*23-Commission on Uniform State Laws*

(WV Code Chapter 29)

Fund 0214 FY 2011 Org 0217

1	Unclassified - Total	.....	096	\$	46,550
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 2011 Org 0219

1	Personal Services	.....	001	\$	650,070
2	Annual Increment	.....	004		9,097
3	Employee Benefits	.....	010		191,387
4	Unclassified	.....	099		135,443
5	BRIM Premium	.....	913		<u>3,885</u>
6	Total	.....		\$	989,882

7 Any unexpended balance remaining in the appropriation  
8 for Unclassified - Surplus (fund 0220, activity 097) at the  
9 close of the fiscal year 2010 is hereby reappropriated for  
10 expenditure during the fiscal year 2011.

*25-Ethics Commission*

(WV Code Chapter 6B)

Fund 0223 FY 2011 Org 0220



1 PEIA Subsidy . . . . . 801 \$ 3,500,000

2 The above appropriation may be transferred to a special  
3 revenue fund and shall be utilized by the West Virginia  
4 Public Employee’s Insurance Agency for the purposes of  
5 offsetting benefit changes in plan year 2010 and to offset the  
6 aggregate premium cost-sharing percentage requirements  
7 between employers and employees. Such amount shall not  
8 be included in the calculation of the plan year aggregate  
9 premium cost-sharing percentages between employers and  
10 employees.

11 The division of highways, division of motor vehicles,  
12 bureau of employment programs, public service commission  
13 and other departments, bureaus, divisions, or commissions  
14 operating from special revenue funds and/or federal funds  
15 shall pay their proportionate share of the public employees  
16 health insurance cost for their respective divisions.

*29-West Virginia Prosecuting Attorneys Institute*

(WV Code Chapter 7)

Fund 0557 FY 2011 Org 0228

1	Forensic Medical Examinations (R) .	683	\$	138,348
2	Federal Funds/Grant Match (R) . . . .	749		<u>97,539</u>
3	Total . . . . .		\$	235,887

4 Any unexpended balances remaining in the  
5 appropriations for Forensic Medical Examinations (fund  
6 0557, activity 683) and Federal Funds/Grant Match (fund  
7 0557, activity 749) at the close of the fiscal year 2010 are  
8 hereby reappropriated for expenditure during the fiscal year  
9 2011 with the exception of fund 0557, fiscal year 2010,  
10 activity 683 (\$8,376) which shall expire on June 30, 2010.



*30-Children's Health Insurance Agency*

(WV Code Chapter 5)

Fund 0588 FY 2011 Org 0230

1 Unclassified - Total ..... 096 \$10,425,628

*31-Real Estate Division*

(WV Code Chapter 5A)

Fund 0610 FY 2011 Org 0233

1	Unclassified .....	099	\$	612,371
2	BRIM Premium .....	913		<u>4,200</u>
3	Total .....		\$	616,571

**DEPARTMENT OF COMMERCE**

*32-Division of Tourism*

(WV Code Chapter 5B)

Fund 0246 FY 2011 Org 0304

1 Any unexpended balance remaining in the appropriation  
 2 for Tourism - Special Projects (fund 0246, activity 859) at the  
 3 close of the fiscal year 2010 is hereby reappropriated for  
 4 expenditure during the fiscal year 2011.

*33-Division of Forestry*

(WV Code Chapter 19)

Fund 0250 FY 2011 Org 0305

1 Personal Services ..... 001 \$ 2,520,900

## APPROPRIATIONS

[Ch. 8

2	Annual Increment .....	004	68,900
3	Employee Benefits .....	010	961,532
4	Unclassified .....	099	656,549
5	BRIM Premium .....	913	<u>141,742</u>
6	Total .....		\$ 4,349,623

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 2011 Org 0306

1	Personal Services .....	001	\$ 1,275,095
2	Annual Increment .....	004	38,380
3	Employee Benefits .....	010	413,409
4	Unclassified .....	099	300,850
5	Mineral Mapping System (R) .....	207	1,413,772
6	BRIM Premium .....	913	<u>20,228</u>
7	Total .....		\$ 3,461,734

8 Any unexpended balance remaining in the appropriation  
 9 for Mineral Mapping System (fund 0253, activity 207) at the  
 10 close of the fiscal year 2010 is hereby reappropriated for  
 11 expenditure during the fiscal year 2011 with the exception of  
 12 fund 0253, fiscal year 2010, activity 207 (\$109,803) which  
 13 shall expire on June 30, 2010.

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

*35-West Virginia Development Office*

(WV Code Chapter 5B)

Fund 0256 FY 2011 Org 0307

1	Personal Services . . . . .	001	\$ 3,330,652
2	Annual Increment . . . . .	004	78,732
3	Employee Benefits . . . . .	010	1,089,054
4	ARC-WV Home of Your Own Alliance. .	048	36,480
5	Southern WV Career Center . . . . .	071	448,476
6	Unclassified . . . . .	099	*1,711,758
7	Partnership Grants (R) . . . . .	131	605,150
8	National Youth Science Camp . . . . .	132	190,000
9	Local Economic Development		
10	Partnerships (R) . . . . .	133	1,705,440
11	ARC Assessment . . . . .	136	152,585
12	Mid-Atlantic Aerospace Complex (R) .	231	161,226
13	Guaranteed Work Force Grant (R) . .	242	1,049,264
14	Mingo County Surface Mine Project	296	125,000
15	Robert C. Byrd Institute for Advanced/		
16	Flexible Manufacturing - Technology		
17	Outreach and Programs for Environmental		
18	and Advanced Technologies . . .	367	474,058
19	Advantage Valley . . . . .	389	67,762
20	Chemical Alliance Zone . . . . .	390	45,600
21	WV High Tech Consortium . . . . .	391	215,034
22	Regional Contracting Assistance Center. .	418	200,000
23	Highway Authorities . . . . .	431	791,435
24	Charleston Farmers Market . . . . .	476	91,200
25	International Offices (R) . . . . .	593	629,867
26	Small Business Development (R) . .	703	200,000
27	WV Manufacturing Extension		
28	Partnership . . . . .	731	131,328

\*CLERK'S NOTE: The Governor reduced the amount on line 6 from \$1,886,758 to \$1,711,758.

29	Polymer Alliance .....	754	104,880
30	Regional Councils .....	784	401,280
31	Mainstreet Program .....	794	184,439
32	National Institute of Chemical		
33	Studies .....	805	64,296
34	Local Economic Development		
35	Assistance (R) .....	819	7,677,000
36	I-79 Development Council .....	824	*23,750
37	BRIM Premium .....	913	26,096
38	Hatfield McCoy Recreational Trail .	960	228,000
39	Hardwood Alliance Zone .....	992	<u>38,851</u>
40	Total .....		\$ 22,475,543

41 Any unexpended balances remaining in the  
42 appropriations for Tourism — Unclassified — Surplus (fund  
43 0256, activity 075), Unclassified - Surplus (fund 0256,  
44 activity 097), Partnership Grants (fund 0256, activity 131),  
45 Local Economic Development Partnerships (fund 0256,  
46 activity 133), Mid-Atlantic Aerospace Complex (fund 0256,  
47 activity 231), Guaranteed Work Force Grant (fund 0256,  
48 activity 242), Local Economic Development Assistance —  
49 Surplus (fund 0256, activity 266), Industrial Park Assistance  
50 (fund 0256, activity 480), Leverage Technology and Small  
51 Business Development Program (fund 0256, activity 525),  
52 International Offices (fund 0256, activity 593), Small  
53 Business Development (fund 0256, activity 703), Local  
54 Economic Development Assistance (fund 0256, activity 819),  
55 Economic Development Assistance (fund 0256, activity 900),  
56 and Mining Safety Technology (fund 0256, activity 945) at  
57 the close of the fiscal year 2010 are hereby reappropriated for  
58 expenditure during the fiscal year 2011 with the exception of  
59 fund 0256, fiscal year 2010, activity 133 (\$46,999) which  
60 shall expire on June 30, 2010.

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\*CLERK'S NOTE: The Governor reduced the amount on line 36 from \$45,600 to \$23,750. The total does NOT reflect the reductions made by the Governor.

61 The above appropriation to Local Economic  
 62 Development Partnerships (activity 133) shall be used by the  
 63 West Virginia development office for the award of funding  
 64 assistance to county and regional economic development  
 65 corporations or authorities participating in the certified  
 66 development community program developed under the  
 67 provisions of W.Va. Code §5B-2-14. The West Virginia  
 68 development office shall award the funding assistance  
 69 through a matching grant program, based upon a formula  
 70 whereby funding assistance may not exceed \$34,000 per  
 71 county served by an economic development or  
 72 redevelopment corporation or authority.

73 From the above appropriation for Highway Authorities  
 74 (fund 0256, activity 431), \$115,187 is for King Coal  
 75 Highway Authority; \$115,187 is for Coal Field Expressway  
 76 Authority; \$92,150 is for Coal Heritage Highway Authority;  
 77 \$92,150 is for Coal Heritage Area Authority; \$46,075 is for  
 78 Little Kanawha River Parkway; \$82,935 is for Midland Trail  
 79 Scenic Highway Association; \$52,525 is for Shawnee  
 80 Parkway Authority; \$92,150 is for Corridor G Regional  
 81 Development Authority; \$57,000 is for Corridor H Authority;  
 82 and \$46,076 is for Route 2 I68 Highway Authority.

*36-Division of Labor*

(WV Code Chapters 21 and 47)

Fund 0260 FY 2011 Org 0308

1	Personal Services . . . . .	001	\$ 1,711,510
2	Annual Increment . . . . .	004	31,343
3	Employee Benefits . . . . .	010	734,041
4	Unclassified . . . . .	099	820,033
5	BRIM Premium . . . . .	913	<u>47,521</u>
6	Total . . . . .		\$ 3,344,448

*37-Division of Natural Resources*

(WV Code Chapter 20)

Fund 0265 FY 2011 Org 0310

1	Personal Services .....	001	\$ 9,038,748
2	Annual Increment .....	004	312,825
3	Employee Benefits .....	010	3,530,531
4	Unclassified .....	099	625,393
5	Litter Control Conservation Officers	564	156,988
6	Upper Mud River Flood Control ...	654	177,638
7	Law Enforcement .....	806	2,860,162
8	BRIM Premium .....	913	<u>293,374</u>
9	Total .....		\$ 16,995,659

10 Any unexpended balances remaining in the  
 11 appropriations for Land Purchase (fund 0265, activity 761)  
 12 and Fish Hatchery Improvements (fund 0265, activity 825)  
 13 at the close of the fiscal year 2010 are hereby reappropriated  
 14 for expenditure during the fiscal year 2011.

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

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

(WV Code Chapter 22)

Fund 0277 FY 2011 Org 0314

1	Personal Services .....	001	\$ 6,188,925
2	Annual Increment .....	004	83,914
3	Employee Benefits .....	010	2,321,279
4	Unclassified .....	099	1,773,867

Ch. 8]	APPROPRIATIONS	95
	5 WV Diesel Equipment Commission    712	0
	6 BRIM Premium . . . . . 913	<u>68,134</u>
	7 Total . . . . .	\$10,436,119

8 Inclusion in the above appropriation for Unclassified  
9 (fund 0277, activity 099) is \$500,000 for the fourth year of  
10 Southern West Virginia Community and Technical College  
11 Mine Rescue and Rapid Response Team.

*39-Board of Coal Mine Health and Safety*

(WV Code Chapter 22)

Fund 0280 FY 2011 Org 0319

1	Personal Services . . . . .	001	\$	121,353
2	Annual Increment . . . . .	004		1,020
3	Employee Benefits . . . . .	010		33,125
4	WV Mine Technology Force . . . . .	066		115,000
5	Unclassified . . . . .	099		29,250
6	WV Diesel Equipment Commission    712			37,050
7	Board of Miners Training			
8	and Certification . . . . .	667		<u>48,750</u>
9	Total . . . . .		\$	385,548

*40-Coal Mine Safety and Technical Review Committee*

(WV Code Chapter 22)

Fund 0285 FY 2011 Org 0320

1	Unclassified . . . . .	099	\$	48,750
2	Mine Safety Technology Task Force    061			0
3	Coal Forum . . . . .	664		<u>29,250</u>
4	Total . . . . .		\$	78,000

5 It is the intent of the Legislature that the Coal Forum  
6 (activity 664) is to expend funds from its appropriation on  
7 technical, environmental and coal education programs.

*41-WorkForce West Virginia*

(WV Code Chapter 23)

Fund 0572 FY 2011 Org 0323

1 Unclassified - Total ..... 096 \$ 95,000

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

(WV Code Chapter 19)

Fund 0606 FY 2011 Org 0327

1 Unclassified - Total ..... 096 \$ <sup>1</sup>\*1,442,440

2 <sup>2</sup>\*\*\*

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*43-Division of Energy*

(WV Code Chapter 5H)

Fund 0612 FY 2011 Org 0328

1 Unclassified ..... 099 \$ <sup>3</sup>\*1,717,704

2 BRIM Premium ..... 913 3,298

**\*CLERK'S NOTE:** <sup>1</sup>The Governor reduced the amount in Item 42, line 1, from \$2,492,440 to \$1,442,440. <sup>2</sup> He also deleted the language on lines 2 through 7. <sup>3</sup> He reduced the amount in Item 43, line 1, from \$1,754,204 to \$1,717,704.



3 Total ..... \$ 1,757,502

4 From the above appropriation for Unclassified (fund  
 5 0612, activity 099) \$693,500 is for West Virginia University  
 6 and \*\$693,500 is for Southern West Virginia Community and  
 7 Technical College for the Mine Training and Energy  
 8 Technologies Academy.

**DEPARTMENT OF EDUCATION**

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

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2011 Org 0402

1	Personal Services .....	001	\$	247,203
2	Annual Increment .....	004		5,073
3	Employee Benefits .....	010		82,414
4	Unclassified .....	099		<u>2,109,494</u>
5	Total .....		\$	2,444,184

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

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2011 Org 0402

1	Personal Services .....	001	\$	625,015
2	Annual Increment .....	004		21,446
3	Employee Benefits .....	010		211,734
4	Unclassified .....	099		182,152

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\*CLERK'S NOTE: The Governor reduced the amount on line 6 from \$730,000 to \$693,500. The total in Item 43 does NOT reflect the reduction made by the Governor.

5	BRIM Premium .....	913	<u>21,694</u>
6	Total .....		\$ 1,062,041

*46-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2011 Org 0402

1	Personal Services .....	001	\$ 3,484,742
2	Annual Increment .....	004	51,424
3	Employee Benefits .....	010	1,034,344
4	Unclassified (R) .....	099	3,050,000
5	34/1000 Waiver .....	139	160,000
6	Increased Enrollment .....	140	4,410,000
7	Safe Schools .....	143	4,439,240
8	Teacher Mentor (R) .....	158	842,034
9	National Teacher Certification (R) ..	161	400,000
10	Technology Repair and Modernization	298	951,003
11	HVAC Technicians .....	355	474,501
12	Early Retirement Notification		
13	Incentive .....	366	275,000
14	MATH Program .....	368	396,251
15	Assessment Programs .....	396	2,529,284
16	21 <sup>st</sup> Century Fellows .....	507	297,188
17	English as a Second Language .....	528	*0
18	Teacher Reimbursement .....	573	297,188
19	Hospitality Training .....	600	342,034
20	Low Student Enrollment Allowance	615	400,000
21	Hi-Y Youth in Government .....	616	94,000
22	High Acuity Special Needs (R) ....	634	240,000
23	Foreign Student Education .....	636	96,447
24	State Teacher of the Year .....	640	45,100
25	Principals Mentorship .....	649	79,250

\*CLERK'S NOTE: The Governor reduced the amount on line 17 from \$550,000 to \$0. The total does NOT reflect the reduction made by the Governor.

26	Pilot Program of Structured In-School		
27	Alternatives . . . . .	826	96,000
28	21 <sup>st</sup> Century Innovation Zones . . . . .	876	435,694
29	Student Enrichment Program . . . . .	879	6,152,000
30	21 <sup>st</sup> Century Learners (R) . . . . .	886	2,587,216
31	BRIM Premium . . . . .	913	267,786
32	High Acuity Health Care Needs		
33	Program . . . . .	920	1,000,000
34	School Nurse Funding . . . . .	921	584,535
35	21 <sup>st</sup> Century Assessment and		
36	Professional Development . . . . .	931	4,457,825
37	WV Commission on Holocaust		
38	Education . . . . .	935	15,000
39	Allowance for Extraordinary		
40	Sustained Growth . . . . .	943	400,000
41	Regional Education Service		
42	Agencies . . . . .	972	3,990,000
43	Sparse Population Allocation . . . . .	973	210,000
44	Educational Program Allowance . . .	996	<u>237,751</u>
45	Total . . . . .		\$ 45,372,837

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

48       Any unexpended balances remaining in the  
49 appropriations for Unclassified (fund 0313, activity 099),  
50 Teacher Mentor (fund 0313, activity 158), National Teacher  
51 Certification (fund 0313, activity 161), High Acuity Special  
52 Needs (fund 0313, activity 634), and 21<sup>st</sup> Century Learners  
53 (fund 0313, activity 886) at the close of the fiscal year 2010  
54 are hereby reappropriated for expenditure during the fiscal  
55 year 2011 with the exception of fund 0313, fiscal year 2010,  
56 activity 099 (\$82,803), fund 0313, fiscal year 2010, activity  
57 158 (\$28,500), fund 0313, fiscal year 2010, activity 161  
58 (\$400,000) and fund 0313, fiscal year 2010, activity 886  
59 (\$200,000) which shall expire on June 30, 2010.

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 2010. 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), \$95,100 shall be expended for  
 68 Webster County Board of Education for Hacker Valley and  
 69 \$142,651 for the Randolph County Board of Education for  
 70 Pickens School.

71 From the above appropriation for Low Student  
 72 Enrollment Allowance (activity 615), funds shall be allocated  
 73 to county boards of education in accordance with the former  
 74 provisions of W.Va. Code §18-9A-22.

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.

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

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2011 Org 0402

1	Special Education - Counties . . . . .	159	\$	7,271,757
2	Special Education - Institutions . . . .	160		3,666,319
3	Education of Juveniles Held in			
4	Predispositional Juvenile			
5	Detention Centers . . . . .	302		593,216

6	Education of Institutionalized		
7	Juveniles and Adults (R) . . . . .	472	<u>15,862,209</u>
8	Total . . . . .		\$27,393,501

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 2010 is  
12 hereby reappropriated for expenditure during the fiscal year  
13 2011 with the exception of fund 0314, fiscal year 2010,  
14 activity 472 (\$673,500) which shall expire on June 30, 2010.

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

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

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2011 Org 0402

1	Other Current Expenses . . . . .	022	\$148,725,799
2	Advanced Placement . . . . .	053	243,221
3	Professional Educators . . . . .	151	769,598,895
4	Service Personnel . . . . .	152	278,510,155
5	Fixed Charges . . . . .	153	102,681,817
6	Transportation . . . . .	154	70,840,880
7	Administration . . . . .	155	23,045,378
8	Improved Instructional Programs . . .	156	38,528,618
9	21st Century Strategic Technology		
10	Learning Growth . . . . .	936	<u>5,528,470</u>
11	Basic Foundation Allowances . . . . .		1,437,703,233
12	Less Local Share		<u>(382,404,864)</u>
13	Total Basic State Aid . . . . .		1,055,298,369
14	Public Employees' Insurance		
15	Matching . . . . .	012	223,138,798

16	Teachers' Retirement System . . . . .	019	57,912,000
17	School Building Authority . . . . .	453	23,313,425
18	Retirement Systems - Unfunded		
19	Liability . . . . .	775	<u>323,249,497</u>
20	Total . . . . .	\$	1,682,912,089

21 The above appropriation for the State Aid to Schools  
 22 shall be supplemented with additional funding provided  
 23 under the American Recovery and Reinvestment Act of 2009  
 24 to maintain the public education state aid to schools funding  
 25 formula for fiscal year 2011.

*49-State Board of Education -  
 Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2011 Org 0402

1	Personal Services . . . . .	001	\$ 1,046,345
2	Annual Increment . . . . .	004	23,724
3	Employee Benefits . . . . .	010	339,150
4	Unclassified . . . . .	099	1,226,878
5	Wood Products - Forestry Vocational		
6	Program . . . . .	146	57,562
7	Albert Yanni Vocational Program . .	147	142,650
8	Vocational Aid . . . . .	148	17,630,764
9	Adult Basic Education . . . . .	149	3,932,434
10	Program Modernization . . . . .	305	956,014
11	Technical & Secondary Program		
12	Improvement Staff . . . . .	330	296,850
13	GED Testing (R) . . . . .	339	583,792
14	FFA Grant Awards . . . . .	839	12,428
15	Pre-Engineering Academy Program	840	<u>286,804</u>
16	Total . . . . .		\$ 26,535,395

17 Any unexpended balance remaining in the appropriation  
 18 for GED Testing (fund 0390, activity 339) at the close of the

19 fiscal year 2010 is hereby reappropriated for expenditure  
20 during the fiscal year 2011.

*50-State Board of Education -  
Division of Education Performance Audits*

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2011 Org 0402

1	Personal Services .....	001	\$	432,998
2	Annual Increment .....	004		5,196
3	Employee Benefits .....	010		107,359
4	Unclassified .....	099		<u>163,899</u>
5	Total .....		\$	709,452

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

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2011 Org 0403

1	Personal Services .....	001	\$	8,105,042
2	Annual Increment .....	004		8,606
3	Employee Benefits .....	010		2,616,708
4	Unclassified .....	099		1,864,531
5	Capital Outlay and Maintenance (R)	755		62,500
6	BRIM Premium .....	913		<u>59,087</u>
7	Total .....		\$	12,716,474

8 Any unexpended balance remaining in the appropriation  
9 for Capital Outlay and Maintenance (fund 0320, activity 755)  
10 at the close of the fiscal year 2010 is hereby reappropriated  
11 for expenditure during the fiscal year 2011.

**DEPARTMENT OF EDUCATION AND THE ARTS**

*52-Department of Education and the Arts -  
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0294 FY 2011 Org 0431

1	Unclassified (R) . . . . .	099	\$908,799
2	Center for Professional Development (R).	115	2,801,948
3	WV Humanities Council . . . . .	168	450,000
4	Benedum Professional Development		
5	Collaborative (R) . . . . .	427	927,500
6	Governor's Honor Academy (R) . . .	478	500,780
7	Energy Express . . . . .	861	470,000
8	BRIM Premium . . . . .	913	4,509
9	Special Olympic Games . . . . .	966	<u>25,000</u>
10	Total . . . . .		\$ 6,088,536

11 Any unexpended balances remaining in the  
 12 appropriations for Unclassified (fund 0294, activity 099),  
 13 Center for Professional Development (fund 0294 activity  
 14 115), Benedum Professional Development Collaborative  
 15 (fund 0294, activity 427), and Governor's Honor Academy  
 16 (fund 0294, activity 478) at the close of the fiscal year 2010  
 17 are hereby reappropriated for expenditure during the fiscal  
 18 year 2011 with the exception of fund 0294, fiscal year 2010,  
 19 activity 115 (\$162,367) and fund 0294, fiscal year 2010,  
 20 activity 427 (\$54,750) which shall expire on June 30, 2010.

*53-Division of Culture and History*

(WV Code Chapter 29)

Fund 0293 FY 2011 Org 0432

1	Personal Services . . . . .	001	\$ 2,626,190
2	Annual Increment . . . . .	004	59,087
3	Employee Benefits . . . . .	010	981,549
4	Unclassified (R) . . . . .	099	1,112,187
5	Culture and History Programming . .	732	292,945
6	Capital Outlay and Maintenance (R)	755	100,000



7	Historical Highway Marker		
8	Program (R) .....	844	75,185
9	BRIM Premium .....	913	<u>33,677</u>
10	Total .....		\$ 5,280,820

11 Any unexpended balances remaining in the  
 12 appropriations for Unclassified - Surplus (fund 0293, activity  
 13 097), Unclassified (fund 0293, activity 099), Capital Outlay,  
 14 Repairs and Equipment (fund 0293, activity 589) \*\*\*  
 15 \*\*\* Capital  
 16 Outlay, Repairs and Equipment — Surplus (fund 0293,  
 17 activity 677), Capital Outlay and Maintenance (fund 0293,  
 18 activity 755), and Historical Highway Marker Program (fund  
 19 0293, activity 844) at the close of the fiscal year 2010 are  
 20 hereby reappropriated for expenditure during the fiscal year  
 21 2011 with the exception of fund 0293, fiscal year 2010,  
 22 activity 099 (\$59,337) and fund 0293, fiscal year 2010,  
 23 activity 755 (\$84,282) which shall expire on June 30, 2010.

24 The Unclassified appropriation includes funding for the  
 25 arts funds, department programming funds, grants, fairs and  
 26 festivals and Camp Washington Carver and shall be  
 27 expended only upon authorization of the division of culture  
 28 and history and in accordance with the provisions of Chapter  
 29 5A, Article 3, and Chapter 12 of the Code.

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

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\*CLERK'S NOTE: The Governor deleted a portion of language on lines 14 through 15.

36 From the above appropriation for Unclassified (activity  
 37 099), \$100,000 shall be used for the Sesquicentennial  
 38 Celebration.

*54-Library Commission*

(WV Code Chapter 10)

Fund 0296 FY 2011 Org 0433

1	Personal Services .....	001	\$	991,852
2	Annual Increment .....	004		37,080
3	Employee Benefits .....	010		359,592
4	Unclassified .....	099		292,523
5	Services to Blind & Handicapped ..	181		183,005
6	BRIM Premium .....	913		<u>15,177</u>
7	Total .....		\$	1,879,229

*55-Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 0300 FY 2011 Org 0439

1	Personal Services .....	001	\$	3,195,396
2	Annual Increment .....	004		71,620
3	Employee Benefits .....	010		1,230,320
4	Unclassified (R) .....	099		616,288
5	Mountain Stage .....	249		300,000
6	Capital Outlay and Maintenance (R)	755		50,000
7	BRIM Premium .....	913		<u>41,929</u>
8	Total .....		\$	5,505,553

9 Any unexpended balances remaining in the  
 10 appropriations for Unclassified - Surplus (fund 0300, activity  
 11 097), Unclassified (fund 0300, activity 099) and Capital  
 12 Outlay and Maintenance (fund 0300, activity 755) at the  
 13 close of the fiscal year 2010 are hereby reappropriated for

14 expenditure during the fiscal year 2011 with the exception of  
 15 fund 0300, fiscal year 2010, activity 099 (\$142,404) and fund  
 16 0300, fiscal year 2010, activity 755 (\$47,000) which shall  
 17 expire on June 30, 2010.

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

(WV Code Chapter 18)

Fund 0310 FY 2011 Org 0932

1	Personal Services .....	001	\$ 7,414,605
2	Annual Increment .....	004	166,317
3	Independent Living Services (R) ...	009	209,810
4	Employee Benefits .....	010	3,016,299
5	Unclassified .....	099	502,066
6	Workshop Development .....	163	1,424,307
7	Supported Employment Extended		
8	Services .....	206	46,296
9	Ron Yost Personal Assistance Fund	407	313,698
10	Employment Attendant Care		
11	Program .....	598	156,065
12	BRIM Premium .....	913	<u>67,033</u>
13	Total .....		\$13,316,496

14 Any unexpended balances remaining in the  
 15 appropriations for Independent Living Services (fund 0310,  
 16 activity 009), and Capital Outlay and Maintenance (fund  
 17 0310, activity 755) at the close of the fiscal year 2010 are  
 18 hereby reappropriated for expenditure during the fiscal year  
 19 2011 with the exception of fund 0310, fiscal year 2010,  
 20 activity 755 (\$100,000) which shall expire on June 30, 2010.

21 From the above appropriation for Workshop  
 22 Development (activity 163), funds shall be used exclusively  
 23 with the private non-profit community rehabilitation program  
 24 organizations known as work centers or sheltered workshops.

25 The appropriation shall also be used to continue the support  
 26 of the program, services, and individuals with disabilities  
 27 currently in place at those 31 organizations.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*57-Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 2011 Org 0311

1	Personal Services .....	001	\$	73,982
2	Annual Increment .....	004		390
3	Employee Benefits .....	010		20,177
4	Unclassified .....	099		48,245
5	BRIM Premium .....	913		<u>684</u>
6	Total .....		\$	143,478

*58-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 0273 FY 2011 Org 0313

1	Personal Services .....	001	\$	3,339,332
2	Annual Increment .....	004		70,954
3	Employee Benefits .....	010		1,173,503
4	Water Resources Protection			
5	and Management .....	068		574,200
6	Unclassified .....	099		840,614
7	Dam Safety .....	607		211,267
8	West Virginia Stream Partners			
9	Program .....	637		77,396
10	WV Contribution to River			
11	Commissions .....	776		148,485
12	Office of Water Resources			
13	Non-Enforcement Activity .....	855		1,189,193



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 2010 is hereby reappropriated for  
 9 expenditure during the fiscal year 2011 with the exception of  
 10 fund 0400, fiscal year 2010, activity 191 (\$6,220) which shall  
 11 expire on June 30, 2010.

*61-Division of Health -  
 Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2011 Org 0506

1	Personal Services . . . . .	001	\$ 7,861,672
2	Annual Increment . . . . .	004	207,144
3	Employee Benefits . . . . .	010	3,390,663
4	Chief Medical Examiner . . . . .	045	4,684,143
5	Unclassified . . . . .	099	5,193,262
6	State Aid for Local and		
7	Basic Public Health Services . . .	184	16,626,686
8	Safe Drinking Water Program . . . . .	187	516,556
9	Women, Infants and Children . . . . .	210	65,060
10	Early Intervention . . . . .	223	3,307,043
11	Cancer Registry . . . . .	225	209,440
12	ABCA Tobacco Retailer Education		
13	Program - Transfer . . . . .	239	200,000
14	CARDIAC Project . . . . .	375	*475,000
15	State EMS Technical Assistance . . .	379	1,423,729
16	Statewide EMS Program Support (R).	383	930,038
17	Primary Care Centers - Mortgage		
18	Finance . . . . .	413	719,072
19	Black Lung Clinics . . . . .	467	198,646
20	Center for End of Life . . . . .	545	250,000

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\*CLERK'S NOTE: The Governor reduced the amount on line 14 from \$500,000 to \$475,000.

21	Women's Right to Know .....	546	15,000
22	Pediatric Dental Services .....	550	151,603
23	Vaccine for Children .....	551	443,981
24	Adult Influenza Vaccine .....	552	65,000
25	Tuberculosis Control .....	553	244,822
26	Maternal & Child Health Clinics,		
27	Clinicians and Medical Contracts		
28	& Fees (R) .....	575	7,223,771
29	Epidemiology Support .....	626	1,683,837
30	Primary Care Support .....	628	8,849,423
31	Health Right Free Clinics .....	727	3,749,336
32	Capital Outlay and Maintenance (R)	755	2,125,000
33	Healthy Lifestyles (R) .....	778	168,000
34	Emergency Response Entities -		
35	Special Projects (R) .....	822	*744,800
36	Osteoporosis and Arthritis		
37	Prevention .....	849	256,507
38	Diabetes Education Fund .....	873	70,000
39	Tobacco Education Program (R) ...	906	5,667,111
40	BRIM Premium .....	913	211,214
41	State Trauma and Emergency Care		
42	System .....	918	<u>1,821,800</u>
43	Total .....		\$ 79,813,559

44       Any unexpended balances remaining in the  
45       appropriations for Statewide EMS Program Support (fund  
46       0407, activity 383), Maternal and Child Health Clinics,  
47       Clinicians and Medical Contracts and Fees (fund 0407,  
48       activity 575), Capital Outlay and Maintenance (fund 0407,  
49       activity 755), Healthy Lifestyles (fund 0407, activity 778),  
50       Emergency Response Entities - Special Projects (fund 0407,  
51       activity 822), Assistance to Primary Health Care Centers  
52       Community Health Foundation (fund 0407, activity 845) and

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\*CLERK'S NOTE: The Governor reduced the amount on line 35 from \$784,000 to \$744,800. The total does NOT reflect the reductions made by the Governor.

53 Tobacco Education Program (fund 0407, activity 906) at the  
54 close of the fiscal year 2010 are hereby reappropriated for  
55 expenditure during the fiscal year 2011 with the exception of  
56 fund 0407, fiscal year 2010, activity 383 (\$32,885) and fund  
57 0407, fiscal year 2010, activity 822 (\$26,656) which shall  
58 expire on June 30, 2010.

59 From the above appropriation for Unclassified (activity  
60 099), an amount not less than \$100,000 is for the West  
61 Virginia Cancer Coalition; \$50,000 shall be expended for the  
62 West Virginia Aids Coalition; \$100,000 is for Adolescent  
63 Immunization Education; and \$50,000 is for Hospital  
64 Hospitality House of Huntington.

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; and  
69 \$400,000 shall be transferred to the Breast and Cervical  
70 Cancer Diagnostic Treatment Fund.

71 The above appropriation for ABCA Tobacco Retailer  
72 Education Program - Transfer (activity 239) shall be  
73 transferred to the Alcohol Beverage Control Administration  
74 (fund 7352, org 0708) for expenditure.

75 Included in the above appropriation for Primary Care  
76 Centers - Mortgage Finance is \$47,500 for the mortgage  
77 payment for the Lincoln Primary Care Center, Inc.; \$50,483  
78 for the mortgage payment for the Monroe Health Center;  
79 \$40,436 for the mortgage payment for Roane County Family  
80 Health Care, Inc.; \$45,600 for the mortgage payment for the  
81 Primary Care Systems (Clay); \$19,000 for the mortgage  
82 payment for the Belington Clinic; \$28,500 for the mortgage  
83 payment for the Tri-County Health Clinic; \$14,250 for the  
84 mortgage payment for Valley Health Care (Randolph);  
85 \$55,632 for the mortgage payment for Valley Health



86 Systems, Inc. (Woman's Place and Harts Health Clinic);  
 87 \$7,600 for the mortgage payment for Northern Greenbrier  
 88 Health Clinic; \$12,061 for the mortgage payment for the  
 89 Women's Care, Inc. (Putnam); \$23,750 for the mortgage  
 90 payment for the Preston-Taylor Community Health Centers,  
 91 Inc.; \$19,000 for the mortgage payment for the North Fork  
 92 Clinic (Pendleton); \$38,000 for the mortgage payment for the  
 93 Pendleton Community Care; \$36,480 for the mortgage  
 94 payment for Clay-Battelle Community Health Center;  
 95 \$31,920 for the mortgage payment for Mountaineer Health  
 96 Clinic in Paw Paw; \$12,350 for the mortgage payment for the  
 97 St. George Medical Clinic; \$26,600 for the mortgage  
 98 payment for the Bluestone Health Center; \$42,750 for the  
 99 mortgage payment for Wheeling Health Right; \$45,600 for  
 100 the mortgage payment for the Minnie Hamilton Health Care  
 101 Center, Inc.; \$51,300 for the mortgage payment for the  
 102 Shenandoah Valley Medical Systems, Inc.; \$42,750 for the  
 103 mortgage payment for the Change, Inc.; and \$27,510 for the  
 104 mortgage payment for the Wirt County Health Services  
 105 Association.

*62-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 0525 FY 2011 Org 0506

1	Personal Services . . . . .	001	\$	667,097
2	Annual Increment . . . . .	004		14,869
3	Employee Benefits . . . . .	010		285,536
4	Unclassified . . . . .	099		6,663
5	Special Olympics . . . . .	208		26,074
6	Behavioral Health Program -			
7	Unclassified (R) . . . . .	219		62,279,562
8	Family Support Act . . . . .	221		1,093,923
9	Institutional Facilities Operations (R)	335		85,860,352
10	Capital Outlay and Maintenance (R)	755		950,000

11	Colin Anderson Community		
12	Placement (R) . . . . .	803	*664,000
13	Renaissance Program . . . . .	804	194,000
14	BRIM Premium . . . . .	913	<u>1,088,070</u>
15	Total . . . . .		\$153,630,146

16           Any unexpended balances remaining in the  
17 appropriations for Behavioral Health Program - Unclassified  
18 (fund 0525, activity 219), Institutional Facilities Operations  
19 (fund 0525, activity 335), Capital Outlay (fund 0525, activity  
20 511), Capital Outlay and Maintenance (fund 0525, activity  
21 755), and Colin Anderson Community Placement (fund 0525,  
22 activity 803) at the close of the fiscal year 2010 are hereby  
23 reappropriated for expenditure during the fiscal year 2011  
24 with the exception of fund 0525, fiscal year 2010, activity  
25 219 (\$5,180,547) which shall expire on June 30, 2010.

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

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

35           From the above appropriation to Institutional Facilities  
36 Operations, together with available funds from the division  
37 of health - hospital services revenue account (fund 5156,  
38 activity 335), on July 1, 2010, the sum of \$160,000 shall be  
39 transferred to the department of agriculture - land division as

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\*CLERK'S NOTE: The Governor reduced the amount on line 12 from \$1,164,000 to \$664,000. The total does NOT reflect the reductions made by the Governor.

40 advance payment for the purchase of food products; actual  
 41 payments for such purchases shall not be required until such  
 42 credits have been completely expended.

43 Additional funds have been appropriated in fund 5156,  
 44 fiscal year 2011, 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.

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

(WV Code Chapter 16)

Fund 0561 FY 2011 Org 0506

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

3 The above appropriation for Drinking Water Treatment  
 4 Revolving Fund - Transfer shall be transferred to the West  
 5 Virginia Drinking Water Treatment Revolving Fund or  
 6 appropriate bank depository and the Drinking Water  
 7 Treatment Revolving - Administrative Expense Fund as  
 8 provided by Chapter 16 of the Code.

*64-Human Rights Commission*

(WV Code Chapter 5)

Fund 0416 FY 2011 Org 0510

1 Personal Services . . . . . 001 \$ 735,925

116	APPROPRIATIONS	[Ch. 8
2	Annual Increment . . . . .	19,912
3	Employee Benefits . . . . .	264,281
4	Unclassified . . . . .	261,293
5	BRIM Premium . . . . .	<u>9,311</u>
6	Total . . . . .	\$ 1,290,722

*65-Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2011 Org 0511

1	Personal Services . . . . .	\$ 26,491,320
2	Annual Increment . . . . .	771,638
3	Employee Benefits . . . . .	11,656,061
4	Unclassified . . . . .	* <sup>1</sup> 15,165,257
5	Child Care Development . . . . .	* <sup>2</sup> 767,709
6	Medical Services Contracts and Office	
7	of Managed Care . . . . .	* <sup>3</sup> 1,835,469
8	Medical Services (R) . . . . .	226,471,412
9	Social Services . . . . .	* <sup>4</sup> 74,147,057
10	Family Preservation Program . . . . .	1,565,000
11	Family Resource Networks (R) . . . .	1,905,367
12	Domestic Violence Legal Services	
13	Fund . . . . .	400,000
14	James "Tiger" Morton Catastrophic	
15	Illness Fund . . . . .	695,618
16	MR/DD Waiver . . . . .	87,753,483
17	Child Protective Services Case	
18	Workers . . . . .	17,643,317
19	OSCAR and RAPIDS . . . . .	5,055,102
20	Title XIX Waiver for Seniors . . . . .	* <sup>5</sup> 2,000,000

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\***CLERK'S NOTE:** The Governor reduced amounts in Item 65: <sup>1</sup> on line 4 from \$15,365,257 to \$15,165,257; <sup>2</sup> on line 5 from \$1,267,709 to \$767,709; <sup>3</sup> on line 7 from \$2,335,469 to \$1,835,469; <sup>4</sup> on line 9 from \$75,586,872 to \$74,147,057; <sup>5</sup> on line 20 from \$7,550,534 to \$2,000,000.

21	WV Teaching Hospitals		
22	Tertiary/Safety Net . . . . .	547	6,356,000
23	Specialized Foster Care . . . . .	566	365,729
24	Child Welfare System . . . . .	603	* 6,669,501
25	In-Home Family Education . . . . .	688	750,000
26	WV Works Separate State Program .	698	*7,750,000
27	Child Support Enforcement . . . . .	705	*8,001,426
28	Medicaid Auditing . . . . .	706	604,845
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
33	Child and Family Services . . . . .	736	2,850,000
34	Grants for Licensed Domestic		
35	Violence Programs and Statewide		
36	Prevention . . . . .	750	2,000,000
37	Capital Outlay and Maintenance (R)	755	11,875
38	Medical Services Administrative		
39	Costs . . . . .	789	14,413,708
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 . . . . .		\$ 558,378,471

45 Any unexpended balances remaining in the  
46 appropriations for Medical Services (fund 0403, activity  
47 189), Family Resource Networks (fund 0403, activity 274),  
48 Capital Outlay and Maintenance (fund 0403, activity 755),  
49 and Indigent Burials (fund 0403, activity 851) at the close of  
50 the fiscal year 2010 are hereby reappropriated for expenditure  
51 during the fiscal year 2011 with the exception of fund 0403,  
52 fiscal year 2010, activity 189 (\$14,970,364) and fund 0403,  
53 fiscal year 2010, activity 274 (\$1,200,000) which shall expire  
54 on June 30, 2010.

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\*CLERK'S NOTE: The Governor reduced amounts in Item 65: <sup>6</sup> on line 24 from \$2,644,588 to \$1,699,501; <sup>7</sup> on line 26 from \$5,000,000 to \$4,750,000; and <sup>8</sup> on line 27 from \$6,774,541 to \$6,001,426. The total does NOT reflect the reductions made by the Governor.

55       The above appropriation for James “Tiger” Morton  
56       Catastrophic Illness Fund (activity 455) shall be transferred  
57       to the James “Tiger” Morton Catastrophic Illness Fund (fund  
58       5454) as provided by Article 5Q, Chapter 16 of the Code.

59       The above appropriation for Domestic Violence Legal  
60       Services Fund (activity 384) shall be transferred to the  
61       Domestic Violence Legal Services Fund (fund 5455).

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

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

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

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

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

90 The above appropriation for Children’s Trust Fund -  
91 Transfer (activity 951) shall be transferred to the Children’s  
92 Fund (fund 5469, org 0511).

93 From the WV Works Separate State Program (activity  
94 698), \$1,150,000 shall be transferred to the WV WORKS  
95 Separate State College Program Fund, and \$3,600,000 shall  
96 be transferred to the WV WORKS Separate State Two Parent  
97 Families Program Fund.

**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 2011 Org 0601

1	Unclassified (R) .....	099	\$ 796,301
2	Fusion Center (R) .....	469	493,568
3	BRIM Premium .....	913	9,404
4	Homeland State Security Administrative		
5	Agency (R) .....	953	<u>591,269</u>
6	Total .....		\$1,890,542

7 Any unexpended balances remaining in the appropriations  
8 for Unclassified (fund 0430, activity 099), Fusion Center  
9 (fund 0430, activity 469), Capital Outlay (fund 0430, activity  
10 511), WV Fire and EMS Survivor Benefit (fund 0430,  
11 activity 939) and Homeland State Security Administrative

12 Agency (fund 0430, activity 953), at the close of the fiscal  
 13 year 2010 are hereby reappropriated for expenditure during  
 14 the fiscal year 2011 with the exception of fund 0430, fiscal  
 15 year 2010, activity 939 (\$150,000) which shall expire on  
 16 June 30, 2010.

*67-Adjutant General -  
 State Militia*

(WV Code Chapter 15)

Fund 0433 FY 2011 Org 0603

1	Personal Services . . . . .	001	\$	0
2	Annual Increment . . . . .	004		0
3	Employee Benefits . . . . .	010		0
4	Unclassified (R) . . . . .	099	17,849,357	
5	Mountaineer ChalleNGe Academy .	709		0
6	Capital Outlay and Maintenance . . .	755		0
7	BRIM Premium . . . . .	913		0
8	Total . . . . .			<u>\$17,849,357</u>

9 Any unexpended balance remaining in the appropriation  
 10 for Unclassified (fund 0433, activity 099) at the close of the  
 11 fiscal year 2010 is hereby reappropriated for expenditure  
 12 during the fiscal year 2011 with the exception of fund 0433,  
 13 fiscal year 2010, activity 099 (\$1,146,721) which shall expire  
 14 on June 30, 2010.

15 From the above appropriation for Unclassified (fund  
 16 0433, activity 099) an amount up to \$1,652,768 is for the  
 17 Mountaineer ChalleNGe Academy and, an amount not less  
 18 than \$1,000,000 is for Capital Outlay and Maintenance.

19 From the above appropriation an amount approved by the  
 20 adjutant general and the secretary of military affairs and  
 21 public safety may be transferred to the State Armory Board  
 22 for operation and maintenance of National Guard Armories.



*68-Adjutant General -  
Military Fund*

(WV Code Chapter 15)

Fund 0605 FY 2011 Org 0603

1	Unclassified — Total .....	096	\$ 200,000
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*69-West Virginia Parole Board*

(WV Code Chapter 62)

Fund 0440 FY 2011 Org 0605

1	Personal Services .....	001	\$ 183,517
2	Annual Increment .....	004	10,440
3	Employee Benefits .....	010	228,265
4	Unclassified .....	099	221,375
5	Salaries of Members of West Virginia		
6	Parole Board .....	227	405,000
7	BRIM Premium .....	913	<u>4,712</u>
8	Total .....		\$ 1,053,309

*70-Division of Homeland Security and  
Emergency Management*

(WV Code Chapter 15)

Fund 0443 FY 2011 Org 0606

1	Personal Services .....	001	\$ 409,963
2	Annual Increment .....	004	8,060
3	Employee Benefits .....	010	159,639
4	Unclassified (R) .....	099	255,672
5	Radiological Emergency Preparedness	554	30,000
6	Federal Funds/Grant Match (R) ....	749	681,666

7	Mine and Industrial Accident Rapid		
8	Response Call Center . . . . .	781	503,407
9	Early Warning Flood System (R) . . .	877	531,344
10	BRIM Premium . . . . .	913	20,336
11	WVU Charleston Poison Control		
12	Hotline . . . . .	944	596,100
13	Disaster Mitigation . . . . .	952	<u>100,000</u>
14	Total . . . . .		\$ 3,296,187

15 Any unexpended balances remaining in the  
 16 appropriations for Unclassified (fund 0443, activity 099),  
 17 Federal Funds/Grant Match (fund 0443, activity 749), and  
 18 Early Warning Flood System (fund 0443, activity 877) at the  
 19 close of the fiscal year 2010 are hereby reappropriated for  
 20 expenditure during the fiscal year 2011 with the exception of  
 21 fund 0443, fiscal year 2010, activity 099 (\$18,351) which  
 22 shall expire on June 30, 2010.

*71-Division of Corrections -  
 Central Office*

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

Fund 0446 FY 2011 Org 0608

1	Personal Services . . . . .	001	\$ 423,953
2	Annual Increment . . . . .	004	7,235
3	Employee Benefits . . . . .	010	131,543
4	Unclassified . . . . .	099	<u>115,673</u>
5	Total . . . . .		\$ 678,404

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 2010 is hereby  
 9 reappropriated for expenditure during the fiscal year 2011.

*72-Division of Corrections -  
Correctional Units*

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

Fund 0450 FY 2011 Org 0608

1	Employee Benefits . . . . .	010	\$ 378,294
2	Children's Protection Act (R) . . . . .	090	931,821
3	Unclassified . . . . .	099	1,041,662
4	Charleston Work Release . . . . .	456	1,510,820
5	Beckley Correctional Center . . . . .	490	983,931
6	Huntington Work Release . . . . .	495	885,253
7	Anthony Center . . . . .	504	4,494,068
8	Huttonsville Correctional Center . . . . .	514	19,877,317
9	Northern Correctional Facility . . . . .	534	6,690,570
10	Inmate Medical Expenses (R) . . . . .	535	24,226,064
11	Pruntytown Correctional Center . . . . .	543	6,844,897
12	Payments to Federal, County and/or		
13	Regional Jails (R) . . . . .	555	20,000,000
14	Corrections Academy . . . . .	569	1,249,667
15	Martinsburg Correctional Center . . . . .	663	3,275,909
16	Parole Services . . . . .	686	2,863,208
17	Special Services . . . . .	687	3,081,291
18	Capital Outlay and Maintenance (R)	755	1,000,000
19	McDowell County Correctional Center	790	1,949,983
20	Stephens Correctional Facility . . . . .	791	6,474,500
21	Beckley Work Release . . . . .	797	1,000,000
22	St. Mary's Correctional Facility . . . . .	881	12,130,746
23	Denmar Correctional Facility . . . . .	882	4,195,414
24	Ohio County Correctional Facility . . . . .	883	1,570,975
25	Mt. Olive Correctional Facility . . . . .	888	19,011,185
26	Lakin Correctional Facility . . . . .	896	7,954,407
27	BRIM Premium . . . . .	913	<u>829,190</u>
28	Total . . . . .		\$ 154,451,172

29 Any unexpended balances remaining in the  
 30 appropriations for Children's Protection Act (fund 0450,  
 31 activity 090), Unclassified - Surplus (fund 0450, activity  
 32 097), Inmate Medical Expenses (fund 0450, activity 535),  
 33 Payments to Federal, County and/or Regional Jails (fund  
 34 0450, activity 555), and Capital Outlay and Maintenance  
 35 (fund 0450, activity 755) at the close of the fiscal year 2010  
 36 are hereby reappropriated for expenditure during the fiscal  
 37 year 2011 with the exception of fund 0450, fiscal year 2010,  
 38 activity 090 (\$750,000) which shall expire on June 30, 2010.

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

45 From the above appropriation to Unclassified, on July 1,  
 46 2010, the sum of \$300,000 shall be transferred to the  
 47 department of agriculture - land division as advance payment  
 48 for the purchase of food products; actual payments for such  
 49 purchases shall not be required until such credits have been  
 50 completely expended.

*73-West Virginia State Police*

(WV Code Chapter 15)

Fund 0453 FY 2011 Org 0612

1	Personal Services . . . . .	001	\$	43,164,064
2	Annual Increment . . . . .	004		269,980
3	Employee Benefits . . . . .	010		7,928,128
4	Children's Protection Act . . . . .	090		854,842
5	Unclassified . . . . .	099		9,717,019
6	Vehicle Purchase . . . . .	451		521,800
7	Barracks Lease Payments . . . . .	556		246,478

8	Communications and		
9	Other Equipment (R) . . . . .	558	877,864
10	Trooper Retirement Fund . . . . .	605	5,909,067
11	Handgun Administration Expense . .	747	73,934
12	Capital Outlay and Maintenance (R)	755	250,000
13	Retirement Systems - Unfunded		
14	Liability . . . . .	775	23,605,000
15	Automated Fingerprint		
16	Identification System . . . . .	898	652,070
17	BRIM Premium . . . . .	913	<u>5,418,504</u>
18	Total . . . . .		\$ 99,488,750

19 Any unexpended balances remaining in the  
 20 appropriations for Communications and Other Equipment  
 21 (fund 0453, activity 558), and Capital Outlay and  
 22 Maintenance (fund 0453, activity 755) at the close of the  
 23 fiscal year 2010 are hereby reappropriated for expenditure  
 24 during the fiscal year 2011 with the exception of fund 0453,  
 25 fiscal year 2010, activity 558 (\$210,600) and fund 0453,  
 26 fiscal year 2010, activity 755 (\$100,000) which shall expire  
 27 on June 30, 2010.

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

*74-Division of Veterans' Affairs*

(WV Code Chapter 9A)

Fund 0456 FY 2011 Org 0613

1	Personal Services . . . . .	001	\$ 1,194,096
2	Annual Increment . . . . .	004	28,440
3	Employee Benefits . . . . .	010	485,563
4	Unclassified . . . . .	099	282,903
5	Veterans' Field Offices . . . . .	228	168,345

6	Veterans' Nursing Home . . . . .	286	6,602,932
7	Veterans' Toll Free Assistance Line	328	5,015
8	Veterans' Reeducation Assistance (R)	329	131,604
9	Veterans' Grant Program (R) . . . . .	342	150,000
10	Veterans' Grave Markers . . . . .	473	15,750
11	Veterans' Transportation . . . . .	485	625,000
12	Memorial Day Patriotic Exercise . . .	697	20,000
13	Educational Opportunities for		
14	Children of Deceased Veterans (R)	854	25,000
15	BRIM Premium . . . . .	913	<u>23,860</u>
16	Total . . . . .		\$ 9,758,508

17 Any unexpended balances remaining in the  
18 appropriations for Veterans' Reeducation Assistance (fund  
19 0456, activity 329), Veterans' Grant Program (fund 0456,  
20 activity 342), Women's Veterans' Monument (fund 0456,  
21 activity 385), Veterans' Bonus (fund 0456, activity 483), and  
22 Educational Opportunities for Children of Deceased Veterans  
23 (fund 0456, activity 854) at the close of the fiscal year 2010  
24 are hereby reappropriated for expenditure during the fiscal  
25 year 2011 with the exception of fund 0456, fiscal year 2010,  
26 activity 329 (\$137,433) and fund 0456, fiscal year 2010,  
27 activity 342 (\$30,000) which shall expire on June 30, 2010.

28 The above appropriation for Veterans' Nursing Home  
29 (fund 0456, activity 286) may be transferred to the Veterans  
30 Facilities Support Fund (fund 6703, org 0613) at the  
31 discretion of the director of the Division of Veterans' Affairs.

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

(WV Code Chapter 9A)

Fund 0460 FY 2011 Org 0618

1 Personal Services . . . . . 001 \$ 704,951

Ch. 8]	APPROPRIATIONS	127
2	Annual Increment . . . . .	004 29,264
3	Employee Benefits . . . . .	010 315,047
4	Unclassified . . . . .	099 <u>71,834</u>
5	Total . . . . .	\$ 1,121,096

*76-Fire Commission*

(WV Code Chapter 29)

Fund 0436 FY 2011 Org 0619

1	Unclassified - Total . . . . .	096 \$81,156
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*77-Division of Justice and Community Service*

(WV Code Chapter 15)

Fund 0546 FY 2011 Org 0620

1	Personal Services . . . . .	001 \$ 429,381
2	Annual Increment . . . . .	004 6,025
3	Employee Benefits . . . . .	010 155,431
4	Unclassified . . . . .	099 175,532
5	Child Advocacy Centers (R) . . . . .	458 * 1,250,834
6	Community Corrections (R) . . . . .	561 3,500,000
7	Statistical Analysis Program . . . . .	597 52,601
8	BRIM Premium . . . . .	913 <u>1,660</u>
9	Total . . . . .	\$ 5,821,464

10 Any unexpended balances remaining in the  
 11 appropriations for Child Advocacy Centers (fund 0546,  
 12 activity 458), and Community Corrections (fund 0546,  
 13 activity 561) at the close of the fiscal year 2010 are hereby  
 14 reappropriated for expenditure during the fiscal year 2011  
 15 with the exception of fund 0546, fiscal year 2010, activity

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\*CLERK'S NOTE: The Governor reduced the amount in Item 77, line 5 , from \$1,500,834 to \$1,250,834. The total does NOT reflect the reductions made by the Governor.

16 458 (\$21,242) and fund 0546, fiscal year 2010, activity 561  
 17 (\$160,000) which shall expire on June 30, 2010.

18 From the above appropriation for Child Advocacy  
 19 Centers (fund 0546, activity 458), the division may retain an  
 20 amount not to exceed four percent of the total appropriation  
 21 for administrative purposes.

*78-Division of Juvenile Services*

(WV Code Chapter 49)

Fund 0570 FY 2011 Org 0621

1	Jones Building Treatment Center (R) .	261	\$ 1,500,000
2	Statewide Reporting Centers (R) . . .	262	3,813,621
3	Robert L. Shell Juvenile Center . . . .	267	2,005,270
4	Central Office . . . . .	701	2,228,642
5	Capital Outlay and Maintenance (R)	755	250,000
6	Gene Spadaro Juvenile Center . . . .	793	2,105,700
7	BRIM Premium . . . . .	913	96,187
8	WV Industrial Home for Youth (R) .	979	10,838,621
9	Honey Rubenstein Center (R) . . . . .	980	5,367,921
10	Eastern Regional Juvenile Center . .	981	1,764,841
11	Northern Regional Juvenile Center .	982	1,344,737
12	North Central Regional		
13	Juvenile Center . . . . .	983	1,881,470
14	Southern Regional Juvenile Center .	984	1,931,780
15	Tiger Morton Center . . . . .	985	2,075,217
16	Donald R. Kuhn Juvenile Center . .	986	4,091,235
17	J.M. "Chick" Buckbee		
18	Juvenile Center . . . . .	987	<u>1,988,524</u>
19	Total . . . . .		\$43,283,766

20 Any unexpended balances remaining in the  
 21 appropriations for Jones Building Treatment Center (fund  
 22 0570, activity 261), Statewide Reporting Centers (fund 0570,  
 23 activity 262), Capital Outlay and Maintenance (fund 0570,



24 activity 755), WV Industrial Home for Youth (fund 0570,  
 25 activity 979), and Honey Rubenstein Center (fund 0570,  
 26 activity 980) at the close of the fiscal year 2010 are hereby  
 27 reappropriated for expenditure during the fiscal year 2011  
 28 with the exception of fund 0570, fiscal year 2010, activity  
 29 262 (\$778,000), fund 0570, fiscal year 2010, activity 979  
 30 (\$250,000) and fund 0570, fiscal year 2010, activity 980  
 31 (\$725,000) which shall expire on June 30, 2010.

32 From the above appropriations, on July 1, 2010, the sum  
 33 of \$50,000 shall be transferred to the department of  
 34 agriculture - land division as advance payment for the  
 35 purchase of food products; actual payments for such  
 36 purchases shall not be required until such credits have been  
 37 completely expended.

38 The director of juvenile services shall have the authority  
 39 to transfer between line items appropriated to the individual  
 40 juvenile centers above.

*79-Division of Protective Services*

(WV Code Chapter 5F)

Fund 0585 FY 2011 Org 0622

1	Personal Services .....	001	\$ 1,348,894
2	Annual Increment .....	004	38,090
3	Employee Benefits .....	010	553,318
4	Unclassified (R) .....	099	313,618
5	BRIM Premium .....	913	<u>9,969</u>
6	Total .....		\$ 2,263,889

7 Any unexpended balances remaining in the  
 8 appropriations for Equipment (fund 0585, activity 070) and  
 9 Unclassified (fund 0585, activity 099) at the close of the  
 10 fiscal year 2010 are hereby reappropriated for expenditure  
 11 during the fiscal year 2011 with the exception of fund 0585,

12 fiscal year 2010, activity 099 (\$79,470) which shall expire on  
13 June 30, 2010.

**DEPARTMENT OF REVENUE**

*80-Office of the Secretary*

(WV Code Chapter 11)

Fund 0465 FY 2011 Org 0701

1 Unclassified - Total (R) . . . . . 096 \$828,483

2 Any unexpended balances remaining in the  
3 appropriations for Unclassified - Total (fund 0465, activity  
4 096) and Unclassified (fund 0465, activity 099) at the close  
5 of the fiscal year 2010 are hereby reappropriated for  
6 expenditure during the fiscal year 2011.

*81-Tax Division*

(WV Code Chapter 11)

Fund 0470 FY 2011 Org 0702

1	Personal Services (R) . . . . .	001	\$ 13,109,606
2	Annual Increment . . . . .	004	322,206
3	Employee Benefits (R) . . . . .	010	5,237,457
4	Unclassified (R) . . . . .	099	8,047,417
5	GIS Development Project (R) . . . . .	562	150,000
6	Multi State Tax Commission . . . . .	653	77,958
7	BRIM Premium . . . . .	913	<u>14,420</u>
8	Total . . . . .		\$ 26,959,064

9 Any unexpended balances remaining in the  
10 appropriations for Personal Services (fund 0470, activity  
11 001), Employee Benefits (fund 0470, activity 010), Tax  
12 Technology Upgrade (fund 0470, activity 094), Unclassified

13 (fund 0470, activity 099), Integrated Tax Accounting System  
 14 (fund 0470, activity 292), GIS Development Project (fund  
 15 0470, activity 562), and Remittance Processor (fund 0470,  
 16 activity 570) at the close of the fiscal year 2010 are hereby  
 17 reappropriated for expenditure during the fiscal year 2011  
 18 with the exception of fund 0470, fiscal year 2010, activity  
 19 001 (\$815,840) and fund 0470, fiscal year 2010, activity 010  
 20 (\$200,000) which shall expire on June 30, 2010.

*82-State Budget Office*

(WV Code Chapter 11B)

Fund 0595 FY 2011 Org 0703

1	Unclassified (R) .....	099	\$	843,629
2	Pay Equity Reserve .....	364		250,000
3	BRIM Premium .....	913		<u>3,628</u>
4	Total .....		\$	1,097,257

5 Any unexpended balance remaining in the appropriation  
 6 for Unclassified (fund 0595, activity 099) at the close of the  
 7 fiscal year 2010 is hereby reappropriated for expenditure  
 8 during the fiscal year 2011 with the exception of fund 0595,  
 9 fiscal year 2010, activity 099 (\$40,543) which shall expire on  
 10 June 30, 2010.

*83-West Virginia Office of Tax Appeals*

(WV Code Chapter 11)

Fund 0593 FY 2011 Org 0709

1	Unclassified (R) .....	099	\$	648,935
2	BRIM Premium .....	913		<u>3,166</u>
3	Total .....		\$	652,101

4 Any unexpended balance remaining in the appropriation  
 5 for Unclassified (fund 0593, activity 099) at the close of the  
 6 fiscal year 2010 is hereby reappropriated for expenditure  
 7 during the fiscal year 2011 with the exception of fund 0593,  
 8 fiscal year 2010, activity 099 (\$12,900) which shall expire on  
 9 June 30, 2010.

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

(WV Code Chapter 29)

Fund 0523 FY 2011 Org 0933

1 Unclassified - Total . . . . . 096 \$ 85,723

**DEPARTMENT OF TRANSPORTATION**

*85-State Rail Authority*

(WV Code Chapter 29)

Fund 0506 FY 2011 Org 0804

1	Unclassified (R) . . . . .	099	\$ 3,385,589
2	BRIM Premium . . . . .	913	<u>186,413</u>
3	Total . . . . .		\$ 3,572,002

4 From the above appropriation for Unclassified (fund  
 5 0506, activity 099), \$1,000,000 shall be used to establish a  
 6 state plan for transportation and local rail service; and  
 7 \$30,000 shall be expended for improvements at the Duffield  
 8 Station.

9 Any unexpended balance remaining in the appropriation  
 10 for Unclassified (fund 0506, activity 099) at the close of the  
 11 fiscal year 2010 is hereby reappropriated for expenditure  
 12 during the fiscal year 2011 with the exception of fund 0506,

13 fiscal year 2010, activity 099 (\$91,845) which shall expire on  
14 June 30, 2010.

*86-Division of Public Transit*

(WV Code Chapter 17)

Fund 0510 FY 2011 Org 0805

1	Unclassified (R) . . . . .	099	\$ 1,669,170
2	Federal Funds/Grant Match (R) . . . .	749	<u>1,116,839</u>
3	Total . . . . .		\$ 2,786,009

4 Any unexpended balances remaining in the  
5 appropriations for Unclassified (fund 0510, activity 099), and  
6 Federal Funds/Grant Match (fund 0510, activity 749) at the  
7 close of the fiscal year 2010 are hereby reappropriated for  
8 expenditure during the fiscal year 2011 with the exception of  
9 fund 0510, fiscal year 2010, activity 749 (\$99,710) which  
10 shall expire on June 30, 2010.

*87-Public Port Authority*

(WV Code Chapter 17)

Fund 0581 FY 2011 Org 0806

1	Unclassified (R) . . . . .	099	\$ 398,421
2	BRIM Premium . . . . .	913	<u>2,764</u>
3	Total . . . . .		\$ 401,185

4 Any unexpended balance remaining in the appropriation  
5 for Unclassified (fund 0581, activity 099) at the close of the  
6 fiscal year 2010 is hereby reappropriated for expenditure  
7 during the fiscal year 2011 with the exception of fund 0581,  
8 fiscal year 2010, activity 099 (\$14,214) which shall expire on  
9 June 30, 2010.

*88-Aeronautics Commission*

(WV Code Chapter 29)

Fund 0582 FY 2011 Org 0807

1	Unclassified (R) .....	099	\$ 1,213,593
2	Civil Air Patrol .....	234	<u>155,095</u>
3	Total .....		\$ 1,368,688

4 Any unexpended balance remaining in the appropriation  
 5 for Unclassified (fund 0582, activity 099) at the close of the  
 6 fiscal year 2010 is hereby reappropriated for expenditure  
 7 during the fiscal year 2011 with the exception of fund 0582,  
 8 fiscal year 2010, activity 099 (\$48,886) which shall expire on  
 9 June 30, 2010.

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

**BUREAU OF SENIOR SERVICES***89-Bureau of Senior Services*

(WV Code Chapter 29)

Fund 0420 FY 2011 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 2010 is hereby reappropriated for  
 4 expenditure during the fiscal year 2011.

**HIGHER EDUCATION**

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

## (WV Code Chapter 18B)

Fund 0596 FY 2011 Org 0420

1	New River Community and		
2	Technical College . . . . .	358	\$ 5,248,676
3	West Virginia Council for Community		
4	and Technical Education (R) . . .	392	853,273
5	Eastern West Virginia Community and		
6	Technical College . . . . .	412	1,906,570
7	Kanawha Valley Community and Technical		
8	College . . . . .	445	3,737,641
9	Southern West Virginia Community and		
10	Technical College . . . . .	446	7,985,386
11	West Virginia Northern Community and		
12	Technical College . . . . .	447	7,120,613
13	West Virginia University -		
14	Parkersburg . . . . .	471	8,942,043
15	Bridgemont Community and Technical		
16	College . . . . .	486	3,607,883
17	Mountwest Community and		
18	Technical College . . . . .	487	5,464,151
19	Community and Technical College		
20	Improvements . . . . .	610	*0
21	Community College		
22	Workforce Development (R) . . .	878	918,000
23	Blue Ridge Community and		
24	Technical College . . . . .	885	2,737,366
25	College Transition Program (R) . . .	887	323,500
26	West Virginia Advance Workforce		
27	Development (R) . . . . .	893	3,644,020
28	Technical Program Development (R)	894	2,261,100
29	Pierpont Community and Technical		
30	College . . . . .	930	<u>7,683,748</u>
31	Total . . . . .		\$64,533,970

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\*CLERK'S NOTE: The Governor reduced the amount on line 23 from \$2,100,000 to \$0. The total does NOT reflect the reduction made by the Governor.

32 Any unexpended balances remaining in the  
33 appropriations for Unclassified - Surplus (fund 0596, activity  
34 097), Equipment - Surplus (fund 0596, activity 341), West  
35 Virginia Council for Community and Technical Education  
36 (fund 0596, activity 392), Community College Workforce  
37 Development (fund 0596, activity 878), College Transition  
38 Program (fund 0596, activity 887), West Virginia Advance  
39 Workforce Development (fund 0596, activity 893), and  
40 Technical Program Development (fund 0596, activity 894) at  
41 the close of the fiscal year 2010 are hereby reappropriated for  
42 expenditure during the fiscal year 2011 with the exception of  
43 fund 0596, fiscal year 2010, activity 392 (\$29,728) which  
44 shall expire on June 30, 2010.

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56 From the above appropriation for the Community College  
57 Workforce Development (fund 0596, activity 878), \$200,000  
58 shall be expended on the Mine Training Program in Southern  
59 West Virginia.

60 The institutions operating with special revenue funds  
61 and/or federal funds shall pay their proportionate share of the  
62 Board of Risk and Insurance Management total insurance  
63 premium cost for their respective institutions.

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\*CLERK'S NOTE: The Governor deleted language on lines 45 through 55.



91-Higher Education Policy Commission -  
Administration -  
Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2011 Org 0441

1	Unclassified (R) .....	099	\$*2,175,573
2	Higher Education Grant Program ...	164	34,160,862
3	WVNET .....	169	1,914,713
4	PROMISE Scholarship — Transfer .	800	19,000,000
5	HEAPS Grant Program (R) .....	867	5,004,270
6	BRIM Premium .....	913	<u>18,936</u>
7	Total .....		\$62,474,354

8 Any unexpended balances remaining in the  
9 appropriations for Unclassified (fund 0589, activity 099),  
10 Vice Chancellor for Health Sciences - Rural Health Initiative  
11 Program and Site Support (fund 0589, activity 595), Capital  
12 Outlay and Maintenance (fund 0589, activity 755), and  
13 HEAPS Grant Program (fund 0589, activity 867) at the close  
14 of the fiscal year 2010 are hereby reappropriated for  
15 expenditure during the fiscal year 2011 with the exception of  
16 fund 0589, fiscal year 2010, activity 099 (\$74,191) which  
17 shall expire on June 30, 2010.

18 The above appropriation for Higher Education Grant  
19 Program (activity 164) shall be transferred to the Higher  
20 Education Grant Fund (fund 4933, org 0441) established by  
21 W.Va. Code §18C-5-3.

22 The above appropriation for PROMISE Scholarship -  
23 Transfer (activity 800) shall be transferred to the PROMISE

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\*CLERK'S NOTE: The Governor reduced the amount in Item 91, line 1 from \$2,375,573 to \$2,175,573. The total does NOT reflect the reduction made by the Governor.

- 24 Scholarship Fund (fund 4296, org 0441) established by  
 25 W.Va. Code §18C-7-7.

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

(WV Code Chapter 18B)

Fund 0586 FY 2011 Org 0442

1	WVU School of Health Science -		
2	Eastern Division . . . . .	056	\$ 2,415,161
3	School of Osteopathic Medicine . . .	172	6,901,010
4	Marshall Medical School . . . . .	173	11,388,523
5	WVU—School of Health Sciences .	174	15,970,048
6	WVU School of Health Sciences -		
7	Charleston Division . . . . .	175	2,427,569
8	Rural Health Outreach Programs (R)	377	570,863
9	School of Osteopathic Medicine		
10	BRIM Subsidy . . . . .	403	160,236
11	Bluefield State College . . . . .	408	5,882,611
12	Concord University . . . . .	410	9,175,771
13	Fairmont State University . . . . .	414	15,611,661
14	Glenville State College . . . . .	428	5,974,510
15	Shepherd University . . . . .	432	10,153,214
16	West Liberty University . . . . .	439	8,440,109
17	West Virginia State University . . . .	441	9,877,879
18	Marshall University . . . . .	448	49,551,205
19	Marshall University Medical School		
20	BRIM Subsidy . . . . .	449	932,587
21	West Virginia University . . . . .	459	104,489,885
22	West Virginia University School of		
23	Medicine BRIM Subsidy . . . . .	460	1,285,775
24	Jackson's Mill . . . . .	461	200,000
25	West Virginia University Institute		
26	for Technology . . . . .	479	7,836,746

27	Vista E-Learning (R) . . . . .	519	274,522
28	State Priorities - Brownfield Professional		
29	Development (R) . . . . .	531	739,246
30	Rural Health Initiative - Medical		
31	Schools Support . . . . .	581	438,996
32	Higher Education Improvements . . .	658	*0
33	West Virginia State University Land		
34	Grant Match . . . . .	956	1,752,280
35	West Virginia University —		
36	Potomac State . . . . .	994	<u>4,211,706</u>
37	Total . . . . .		\$277,262,113

38 Any unexpended balances remaining in the  
39 appropriations for Rural Health Outreach Programs (fund  
40 0586, activity 377), Marshall School of Medicine - Surplus  
41 (fund 0586, activity 452), WVUIT-ABET Accreditation  
42 (fund 0586, activity 454), Vista E-Learning (fund 0586,  
43 activity 519), and State Priorities-Brownfield Professional  
44 Development (fund 0586, activity 531) at the close of fiscal  
45 year 2010 are hereby reappropriated for expenditure during  
46 the fiscal year 2011 with the exception of fund 0347, fiscal  
47 year 2010, activity 377, organization 0471 (\$6,919), fund  
48 0343, fiscal year 2010, activity 377, organization 0463  
49 (\$6,919), fund 0348, fiscal year 2010, activity 519,  
50 organization 0471 (\$10,007), fund 0348, fiscal year 2010,  
51 activity 531, organization 0471 (\$13,442) and fund 0344,  
52 fiscal year 2010, activity 531, organization 0463 (\$13,442)  
53 which shall expire on June 30, 2010.

54 Included in the appropriation for WVU — School of  
55 Health Sciences and Marshall Medical School are \$943,080  
56 and \$295,477, respectively, for Graduate Medical Education  
57 which may be transferred to the Department of Health and  
58 Human Resources' Medical Service Fund (fund 5084) for the  
59 purpose of matching federal or other funds to be used in

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\*CLERK'S NOTE: The Governor reduced the amount on line 32 from \$600,000 to \$0. The total does NOT reflect the reduction made by the Governor.

60 support of graduate medical education, subject to approval of  
61 the Vice-Chancellor for Health Sciences and the Secretary of  
62 the Department of Health and Human Resources. If approval  
63 is denied, the funds may be utilized by the respective  
64 institutions for expenditure on graduate medical education.

65       Included in the above appropriation for WVU — School  
66 of Health Sciences is \$900,000 for the Blanchette Rockefeller  
67 Project.

68       Included in the above appropriation for Glenville State  
69 College is \$200,000 for a 17 county consortium between the  
70 County School Systems and Glenville State.

71       Included in the above appropriation for West Virginia  
72 University is \$34,500 for the Marshall and WVU Faculty and  
73 Course Development International Study Project; \$246,429  
74 for the WVU Law School — Skills Program; \$300,000 for  
75 the WVU Coal and Energy Research Bureau to be expended  
76 in consultation with the Board of Coal Mine Health and  
77 Safety, the Mine Safety Technology Task Force, and the DEP  
78 Advisory Council; \$19,714 for the WVU College of  
79 Engineering and Mineral Resources—Diesel Training —  
80 Transfer; \$82,500 for the WVU — Sheep Study; \$500,000  
81 for the Mining Engineering Program; \$500,000 for the Center  
82 for Multiple Sclerosis Program; \$550,000 for the Davis  
83 College of Forestry Agriculture and Consumer Sciences of  
84 which \$112,500 is to be used for Morgantown Farms;  
85 \$112,500 is to be used for Raymond Memorial Farm;  
86 \$112,500 is to be used for Reedsville Farm; and \$112,500 is  
87 to be used for Kerneysville Farm; \$200,000 for Reedsville  
88 Arena and Jackson’s Mill Arena; \$80,000 for a Landscape  
89 Architect at Davis College of Forestry Agriculture and  
90 Consumer Sciences; \$100,000 for the WVU — Soil Testing  
91 Program; \$100,000 for a veterinarian; \$50,000 for the WVU  
92 Cancer Study; \$220,000 for the WVU Petroleum Engineering  
93 Program; \$150,000 for the WV Alzheimer Disease Register  
94 and \$100,000 for the rifle team.

95 Included in the above appropriation for Marshall Medical  
96 School is \$417,351 for the Marshall University Forensic Lab  
97 and \$275,061 for the Marshall University Center for Rural  
98 Health.

99 Included in the above appropriation for Marshall  
100 University is \$181,280 for the Marshall University - Southern  
101 WV CTC 2+2 Program and \$100,000 for the Luke Lee  
102 Listening Language & Learning Lab.

103 Included in the above appropriation for Concord  
104 University is \$100,000 for the Geographic Alliance.

105 Included in the above appropriation for Shepherd  
106 University is \$100,000 for the Gateway Program.

107 From the above appropriation for Rural Health Outreach  
108 Programs (activity 377) includes rural health activities and  
109 programs; rural residency development and education; and  
110 rural outreach activities. These funds shall be dispersed  
111 equally among the three (3) medical schools.

112 From the above appropriation for WVU - Potomac State  
113 is \$50,000 for maintenance, repairs and equipment, \$75,000  
114 for Potomac State Farms for maintenance, repairs, and  
115 equipment and \$82,500 for the Potomac State Equine  
116 Program.

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\*CLERK'S NOTE: The Governor deleted language on lines 117 through 125.

126 The institutions operating from special revenue funds  
 127 and/or federal funds shall pay their proportionate share of the  
 128 Board of Risk and Insurance Management total insurance  
 129 premium cost for their respective institutions.

130 From the above appropriations to the respective medical  
 131 schools, the line items for BRIM subsidies funding shall be  
 132 paid to the Board of Risk and Insurance Management as a  
 133 general revenue subsidy against the "Total Premium Billed"  
 134 to each institution as part of the full cost of their malpractice  
 135 insurance coverage.

136 Total TITLE II, Section 1 - General Revenue

137 (Including claims against the state) \$ 3,741,680,000

1 **Sec. 2. Appropriations from state road fund.** - From  
 2 the state road fund there are hereby appropriated  
 3 conditionally upon the fulfillment of the provisions set forth  
 4 in Article 2, Chapter 11B of the Code the following amounts,  
 5 as itemized, for expenditure during the fiscal year 2011.

**DEPARTMENT OF TRANSPORTATION**

*93-Division of Motor Vehicles*

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2011 Org 0802

			<b>State Road Fund</b>
	<b>Activity</b>		
1	Personal Services . . . . .	001	\$ 14,623,336
2	Annual Increment . . . . .	004	321,240
3	Employee Benefits . . . . .	010	5,226,796

4	Unclassified .....	099	<u>17,657,345</u>
5	Total .....		\$ 37,828,717

*94-Division of Highways*

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2011 Org 0803

1	Debt Service .....	040	\$ 50,000,000
2	Maintenance .....	237	320,096,000
3	Maintenance, Contract Paving and		
4	Secondary Road Maintenance ...	272	70,000,000
5	Bridge Repair and Replacement ...	273	40,000,000
6	Inventory Revolving .....	275	4,000,000
7	Equipment Revolving .....	276	15,000,000
8	General Operations .....	277	56,400,000
9	Interstate Construction .....	278	125,000,000
10	Other Federal Aid Programs .....	279	325,700,000
11	Appalachian Programs .....	280	115,000,000
12	Nonfederal Aid Construction .....	281	25,000,000
13	Highway Litter Control .....	282	1,699,000
14	Federal Economic Stimulus II .....	802	140,000,000
15	Federal Economic Stimulus .....	891	<u>65,000,000</u>
16	Total .....		\$1,352,895,000

17 The above appropriations are to be expended in  
 18 accordance with the provisions of chapters seventeen and  
 19 seventeen-c of the code.

20 The commissioner of highways shall have the authority  
 21 to operate revolving funds within the state road fund for the  
 22 operation and purchase of various types of equipment used  
 23 directly and indirectly in the construction and maintenance of  
 24 roads and for the purchase of inventories and materials and  
 25 supplies.

26        There is hereby appropriated within the above items  
27 sufficient money for the payment of claims, accrued or  
28 arising during this budgetary period, to be paid in accordance  
29 with sections seventeen and eighteen, article two, chapter  
30 fourteen of the code.

31        It is the intent of the Legislature to capture and match all  
32 federal funds available for expenditure on the Appalachian  
33 highway system at the earliest possible time. Therefore,  
34 should amounts in excess of those appropriated be required  
35 for the purposes of Appalachian programs, funds in excess of  
36 the amount appropriated may be made available upon  
37 recommendation of the commissioner and approval of the  
38 governor. Further, for the purpose of Appalachian programs,  
39 funds appropriated to line items may be transferred to other  
40 line items upon recommendation of the commissioner and  
41 approval of the governor.

42        Total TITLE II, Section 2 - State Road Fund

43        (Including claims against the state)    \$ 1,392,289,000

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 2,  
4 Chapter 11B of the Code the following amounts, as itemized,  
5 for expenditure during the fiscal year 2011.

## LEGISLATIVE

### *95-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 1731 FY 2011 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>3,390,975</u>
7 Total .....		\$ 3,927,978

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 2010 is hereby  
 11 reappropriated for expenditure during the fiscal year 2011.

**JUDICIAL**

*96-Supreme Court -  
 Family Court Fund*

(WV Code Chapter 51)

Fund 1763 FY 2011 Org 2400

1 Unclassified - Total .....	096	\$ 1,000,000
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**EXECUTIVE**

*97-Auditor's Office -  
 Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2011 Org 1200

1 Personal Services .....	001	\$ 286,431
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APPROPRIATIONS

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.

*98-Auditor's Office -  
Local Government Purchasing Card Expenditure Fund*

(WV Code Chapter 6)

Fund 1224 FY 2011 Org 1200

1	Unclassified - Total .....	096	\$ 154,922
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*99-Auditor's Office -  
Securities Regulation Fund*

(WV Code Chapter 32)

Fund 1225 FY 2011 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

*100-Auditor's Office -  
Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1233 FY 2011 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  
4 and Acquisition Fund (fund 1329, org 1300) for expenditure  
5 for the purposes described in W.Va. Code §12-3-10c.

*101-Auditor's Office -  
Purchasing Card Administration Fund*

(WV Code Chapter 12)

Fund 1234 FY 2011 Org 1200

1 Unclassified - Total ..... 096 \$ 4,204,610

*102-Auditor's Office -  
Office of the Chief Inspector*

(WV Code Chapter 6)

Fund 1235 FY 2011 Org 1200

1	Personal Services .....	001	\$ 2,421,649
2	Annual Increment .....	004	39,288
3	Employee Benefits .....	010	888,980
4	Unclassified .....	099	<u>815,915</u>
5	Total .....		\$ 4,165,832

*103-Treasurer's Office -  
College Prepaid Tuition and Savings Program  
Administrative Account*

(WV Code Chapter 18)

Fund 1301 FY 2011 Org 1300

1 Unclassified - Total ..... 096 \$ 1,402,462

*104-Treasurer's Office -  
Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1329 FY 2011 Org 1300

1 Unclassified - Total ..... 096 \$ 475,000

*105-Department of Agriculture -  
Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2011 Org 1400

1 Unclassified - Total ..... 096 \$ 3,583,867

*106-Department of Agriculture -  
West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2011 Org 1400

1 Personal Services ..... 001 \$ 53,384

Ch. 8]	APPROPRIATIONS		149
2	Annual Increment .....	004	998
3	Employee Benefits .....	010	15,873
4	Unclassified .....	099	<u>975,996</u>
5	Total .....		\$ 1,046,251

*107-Department of Agriculture -  
General John McCausland Memorial Farm*

(WV Code Chapter 19)

Fund 1409 FY 2011 Org 1400

- |   |                            |     |            |
|---|----------------------------|-----|------------|
| 1 | Unclassified - Total ..... | 096 | \$ 210,000 |
|---|----------------------------|-----|------------|
- 2     The above appropriation shall be expended in accordance  
3 with Article 26, Chapter 19 of the Code.

*108-Department of Agriculture -  
Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 2011 Org 1400

- |   |                            |     |              |
|---|----------------------------|-----|--------------|
| 1 | Unclassified - Total ..... | 096 | \$ 1,508,544 |
|---|----------------------------|-----|--------------|

*109-Department of Agriculture -  
Donated Food Fund*

(WV Code Chapter 19)

Fund 1446 FY 2011 Org 1400

- |   |                            |     |              |
|---|----------------------------|-----|--------------|
| 1 | Unclassified - Total ..... | 096 | \$ 4,546,778 |
|---|----------------------------|-----|--------------|

*110-Department of Agriculture -  
Integrated Predation Management Fund*

(WV Code Chapter 7)

Fund 1465 FY 2011 Org 1400

1 Unclassified - Total ..... 096 \$ 25,000

*111-Attorney General -  
Antitrust Enforcement*

(WV Code Chapter 47)

Fund 1507 FY 2011 Org 1500

1	Personal Services .....	001	\$	262,577
2	Annual Increment .....	004		2,437
3	Employee Benefits .....	010		81,703
4	Unclassified .....	099		<u>156,266</u>
5	Total .....		\$	502,983

*112-Attorney General -  
Preneed Burial Contract Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2011 Org 1500

1 Unclassified - Total ..... 096 \$ 262,818

*113-Attorney General -  
Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 2011 Org 1500

1 Unclassified - Total ..... 096 \$ 901,135

*114-Secretary of State -  
Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2011 Org 1600

1	Personal Services .....	001	\$ 300,000
2	Employee Benefits .....	010	68,300
3	Unclassified .....	099	<u>881,700</u>
4	Total .....		\$ 1,250,000

*115-Secretary of State -  
General Administrative Fees Account*

(WV Code Chapters 3, 5 and 59)

Fund 1617 FY 2011 Org 1600

1	Personal Services .....	001	\$ 1,200,000
2	Annual Increment .....	004	15,000
3	Employee Benefits .....	010	467,673
4	Unclassified .....	099	834,678
5	Technology Improvements .....	599	<u>750,000</u>
6	Total .....		\$ 3,267,351

**DEPARTMENT OF ADMINISTRATION**

*116-Department of Administration -  
Office of the Secretary  
Employee Pension and Health Care Benefit Fund*

(WV Code Chapter 18)

Fund 2044 FY 2011 Org 0201

1 Unclassified - Total . . . . . 096 \$ 32,772,000

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).

*117-Division of Information Services and Communications*

(WV Code Chapter 5A)

Fund 2220 FY 2011 Org 0210

1	Personal Services . . . . .	001	\$ 16,326,413
2	Annual Increment . . . . .	004	342,459
3	Employee Benefits . . . . .	010	5,659,245
4	Unclassified . . . . .	099	<u>15,551,700</u>
5	Total . . . . .		\$ 37,879,817

6 The total amount of this appropriation shall be paid from  
7 a special revenue fund out of collections made by the division  
8 of information services and communications as provided by  
9 law.

10 Each spending unit operating from the general revenue  
11 fund, from special revenue funds or receiving reimbursement  
12 for postage from the federal government shall be charged  
13 monthly for all postage meter service and shall reimburse the  
14 revolving fund monthly for all such amounts.

*118-Division of Personnel*

(WV Code Chapter 29)

Fund 2440 FY 2011 Org 0222



1	Personal Services	001	\$ 2,763,429
2	Annual Increment	004	72,348
3	Employee Benefits	010	991,588
4	Unclassified	099	<u>1,207,158</u>
5	Total		\$ 5,034,523

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.

*119-West Virginia Prosecuting Attorneys Institute*

(WV Code Chapter 7)

Fund 2521 FY 2011 Org 0228

1	Unclassified - Total (R)	096	\$ 550,092
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2 Any unexpended balance remaining in the appropriation  
3 for Unclassified - Total (fund 2521, activity 096, fiscal year  
4 2010) at the close of the fiscal year 2010 is hereby  
5 reappropriated for expenditure during the fiscal year 2011.

*120-Office of Technology -  
Chief Technology Officer Administration Fund*

(WV Code Chapter 5A)

Fund 2531 FY 2011 Org 0231

1	Unclassified - Total	096	\$ 1,881,795
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2 From the above fund, the provisions of W.Va. Code  
3 §11B-2-18 shall not operate to permit expenditures in excess  
4 of the funds authorized for expenditure herein.

**DEPARTMENT OF COMMERCE**

*121-Division of Forestry*

## APPROPRIATIONS

[Ch. 8

(WV Code Chapter 19)

Fund 3081 FY 2011 Org 0305

1	Personal Services .....	001	\$	366,741
2	Annual Increment .....	004		7,594
3	Employee Benefits .....	010		127,230
4	Unclassified .....	099		<u>363,374</u>
5	Total .....		\$	864,939

*122-Division of Forestry -  
Timbering Operations Enforcement Fund*

(WV Code Chapter 19)

Fund 3082 FY 2011 Org 0305

1	Unclassified - Total .....	096	\$	141,750
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*123-Division of Forestry -  
Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2011 Org 0305

1	Unclassified - Total .....	096	\$	1,190,145
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*124-Geological and Economic Survey-  
Geological and Analytical Services Fund*

(WV Code Chapter 29)

Fund 3100 FY 2011 Org 0306

1	Personal Services .....	001	\$	25,821
2	Employee Benefits .....	010		2,351
3	Unclassified .....	099		<u>190,107</u>



*128-Division of Labor -  
Elevator Safety Act*

(WV Code Chapter 21)

Fund 3188 FY 2011 Org 0308

1	Personal Services .....	001	\$	80,254
2	Annual Increment .....	004		1,269
3	Employee Benefits .....	010		29,664
4	Unclassified .....	099		<u>74,655</u>
5	Total .....		\$	185,842

*129-Division of Labor -  
Crane Operator Certification Fund*

(WV Code Chapter 21)

Fund 3191 FY 2011 Org 0308

1	Unclassified - Total .....	096	\$	136,849
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*130-Division of Labor -  
Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2011 Org 0308

1	Unclassified - Total .....	096	\$	107,066
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*131-Division of Labor -  
State Manufactured Housing Administration Fund*

(WV Code Chapter 21)

Fund 3195 FY 2011 Org 0308

Ch. 8]	APPROPRIATIONS			157
1	Personal Services .....	001	\$	102,203
2	Annual Increment .....	004		2,662
3	Employee Benefits .....	010		46,861
4	Unclassified .....	099		28,724
5	BRIM Premium .....	913		<u>3,404</u>
6	Total .....		\$	183,854

*132-Division of Labor -  
Weights and Measures Fund*

(WV Code Chapter 47)

Fund 3196 FY 2011 Org 0308

1	Unclassified - Total .....	096	\$	50,000
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*133-Division of Natural Resources*

(WV Code Chapter 20)

Fund 3200 FY 2011 Org 0310

1	Wildlife Resources .....	023	\$	5,493,200
2	Administration .....	155		1,303,878
3	Capital Improvements and			
4	Land Purchase (R) .....	248		1,373,300
5	Law Enforcement .....	806		<u>5,493,200</u>
6	Total .....		\$	13,663,578

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 Capital Improvements and Land Purchase  
12       (fund 3200, activity 248) at the close of the fiscal year 2010  
13       are hereby reappropriated for expenditure during the fiscal  
14       year 2011.

*134-Division of Natural Resources -  
Game, Fish and Aquatic Life Fund*

(WV Code Chapter 20)

Fund 3202 FY 2011 Org 0310

1	Unclassified - Total .....	096	\$	75,000
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*135-Division of Natural Resources -  
Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2011 Org 0310

1	Personal Services .....	001	\$	704,058
2	Annual Increment .....	004		9,930
3	Employee Benefits .....	010		275,186
4	Unclassified .....	099		<u>322,567</u>
5	Total .....		\$	1,311,741

*136-Division of Natural Resources -  
Planning and Development Division*

(WV Code Chapter 20)

Fund 3205 FY 2011 Org 0310

1	Personal Services .....	001	\$	130,300
2	Annual Increment .....	004		2,340
3	Employee Benefits .....	010		46,010
4	Unclassified .....	099		<u>222,286</u>
5	Total .....		\$	400,936

*137-Division of Natural Resources -  
Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Fund 3253 FY 2011 Org 0310

1 Unclassified - Total ..... 096 \$ 135,000

*138-Division of Natural Resources -  
Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Fund 3256 FY 2011 Org 0310

1 Unclassified - Total ..... 096 \$ 20,000

*139-Miners' Health, Safety and Training Fund*

(WV Code Chapter 22A)

Fund 3355 FY 2011 Org 0314

1	Personal Services .....	001	\$	339,000
2	Annual Increment .....	004		900
3	Employee Benefits .....	010		126,800
4	WV Mining Extension Service ....	026		150,000
5	Unclassified .....	099		3,591,900
6	Mine Safety Technology Task Force	061		<u>0</u>
7	Total .....		\$	4,208,600

8 Any unexpended balance remaining in the appropriation  
9 for Disaster Mitigation (fund 3355, activity 952) at the close  
10 of the fiscal year 2010 is hereby reappropriated for  
11 expenditure during the fiscal year 2011.

*140-Division of Energy -  
Energy Assistance*

(WV Code Chapter 5B)

Fund 3010 FY 2011 Org 0328

1 Energy Assistance — Total . . . . . 647 \$ 300,000

*141-Division of Energy -  
Office of Coal Field Community Development*

(WV Code Chapter 5B)

Fund 3011 FY 2011 Org 0328

1 Unclassified - Total . . . . . 096 \$ 835,111

**DEPARTMENT OF EDUCATION**

*142-State Board of Education -  
Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2011 Org 0402

1 Unclassified - Total . . . . . 096 \$ 900,000

*143-State Department of Education -  
School Building Authority*

(WV Code Chapter 18)

Fund 3959 FY 2011 Org 0402

1	Personal Services . . . . .	001	\$	794,074
2	Annual Increment . . . . .	004		9,120
3	Employee Benefits . . . . .	010		276,409
4	Unclassified . . . . .	099		<u>271,715</u>
5	Total . . . . .		\$	1,351,318



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.

*144-State Department of Education -  
 FFA-FHA Camp and Conference Center*

(WV Code Chapter 18)

Fund 3960 FY 2011 Org 0402

1	Personal Services .....	001	\$	830,000
2	Annual Increment .....	004		13,000
3	Employee Benefits .....	010		279,050
4	Unclassified .....	099		<u>827,950</u>
5	Total .....		\$	1,950,000

**DEPARTMENT OF EDUCATION AND THE ARTS**

*145-Office of the Secretary -  
 Lottery Education Fund Interest Earnings -  
 Control Account*

(WV Code Chapter 29)

Fund 3508 FY 2011 Org 0431

1	Governor's Honor Academy .....	478	\$	100,000
2	EPSCoR (R) .....	571		359,368
3	Literacy Project (R) .....	899		<u>350,000</u>
4	Total .....		\$	809,368

5 Any unexpended balance remaining in the appropriation  
 6 for EPSCoR (fund 3508, activity 571), Educational  
 7 Enhancements (fund 3508, activity 695), and Literacy Project

8 (fund 3508, activity 899) at the close of the fiscal year 2010  
 9 are hereby reappropriated for expenditure during the fiscal  
 10 year 2011.

*146-Division of Culture and History –  
 Public Records and Preservation Revenue Account*

(WV Code Chapter 5A)

Fund 3542 FY 2011 Org 0432

1 Unclassified – Total . . . . . 096 \$ 800,000

*147-State Board of Rehabilitation -  
 Division of Rehabilitation Services -  
 West Virginia Rehabilitation Center -  
 Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2011 Org 0932

1 Unclassified - Total . . . . . 096 \$ 2,905,360

**DEPARTMENT OF ENVIRONMENTAL  
 PROTECTION**

*148-Solid Waste Management Board*

(WV Code Chapter 22C)

Fund 3288 FY 2011 Org 0312

1	Personal Services . . . . .	001	\$	577,384
2	Annual Increment . . . . .	004		7,320
3	Employee Benefits . . . . .	010		183,919
4	Unclassified . . . . .	099		<u>1,792,680</u>
5	Total . . . . .		\$	<u>2,561,303</u>

*149-Division of Environmental Protection -  
Hazardous Waste Management Fund*

(WV Code Chapter 22)

Fund 3023 FY 2011 Org 0313

1	Personal Services .....	001	\$	314,340
2	Annual Increment .....	004		5,640
3	Employee Benefits .....	010		119,654
4	Unclassified .....	099		<u>159,558</u>
5	Total .....		\$	599,192

*150-Division of Environmental Protection -  
Air Pollution Education and Environment Fund*

(WV Code Chapter 22)

Fund 3024 FY 2011 Org 0313

1	Personal Services .....	001	\$	314,794
2	Annual Increment .....	004		2,940
3	Employee Benefits .....	010		129,974
4	Unclassified .....	099		<u>558,833</u>
5	Total .....		\$	1,006,541

*151-Division of Environmental Protection -  
Special Reclamation Fund*

(WV Code Chapter 22)

Fund 3321 FY 2011 Org 0313

1	Personal Services .....	001	\$	933,156
2	Annual Increment .....	004		11,160
3	Employee Benefits .....	010		351,585
4	Unclassified .....	099		<u>16,667,832</u>
5	Total .....		\$	17,963,733

*152-Division of Environmental Protection -  
Oil and Gas Reclamation Fund*

(WV Code Chapter 22)

Fund 3322 FY 2011 Org 0313

1	Unclassified - Total	096	\$	674,360
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*153-Division of Environmental Protection -  
Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2011 Org 0313

1	Personal Services	001	\$	1,037,657
2	Annual Increment	004		9,051
3	Employee Benefits	010		368,752
4	Unclassified	099		<u>874,154</u>
5	Total		\$	2,289,614

*154-Division of Environmental Protection -  
Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2011 Org 0313

1	Personal Services	001	\$	3,685,317
2	Annual Increment	004		65,103
3	Employee Benefits	010		1,543,671
4	Unclassified	099		<u>3,204,365</u>
5	Total		\$	8,498,456

*155-Division of Environmental Protection -  
Underground Storage Tank  
Administrative Fund*

(WV Code Chapter 22)

Fund 3325 FY 2011 Org 0313

1	Personal Services .....	001	\$	269,168
2	Annual Increment .....	004		2,340
3	Employee Benefits .....	010		90,968
4	Unclassified .....	099		<u>196,796</u>
5	Total .....		\$	559,272

*156-Division of Environmental Protection -  
Hazardous Waste Emergency Response Fund*

(WV Code Chapter 22)

Fund 3331 FY 2011 Org 0313

1	Personal Services .....	001	\$	438,397
2	Annual Increment .....	004		6,750
3	Employee Benefits .....	010		171,659
4	Unclassified .....	099		<u>635,576</u>
5	Total .....		\$	1,252,382

*157-Division of Environmental Protection -  
Solid Waste Reclamation and  
Environmental Response Fund*

(WV Code Chapter 22)

Fund 3332 FY 2011 Org 0313

1	Personal Services .....	001	\$	554,901
2	Annual Increment .....	004		6,672
3	Employee Benefits .....	010		187,235
4	Unclassified .....	099		<u>4,022,055</u>
5	Total .....		\$	4,770,863

*158-Division of Environmental Protection -  
Solid Waste Enforcement Fund*

(WV Code Chapter 22)

Fund 3333 FY 2011 Org 0313

1	Personal Services .....	001	\$	1,901,038
2	Annual Increment .....	004		31,380
3	Employee Benefits .....	010		743,595
4	Unclassified .....	099		<u>1,210,406</u>
5	Total .....		\$	3,886,419

*159-Division of Environmental Protection -  
Air Pollution Control Fund*

(WV Code Chapter 22)

Fund 3336 FY 2011 Org 0313

1	Personal Services .....	001	\$	4,116,572
2	Annual Increment .....	004		49,910
3	Employee Benefits .....	010		1,337,174
4	Unclassified .....	099		<u>2,307,644</u>
5	Total .....		\$	7,811,300

*160-Division of Environmental Protection -  
Environmental Laboratory  
Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2011 Org 0313

1	Personal Services .....	001	\$	160,166
2	Annual Increment .....	004		1,980
3	Employee Benefits .....	010		56,806
4	Unclassified .....	099		<u>151,100</u>
5	Total .....		\$	370,052

*161-Division of Environmental Protection -  
Stream Restoration Fund*

(WV Code Chapter 22)

Fund 3349 FY 2011 Org 0313

1 Unclassified - Total ..... 096 \$ 7,244,023

*162-Division of Environmental Protection -  
Litter Control Fund*

(WV Code Chapter 22)

Fund 3486 FY 2011 Org 0313

1 Unclassified - Total ..... 096 \$ 60,000

*163-Division of Environmental Protection -  
Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2011 Org 0313

1	Personal Services .....	001	\$	381,644
2	Annual Increment .....	004		2,170
3	Employee Benefits .....	010		132,276
4	Unclassified .....	099		<u>2,256,658</u>
5	Total .....		\$	<u>2,772,748</u>

*164-Division of Environmental Protection -  
Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2011 Org 0313

## APPROPRIATIONS

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1	Personal Services .....	001	\$	768,322
2	Annual Increment .....	004		11,785
3	Employee Benefits .....	010		281,953
4	Unclassified .....	099		<u>492,090</u>
5	Total .....		\$	1,554,150

*165-Oil and Gas Conservation Commission —  
Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2011 Org 0315

1	Personal Services .....	001	\$	115,814
2	Annual Increment .....	004		2,976
3	Employee Benefits .....	010		37,262
4	Unclassified .....	099		<u>73,206</u>
5	Total .....		\$	229,258

**DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES**

*166-Division of Health -  
Tobacco Settlement Expenditure Fund*

(WV Code Chapter 4)

Fund 5124 FY 2011 Org 0506

- 1 Any unexpended balance remaining in the above
- 2 appropriation for Tobacco Education Program (fund 5124,
- 3 activity 906) at the close of the fiscal year 2010 is hereby
- 4 reappropriated for expenditure during the fiscal year 2011.

*167-Division of Health -  
Vital Statistics*



(WV Code Chapter 16)

Fund 5144 FY 2011 Org 0506

1	Personal Services .....	001	\$	600,428
2	Annual Increment .....	004		15,190
3	Employee Benefits .....	010		252,216
4	Unclassified. ....	099		<u>673,288</u>
5	Total .....		\$	1,541,122

*168-Division of Health -  
Hospital Services Revenue Account  
(Special Fund)  
(Capital Improvement, Renovation and Operations)*

(WV Code Chapter 16)

Fund 5156 FY 2011 Org 0506

1	Institutional Facilities			
2	Operations (R) .....	335	\$	38,874,567
3	Medical Services Trust Fund -			
4	Transfer (R) .....	512		<u>25,300,000</u>
5	Total .....		\$	64,174,567

6 Any unexpended balance remaining in the appropriation  
7 for hospital services revenue account at the close of the fiscal  
8 year 2010 is hereby reappropriated for expenditure during the  
9 fiscal year 2011, except for fund 5156, fiscal year 2010,  
10 activity 040 which shall expire on June 30, 2010.

11 The total amount of this appropriation shall be paid from  
12 the hospital services revenue account special fund created by  
13 W.Va. Code §16-1-13, and shall be used for operating  
14 expenses and for improvements in connection with existing  
15 facilities and bond payments.

16 The secretary of the department of health and human  
 17 resources is authorized to utilize up to ten percent of the  
 18 funds from the appropriation for Institutional Facilities  
 19 Operations line to facilitate cost effective and cost saving  
 20 services at the community level.

21 Necessary funds from the above appropriation may be  
 22 used for medical facilities operations, either in connection  
 23 with this account or in connection with the line item  
 24 designated Institutional Facilities Operations in the  
 25 consolidated medical service fund (fund 0525, fiscal year  
 26 2011, organization 0506).

27 From the above appropriation to Institutional Facilities  
 28 Operations, together with available funds from the  
 29 consolidated medical services fund (fund 0525, activity 335)  
 30 on July 1, 2010, the sum of \$160,000 shall be transferred to  
 31 the department of agriculture - land division as advance  
 32 payment for the purchase of food products; actual payments  
 33 for such purchases shall not be required until such credits  
 34 have been completely expended.

*169-Division of Health -  
 Laboratory Services*

(WV Code Chapter 16)

Fund 5163 FY 2011 Org 0506

1	Personal Services . . . . .	001	\$	612,001
2	Annual Increment . . . . .	004		13,774
3	Employee Benefits . . . . .	010		270,661
4	Unclassified . . . . .	099		<u>1,298,830</u>
5	Total . . . . .		\$	2,195,266

*170-Division of Health -  
 Health Facility Licensing*

(WV Code Chapter 16)

Fund 5172 FY 2011 Org 0506

1	Personal Services .....	001	\$	423,536
2	Annual Increment .....	004		8,936
3	Employee Benefits .....	010		162,176
4	Unclassified .....	099		<u>185,626</u>
5	Total .....		\$	780,274

*171-Division of Health -  
Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2011 Org 0506

1	Personal Services .....	001	\$	61,049
2	Annual Increment .....	004		2,247
3	Employee Benefits .....	010		23,871
4	Unclassified .....	099		<u>2,621,540</u>
5	Total .....		\$	2,708,707

*172-Division of Health -  
Lead Abatement Fund*

(WV Code Chapter 16)

Fund 5204 FY 2011 Org 0506

1	Unclassified - Total .....	096	\$	40,000
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*173-Division of Health -  
West Virginia Birth to Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2011 Org 0506

## APPROPRIATIONS

[Ch. 8

1	Personal Services .....	001	\$	486,967
2	Annual Increment .....	004		5,890
3	Employee Benefits .....	010		205,883
4	Unclassified .....	099		<u>24,192,437</u>
5	Total .....		\$	24,891,177

*174-Division of Health -  
Tobacco Control Special Fund*

(WV Code Chapter 16)

Fund 5218 FY 2011 Org 0506

1	Unclassified—Total .....	096	\$	15,000
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*175-West Virginia Health Care Authority—  
Health Care Cost Review Fund*

(WV Code Chapter 16)

Fund 5375 FY 2011 Org 0507

1	Personal Services .....	001	\$	2,148,295
2	Annual Increment .....	004		31,072
3	Employee Benefits .....	010		690,728
4	Hospital Assistance .....	025		600,000
5	Unclassified .....	099		<u>3,192,945</u>
6	Total .....		\$	6,663,040

7       The above appropriation is to be expended in accordance  
8 with and pursuant to the provisions of Article 29B, Chapter  
9 16 of the Code and from the special revolving fund  
10 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 W.Va. Code §16-29G-4.

*176-West Virginia Health Care Authority -  
West Virginia Health Information Network Account*

(WV Code Chapter 16)

Fund 5380 FY 2011 Org 0507

1	Unclassified .....	099	\$ 1,500,000
2	Technology Infrastructure Network .	351	<u>3,500,000</u>
3	Total .....		\$ 5,000,000

*177-West Virginia Health Care Authority -  
Revolving Loan Fund*

(WV Code Chapter 16)

Fund 5382 FY 2011 Org 0507

1	Unclassified - Total .....	096	\$ 2,000,000
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*178-Division of Human Services -  
Health Care Provider Tax*

(WV Code Chapter 11)

Fund 5090 FY 2011 Org 0511

1	Medical Services .....	189	\$ 152,750,473
2	Medical Services Administrative Costs	789	<u>412,639</u>
3	Total .....		\$153,163,112

4 From the above appropriation for Medical Services  
5 Administrative Costs (fund 5090, activity 789), \$200,000  
6 shall be transferred to the tax division per W.Va. Code §11-  
7 27-32 and the remainder shall be transferred to a special  
8 revenue account in the treasury for use by the department of  
9 health and human resources for administrative purposes. The  
10 remainder of all moneys deposited in the fund shall be

11 transferred to the West Virginia medical services fund (fund  
12 5084).

*179-Division of Human Services -  
Child Support Enforcement*

(WV Code Chapter 48A)

Fund 5094 FY 2011 Org 0511

1 Unclassified - Total (R) . . . . . 096 \$ 44,287,194

2 Any unexpended balance remaining in the appropriation  
3 for Unclassified - Total (fund 5094, activity 096) at the close  
4 of the fiscal year 2010 is hereby reappropriated for  
5 expenditure during the fiscal year 2011, except for fund  
6 5094, activity 096, fiscal year 2007 which shall expire on  
7 June 30, 2010.

*180-Division of Human Services -  
Medical Services Trust Fund*

(WV Code Chapter 9)

Fund 5185 FY 2011 Org 0511

1	Medical Services . . . . .	189	\$ 30,556,594
2	Medical Services Administrative Costs	789	<u>536,433</u>
3	Total . . . . .		\$ 31,093,027

4 The above appropriation to Medical Services shall be  
5 used to provide state match of Medicaid expenditures as  
6 defined and authorized in subsection (c) of W.Va. Code §9-  
7 4A-2a. Expenditures from the fund are limited to the  
8 following: payment of backlogged billings, funding for  
9 services to future federally mandated population groups and  
10 payment of the required state match for medicaid

11 disproportionate share payments. The remainder of all  
12 moneys deposited in the fund shall be transferred to the  
13 division of human services accounts.

*181-Division of Human Services -  
James "Tiger" Morton Catastrophic Illness Fund*

(WV Code Chapter 16)

Fund 5454 FY 2011 Org 0511

1 Unclassified - Total ..... 096 \$ 1,609,076

*182-Family Protection Services Board -  
Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2011 Org 0511

1 Unclassified - Total ..... 096 \$ 838,022

*183-Division of Human Services -  
West Virginia Works Separate State College Program  
Fund*

(WV Code Chapter 9)

Fund 5467 FY 2011 Org 0511

1 Unclassified - Total ..... 096 \$ 1,700,000

*184-Division of Human Services -  
West Virginia Works Separate State Two-Parent Program  
Fund*

(WV Code Chapter 9)

Fund 5468 FY 2011 Org 0511

1 Unclassified - Total ..... 096 \$ 4,800,000

**DEPARTMENT OF MILITARY AFFAIRS AND  
PUBLIC SAFETY**

*185-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 2011 Org 0601

1 Unclassified - Total ..... 096 \$ 25,000

*186-State Armory Board -  
General Armory Fund*

(WV Code Chapter 15)

Fund 6057 FY 2011 Org 0603

1 Unclassified - Total ..... 096 \$ 600,000

*187-Division of Homeland Security and  
Emergency Management -  
West Virginia Interoperable Radio Project*

(WV Code Chapter 24)

Fund 6295 FY 2011 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 2010 is hereby reappropriated for expenditure  
 5 during the fiscal year 2011.

*188-West Virginia Division of Corrections -  
 Parolee Supervision Fees*

(WV Code Chapter 62)

Fund 6362 FY 2011 Org 0608

1	Personal Services .....	001	\$	275,000
2	Annual Increment .....	004		2,070
3	Employee Benefits .....	010		88,812
4	Unclassified .....	099		<u>376,923</u>
5	Total .....		\$	742,805

*189-West Virginia State Police -  
 Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2011 Org 0612

1	Personal Services .....	001	\$	768,367
2	Annual Increment .....	004		32,340
3	Employee Benefits .....	010		255,938
4	Unclassified .....	099		415,165
5	BRIM Premium .....	913		<u>302,432</u>
6	Total .....		\$	1,774,242

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.

*190-West Virginia State Police -  
 Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2011 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.

*191-West Virginia State Police -  
 Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 2011 Org 0612

1	Unclassified .....	099	\$	444,980
2	BRIM Premium .....	913		<u>77,222</u>
3	Total .....		\$	522,202

*192-West Virginia State Police -  
 Surplus Transfer Account*

(WV Code Chapter 15)

Fund 6519 FY 2011 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 2009, activity 099) at

6 the close of the fiscal year 2010 is hereby reappropriated for  
7 expenditure during the fiscal year 2011.

*193-West Virginia State Police -  
Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 2011 Org 0612

1	Unclassified .....	099	\$	247,241
2	BRIM Premium .....	913		<u>18,524</u>
3	Total .....		\$	265,765

*194-West Virginia State Police -  
Bail Bond Enforcer Fund*

(WV Code Chapter 15)

Fund 6532 FY 2011 Org 0612

1	Unclassified - Total .....	096	\$	3,308
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*195-Division of Veterans' Affairs -  
Veterans' Facilities Support Fund*

(WV Code Chapter 9A)

Fund 6703 FY 2011 Org 0613

1	Unclassified - Total .....	096	\$	3,000,000
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*196-Regional Jail and Correctional Facility Authority*

(WV Code Chapter 31)

Fund 6675 FY 2011 Org 0615

## APPROPRIATIONS

[Ch. 8

1	Personal Services .....	001	\$	1,374,952
2	Annual Increment .....	004		21,860
3	Employee Benefits .....	010		442,958
4	Debt Service .....	040		9,000,000
5	Unclassified .....	099		<u>545,235</u>
6	Total .....		\$	11,385,005

*197-Division of Veterans' Affairs -  
WV Veterans' Home -  
Special Revenue Operating Fund*

(WV Code Chapter 9A)

Fund 6754 FY 2011 Org 0618

1	Unclassified - Total .....	096	\$	466,000
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*198-Fire Commission -  
Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2011 Org 0619

1	Personal Services .....	001	\$	1,815,193
2	Annual Increment .....	004		31,024
3	Employee Benefits .....	010		647,548
4	Unclassified .....	099		1,447,562
5	BRIM Premium .....	913		<u>58,013</u>
6	Total .....		\$	3,999,340

7 Any unexpended cash balance remaining in fund 6152 at  
8 the close of the fiscal year 2010 is hereby available for  
9 expenditure as part of the fiscal year 2011 appropriation.

*199-Division of Criminal Justice Services -  
WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2011 Org 0620

1 Unclassified - Total . . . . . 096 \$ 2,010,348

*200-Criminal Justice Services -  
Court Security Fund*

(WV Code Chapter 51)

Fund 6804 FY 2011 Org 0620

1 Unclassified - Total . . . . . 096 \$ 1,500,000

**DEPARTMENT OF REVENUE***201-Division of Banking*

(WV Code Chapter 31A)

Fund 3041 FY 2011 Org 0303

1	Personal Services . . . . .	001	\$	1,674,727
2	Annual Increment . . . . .	004		23,000
3	Employee Benefits . . . . .	010		529,976
4	Unclassified . . . . .	099		<u>916,095</u>
5	Total . . . . .		\$	3,143,798

*202-Office of the Secretary -  
State Debt Reduction Fund*

(WV Code Chapter 29)

Fund 7007 FY 2011 Org 0701

1 Unclassified - Total - Transfer . . . . . 402 \$31,584,000

- 2 The above appropriation for Unclassified - Total -  
 3 Transfer shall be transferred to the Consolidated Public  
 4 Retirement Board - West Virginia Teachers' Retirement  
 5 System Employers Accumulation Fund (fund 2601).

*203-Tax Division -  
 Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2011 Org 0702

1	Personal Services .....	001	\$	17,244
2	Annual Increment .....	004		370
3	Employee Benefits .....	010		5,845
4	Unclassified .....	099		<u>7,717</u>
5	Total .....		\$	31,176

*204-Tax Division -  
 Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2011 Org 0702

1	Personal Services .....	001	\$	869,551
2	Annual Increment .....	004		23,100
3	Employee Benefits .....	010		331,342
4	Unclassified .....	099		<u>255,847</u>
5	Total .....		\$	1,479,840

*205-Tax Division -  
 Special District Excise Tax Administration Fund*

(WV Code Chapter 11)

Fund 7086 FY 2011 Org 0702



(WV Code Chapter 33)

Fund 7150 FY 2011 Org 0704

1	Personal Services .....	001	\$	510,552
2	Annual Increment .....	004		6,352
3	Employee Benefits .....	010		158,997
4	Unclassified .....	099		<u>1,476,110</u>
5	Total .....		\$	2,152,011

*210-Insurance Commissioner -  
Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2011 Org 0704

1	Personal Services .....	001	\$	379,358
2	Annual Increment .....	004		6,000
3	Employee Benefits .....	010		134,765
4	Unclassified .....	099		<u>277,392</u>
5	Total .....		\$	797,515

*211-Insurance Commissioner*

(WV Code Chapter 33)

Fund 7152 FY 2011 Org 0704

1	Personal Services .....	001	\$	16,205,477
2	Annual Increment .....	004		376,376
3	Employee Benefits .....	010		6,990,751
4	Unclassified .....	099		<u>14,163,710</u>
5	Total .....		\$	37,736,314

6 The total amount of this appropriation shall be paid from  
7 a special revenue fund out of collections of fees and charges  
8 as provided by law.



*212-Insurance Commissioner –  
Workers’ Compensation Old Fund*

(WV Code Chapter 23)

Fund 7162 FY 2011 Org 0704

1 Unclassified - Total ..... 096 \$ 550,000,000

*213-Insurance Commissioner –  
Workers’ Compensation Uninsured Employers’ Fund*

(WV Code Chapter 23)

Fund 7163 FY 2011 Org 0704

1 Unclassified - Total ..... 096 \$ 27,000,000

*214-Insurance Commissioner –  
Self-Insured Employer Guaranty Risk Pool*

(WV Code Chapter 23)

Fund 7164 FY 2011 Org 0704

1 Unclassified - Total ..... 096 \$ 5,000,000

*215-Insurance Commissioner –  
Self-Insured Employer Security Risk Pool*

(WV Code Chapter 23)

Fund 7165 FY 2011 Org 0704

1 Unclassified - Total ..... 096 \$ 10,000,000

*216-Lottery Commission -  
Revenue Center Construction Fund*

(WV Code Chapter 29)

Fund 7209 FY 2011 Org 0705

1 Unclassified - Total . . . . . 096 \$ 69,856,349

*217-Municipal Bond Commission*

(WV Code Chapter 13)

Fund 7253 FY 2011 Org 0706

1	Personal Services . . . . .	001	\$	163,463
2	Annual Increment . . . . .	004		5,332
3	Employee Benefits . . . . .	010		70,089
4	Unclassified . . . . .	099		<u>86,497</u>
5	Total . . . . .		\$	325,381

*218-Racing Commission -  
Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2011 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.

*219-Racing Commission -  
Administration and Promotion*

(WV Code Chapter 19)

Fund 7304 FY 2011 Org 0707

1	Personal Services .....	001	\$	123,351
2	Annual Increment .....	004		2,170
3	Employee Benefits .....	010		32,456
4	Unclassified .....	099		<u>82,161</u>
5	Total .....		\$	240,138

*220-Racing Commission -  
General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2011 Org 0707

1	Personal Services .....	001	\$	2,225,625
2	Annual Increment .....	004		25,206
3	Employee Benefits .....	010		583,657
4	Unclassified .....	099		<u>614,364</u>
5	Total .....		\$	3,448,852

*221-Racing Commission -  
Administration, Promotion and Education Fund*

(WV Code Chapter 19)

Fund 7307 FY 2011 Org 0707

1	Unclassified - Total .....	096	\$	770,996
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*222-Alcohol Beverage Control Administration -  
Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2011 Org 0708

1	Personal Services .....	001	\$	112,338
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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.

*223-Alcohol Beverage Control Administration*

(WV Code Chapter 60)

Fund 7352 FY 2011 Org 0708

1	Personal Services .....	001	\$ 3,683,360
2	Annual Increment .....	004	98,092
3	Employee Benefits .....	010	1,629,154
4	Unclassified .....	099	<u>3,030,048</u>
5	Total .....		\$ 8,440,654

6 From the above appropriation an amount shall be used for  
 7 the Tobacco/Alcohol Education Program.

8 The total amount of this appropriation shall be paid from  
 9 a special revenue fund out of liquor revenues.

10 The above appropriation includes the salary of the  
 11 commissioner and the salaries, expenses and equipment of  
 12 administrative offices, warehouses and inspectors.

13 There is hereby appropriated from liquor revenues, in  
 14 addition to the above appropriation, the necessary amount for  
 15 the purchase of liquor as provided by law.

**DEPARTMENT OF TRANSPORTATION**

*224-Division of Motor Vehicles -  
Dealer Recovery Fund*

(WV Code Chapter 17)

Fund 8220 FY 2011 Org 0802

1 Unclassified - Total ..... 096 \$ 189,000

*225-Division of Motor Vehicles -  
Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

Fund 8223 FY 2011 Org 0802

1 Unclassified - Total ..... 096 \$ 6,517,699

*226-Division of Highways -  
A. James Manchin Fund*

(WV Code Chapter 17)

Fund 8319 FY 2011 Org 0803

1 Unclassified - Total ..... 096 \$ 3,000,000

*227-Public Port Authority -  
Special Railroad and Intermodal Enhancement Fund*

(WV Code Chapter 17)

Fund 8254 FY 2011 Org 0806

1 Unclassified - Total ..... 096 \$ 2,500,000

**BUREAU OF SENIOR SERVICES**

*228-Bureau of Senior Services -  
Community Based Service Fund*

(WV Code Chapter 22)

Fund 5409 FY 2011 Org 0508

1 Unclassified - Total ..... 096 \$ 8,450,000

**HIGHER EDUCATION**

*229-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 2011 Org 0442

1 Debt Service ..... 040 \$ 4,805,840  
2 General Capital Expenditures (R) .. 306 500,000  
3 Total ..... \$ 5,305,840

4 Any unexpended balance remaining in the appropriation  
5 for General Capital Expenditures (fund 4902, activity 306,  
6 fiscal year 2010) at the close of fiscal year 2010 is hereby  
7 reappropriated for expenditure during the fiscal year 2011.

8 The total amount of this appropriation shall be paid from  
9 the special capital improvements fund created in W.Va. Code  
10 §18B-10-8. Projects are to be paid on a cash basis and made  
11 available on July 1 of 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.

*230-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 2011 Org 0442

1	Debt Service . . . . .	040	\$23,429,974
2	General Capital Expenditures . . . . .	306	3,000,000
3	Facilities Planning		
4	and Administration (R) . . . . .	386	<u>414,056</u>
5	Total . . . . .		\$26,844,030

6 Any unexpended balance remaining in the appropriation  
7 for Facilities Planning and Administration (fund 4903,  
8 activity 386) at the close of fiscal year 2010 is hereby  
9 reappropriated for expenditure during the fiscal year 2011.

10 The total amount of this appropriation shall be paid from  
11 the special capital improvement fund created in W.Va. Code  
12 §18B-10-8. Projects are to be paid on a cash basis and made  
13 available on July 1.

14 The above appropriations, except for debt service, may be  
15 transferred to special revenue funds for capital improvement  
16 projects at the institutions.

*231-Higher Education Policy Commission -  
Tuition Fee Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2011 Org 0442

1 Any unexpended balance remaining in the appropriation  
2 at the close of the fiscal year 2010 is hereby reappropriated  
3 for expenditure during the fiscal year 2011.

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 W.Va. Code §18-12B-8, which have since been  
13 refunded.

*232-Higher Education Policy Commission -  
West Virginia University -  
West Virginia University Health Sciences Center*

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2011 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 2010 is hereby reappropriated for  
4 expenditure during the fiscal year 2011.

*233-Higher Education Policy Commission -  
Marshall University -  
Marshall University Land Sale Account*

(WV Code Chapter 18B)

Fund 4270 FY 2011 Org 0471



1 Any unexpended balance remaining in the appropriation  
2 at the close of fiscal year 2010 is hereby reappropriated for  
3 expenditure during the fiscal year 2011.

*234-WV Council for Community and Technical College  
Education -  
West Virginia Northern Community and Technical College -  
WVNCC Land Sale Account*

(WV Code Chapter 18B)

Fund 4732 FY 2011 Org 0489

1 Any unexpended balance remaining in the appropriation  
2 at the close of fiscal year 2010 is hereby reappropriated for  
3 expenditure during the fiscal year 2011.

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*235-Board of Barbers and Cosmetologists*

(WV Code Chapters 16 and 30)

Fund 5425 FY 2011 Org 0505

1	Personal Services . . . . .	001	\$	275,000
2	Annual Increment . . . . .	004		4,500
3	Employee Benefits . . . . .	010		130,000
4	Unclassified. . . . .	099		<u>175,000</u>
5	Total . . . . .		\$	584,500

6 The total amount of this appropriation shall be paid from  
7 a special revenue fund out of collections made by the board  
8 of barbers and cosmetologists as provided by law.

*236-Hospital Finance Authority*

(WV Code Chapter 16)

Fund 5475 FY 2011 Org 0509

1	Personal Services . . . . .	001	\$	48,520
2	Annual Increment . . . . .	004		1,240
3	Employee Benefits . . . . .	010		20,785
4	Unclassified. . . . .	099		<u>28,230</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 29A, Chapter 16 of the Code.

*237-WV State Board of Examiners for Licensed Practical  
 Nurses*

(WV Code Chapter 30)

Fund 8517 FY 2011 Org 0906

1	Unclassified - Total . . . . .	096	\$	381,443
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*238-WV Board of Examiners for Registered Professional  
 Nurses*

(WV Code Chapter 30)

Fund 8520 FY 2011 Org 0907

1	Unclassified - Total . . . . .	096	\$	927,146
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*239-Public Service Commission*

(WV Code Chapter 24)

Fund 8623 FY 2011 Org 0926

1	Personal Services . . . . .	001	\$	8,348,143
2	Annual Increment . . . . .	004		161,734



*241-Public Service Commission -  
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8625 FY 2011 Org 0926

1	Personal Services .....	001	\$ 1,552,208
2	Annual Increment .....	004	49,647
3	Employee Benefits .....	010	532,255
4	Unclassified .....	099	<u>679,790</u>
5	Total .....		\$ 2,813,900

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.

*242-Public Service Commission -  
Consumer Advocate*

(WV Code Chapter 24)

Fund 8627 FY 2011 Org 0926

1	Personal Services .....	001	\$ 533,932
2	Annual Increment .....	004	8,692
3	Employee Benefits .....	010	165,481
4	Unclassified .....	099	286,472
5	BRIM Premium .....	913	<u>4,532</u>
6	Total .....		\$ 999,109

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.

*243-Real Estate Commission*

(WV Code Chapter 30)

Fund 8635 FY 2011 Org 0927

1	Personal Services .....	001	\$	368,686
2	Annual Increment .....	004		8,828
3	Employee Benefits .....	010		118,892
4	Unclassified .....	099		<u>309,122</u>
5	Total .....		\$	805,528

6 The total amount of this appropriation shall be paid out  
7 of collections of license fees as provided by law.

*244-WV Board of Examiners for Speech-Language  
Pathology and Audiology*

(WV Code Chapter 30)

Fund 8646 FY 2011 Org 0930

1	Unclassified - Total .....	096	\$	114,000
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*245-WV Board of Respiratory Care*

(WV Code Chapter 30)

Fund 8676 FY 2011 Org 0935

1	Unclassified - Total .....	096	\$	112,120
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*246-WV Board of Licensed Dietitians*

(WV Code Chapter 30)

Fund 8680 FY 2011 Org 0936

1	Unclassified - Total .....	096	\$	20,500
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*247-Massage Therapy Licensure Board*

(WV Code Chapter 30)

Fund 8671 FY 2011 Org 0938

1 Unclassified - Total ..... 096 \$ 125,578

*248-Board of Medicine*

(WV Code Chapter 30)

Fund 9070 FY 2011 Org 0945

1 Unclassified - Total ..... 096 \$ 1,251,299

*249-Board of Treasury Investments*

(WV Code Chapter 12)

Fund 9152 FY 2011 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 Article 6C,  
7 Chapter 12 of the 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 - Other Funds

12 (Including claims against the state) \$ 1,456,817,902

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 W. Va. Code §29-22-  
 9 18, the director of the lottery shall make available from the  
 10 remaining net profits of the lottery any amounts needed to  
 11 pay debt service for which an appropriation is made for Fund  
 12 9065, Fund 4297, and Fund 3514 and is authorized to transfer  
 13 any such amounts to Fund 9065, Fund 4297, and Fund 3514  
 14 for that purpose. Upon receipt of reimbursement of amounts  
 15 so transferred, the director of the lottery shall deposit the  
 16 reimbursement amounts to the following accounts as required  
 17 by this section.

*250-Education, Arts, Sciences and Tourism -  
 Debt Service Fund*

(WV Code Chapter 5)

Fund 2252 FY 2011 Org 0211

	<b>Activity</b>	<b>Lottery Funds</b>
1 Debt Service - Total . . . . .	310	\$10,000,000

*251-West Virginia Development Office -  
 Division of Tourism*

(WV Code Chapter 5B)

Fund 3067 FY 2011 Org 0304

1	Tourism - Telemarketing Center . . .	463	\$ 82,080
2	WV Film Office . . . . .	498	333,220
3	Tourism - Advertising (R) . . . . .	618	2,938,284
4	Tourism - Unclassified (R) . . . . .	662	<u>3,919,514</u>
5	Total . . . . .		\$ 7,273,098

6 Any unexpended balances remaining in the  
7 appropriations for Capitol Complex - Capital Outlay (fund  
8 3067, activity 417), Tourism - Advertising (fund 3067,  
9 activity 618), Tourism - Unclassified (fund 3067, activity  
10 662), and Tourism - Special Projects (fund 3067, activity  
11 859) at the close of the fiscal year 2010 are hereby  
12 reappropriated for expenditure during the fiscal year 2011.

*252-Division of Natural Resources*

(WV Code Chapter 20)

Fund 3267 FY 2011 Org 0310

1	Unclassified (R) . . . . .	099	\$ 2,237,443
2	Pricketts Fort State Park . . . . .	324	120,000
3	Non-Game Wildlife (R) . . . . .	527	411,232
4	State Parks and		
5	Recreation Advertising (R) . . . .	619	<u>548,733</u>
6	Total . . . . .		\$ 3,317,408

7 Any unexpended balances remaining in the  
8 appropriations for Gypsy Moth Suppression Program for  
9 State Parks (fund 3267, activity 017), Unclassified (fund  
10 3267, activity 099), Capital Outlay - Parks (fund 3267,  
11 activity 288), Non-Game Wildlife (fund 3267, activity 527),  
12 and State Parks and Recreation Advertising (fund 3267,  
13 activity 619) at the close of the fiscal year 2010 are hereby  
14 reappropriated for expenditure during the fiscal year 2011.

*253-State Department of Education*



(WV Code Chapters 18 and 18A)

Fund 3951 FY 2011 Org 0402

1	Unclassified (R) .....	099	\$ 3,950,000
2	FBI Checks .....	372	115,165
3	Vocational Education		
4	Equipment Replacement .....	393	783,692
5	Assessment Program (R) .....	396	3,410,463
6	21st Century Technology Infrastructure		
7	Network Tools and Support (R) .	933	<u>22,015,621</u>
8	Total .....		\$30,274,941

9 Any unexpended balances remaining in the  
 10 appropriations for Unclassified (fund 3951, activity 099),  
 11 Assessment Program (fund 3951, activity 396), Student  
 12 Enrichment Programs (fund 3951, activity 879), and 21st  
 13 Century Technology Infrastructure Network Tools and  
 14 Support (fund 3951, activity 933) at the close of the fiscal  
 15 year 2010 are hereby reappropriated for expenditure during  
 16 the fiscal year 2011.

*254-State Department of Education -  
 School Building Authority -  
 Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2011 Org 0402

1	Debt Service - Total .....	310	\$18,000,000
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*255-Department of Education and the Arts -  
 Office of the Secretary -  
 Control Account -  
 Lottery Education Fund*

(WV Code Chapter 5F)

Fund 3508 FY 2011 Org 0431

1	Unclassified (R) .....	099	\$	120,000
2	Commission for National and			
3	Community Service .....	193		435,050
4	Arts Programs (R) .....	500		80,575
5	College Readiness (R) .....	579		182,780
6	Challenger Learning Center .....	862		118,750
7	Statewide STEM 21 <sup>st</sup> Century Academy.	897		<u>150,000</u>
8	Total .....		\$	1,087,155

9 Any unexpended balances remaining in the  
 10 appropriations for Unclassified (fund 3508, activity 099),  
 11 Arts Programs (fund 3508, activity 500), and College  
 12 Readiness (fund 3508, activity 579) at the close of fiscal year  
 13 2010 are hereby reappropriated for expenditure during the  
 14 fiscal year 2011.

*256-Division of Culture and History -  
 Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2011 Org 0432

1	Huntington Symphony .....	027	\$	*90,250
2	Martin Luther King, Jr.			
3	Holiday Celebration .....	031		*10,260
4	Unclassified .....	099		*630,198
5	Fairs and Festivals .....	122		*2,010,518
6	Archeological Curation/Capital			
7	Improvements (R) .....	246		51,012
8	Historic Preservation Grants (R) ...	311		557,407
9	West Virginia Public Theater .....	312		*180,500
10	Tri-County Fair Association .....	343		*22,562
11	George Tyler Moore Center for the			
12	Study of the Civil War .....	397		*54,150

13	Greenbrier Valley Theater . . . . .	423	*135,375
14	Theater Arts of West Virginia . . . . .	464	265,000
15	Marshall Artists Series . . . . .	518	*54,150
16	Grants for Competitive Arts		
17	Program (R). . . . .	624	1,021,250
18	West Virginia State Fair . . . . .	657	*47,500
19	Contemporary American Theater		
20	Festival . . . . .	811	*90,250
21	Independence Hall . . . . .	812	*45,125
22	Mountain State Forest Festival . . . . .	864	*63,175
23	WV Symphony . . . . .	907	*90,250
24	Wheeling Symphony . . . . .	908	*90,250
25	Appalachian Children's		
26	Chorus . . . . .	916	<u>*90,250</u>
27	Total . . . . .		\$ 5,751,934

28 Any unexpended balances remaining in the appropriations  
 29 for Archeological Curation/Capital Improvements (fund 3534,  
 30 activity 246), Historic Preservation Grants (fund 3534, activity  
 31 311), Grants for Competitive Arts Program (fund 3534, activity  
 32 624), and Project ACCESS (fund 3534, activity 865) at the close  
 33 of the fiscal year 2010 are hereby reappropriated for expenditure  
 34 during the fiscal year 2011.

**\*CLERK'S NOTE:** The Governor reduced the following amounts in Item 256:

line 1 from \$95,000 to \$90,250  
 line 2 from \$10,800 to \$10,260  
 line 4 from \$646,644 to \$630,198 and deleting the "(R)"  
 line 5 from \$2,090,571 to \$2,010,518 and deleting the "(R)"  
 line 9 from \$190,000 to \$180,500  
 line 10 from \$23,750 to \$22,562  
 line 12 from \$57,000 to \$54,150  
 line 13 from \$142,500 to \$135,375  
 line 15 from \$57,000 to \$54,150  
 line 18 from \$50,000 to \$47,500  
 line 20 from \$95,000 to \$90,250  
 line 21 from \$47,500 to \$45,125  
 line 22 from \$66,500 to \$63,175  
 line 23 from \$95,000 to \$90,250  
 line 24 from \$95,000 to \$90,250  
 line 25 from \$95,000 to \$90,250

The total does NOT reflect the reductions made by the Governor.

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51       **CLERK'S NOTE: All language deleted by Governor.**

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\*\*\*CLERK'S NOTE: Language on lines 35 through 394 was deleted by the Governor.

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**CLERK'S NOTE: All language deleted by Governor.**

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**CLERK'S NOTE: All language deleted by Governor.**

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**CLERK'S NOTE: All language deleted by Governor.**

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**CLERK'S NOTE: All language deleted by Governor.**



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**CLERK'S NOTE: All language deleted by Governor.**

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**CLERK'S NOTE: All language deleted by Governor.**

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**CLERK'S NOTE: All language deleted by Governor.**

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**CLERK’S NOTE: All language deleted by Governor.**

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**CLERK’S NOTE: All language deleted by Governor.**

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395 Any Fairs & Festival awards shall be funded in addition  
396 to, and not in lieu of, individual grant allocations derived  
397 from the Arts Council and the Cultural Grant Program  
398 allocations.

*257-Library Commission -  
Lottery Education Fund*

(WV Code Chapter 10)

Fund 3559 FY 2011 Org 0433

1	Books and Films . . . . .	179	\$ *1427,500
2	Services to Libraries . . . . .	180	550,000
3	Grants to Public Libraries . . . . .	182	*27,931,440
4	Digital Resources . . . . .	309	219,992
5	Libraries - Special Projects (R) . . . .	625	*3744,800
6	Infomine Network . . . . .	884	<u>852,551</u>
7	Total . . . . .		\$ 11,221,427

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\***CLERK’S NOTE:** The Governor reduced the following amounts in Item 257:  
line 1 from \$450,000 to \$427,500  
line 3 from \$8,348,884 to \$7,931,440  
line 5 from \$800,000 to \$744,800  
The total does NOT reflect the reductions made by the Governor.

8 Any unexpended balance remaining in the appropriation  
 9 for Libraries-Special Projects (fund 3559, activity 625) at the  
 10 close of fiscal year 2010 is hereby reappropriated for  
 11 expenditure during the fiscal year 2011.

*258-Bureau of Senior Services -  
 Lottery Senior Citizens Fund*

(WV Code Chapter 29)

Fund 5405 FY 2011 Org 0508

1	Personal Services . . . . .	001	\$	137,542
2	Annual Increment . . . . .	004		2,800
3	Employee Benefits . . . . .	010		61,900
4	Unclassified . . . . .	099		332,380
5	Local Programs Service Delivery			
6	Costs . . . . .	200		2,475,250
7	Silver Haired Legislature . . . . .	202		20,000
8	Area Agencies Administration . . . .	203		38,684
9	Senior Citizen Centers and			
10	Programs (R) . . . . .	462		*2,470,000
11	Transfer to Division of Human Services			
12	for Health Care and Title XIX Waiver			
13	for Senior Citizens . . . . .	539		31,822,578
14	Roger Tompkins Alzheimers Respite			
15	Care . . . . .	643		1,794,215
16	Regional Aged and Disabled			
17	Resource Center . . . . .	767		935,000
18	Senior Services Medicaid Transfer .	871		8,670,000
19	Legislative Initiatives for the Elderly	904		10,000,000
20	Long Term Care Ombudsman . . . . .	905		321,325
21	BRIM Premium . . . . .	913		7,243
22	In-Home Services and Nutrition			
23	for Senior Citizens . . . . .	917		4,500,000

\*CLERK'S NOTE: The Governor reduced the amount on line 10 from \$2,600,000 to \$2,470,000.

24	West Virginia Helpline . . . . .	006	\$	*142,500
25	West Virginia Elder Watch . . . . .	934		<u>0</u>
26	Total . . . . .		\$	63,968,917

27 Any unexpended balance remaining in the appropriation  
 28 for Senior Citizen Centers and Programs (fund 5405, activity  
 29 462), at the close of the fiscal year 2010 is hereby  
 30 reappropriated for expenditure during the fiscal year 2011.

31 The above appropriation for Transfer to Division of  
 32 Human Services for Health Care and Title XIX Waiver for  
 33 Senior Citizens along with the federal moneys generated  
 34 thereby shall be used for reimbursement for services  
 35 provided under the program.

*259-Community and Technical College —  
 Capital Improvement Fund*

(WV Code Chapter 18B)

Fund 4908 FY 2011 Org 0442

1	Debt Service - Total* <sup>2</sup> . . . . .	310	\$	5,000,000
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2 Any unexpended balance remaining in the appropriation  
 3 for Capital Outlay and Improvements - Total (fund 4908,  
 4 activity 847) at the close of fiscal year 2010 is hereby  
 5 reappropriated for expenditure during the fiscal year 2011.

*260-Higher Education Policy Commission -  
 Lottery Education -  
 Higher Education Policy Commission -  
 Control Account*

(WV Code Chapters 18B and 18C)

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\*CLERK’S NOTE: The Governor reduced the amount <sup>1</sup>on line 24 from \$250,000 to \$142,500. <sup>2</sup>He also deleted the “(R)” in Item 259, line 1. The total does NOT reflect the reduction by the Governor.

Fund 4925 FY 2011 Org 0441

1	Marshall Medical School -		
2	RHI Program and Site Support (R)	033	\$ 427,085
3	WVU Health Sciences -		
4	RHI Program and Site Support (R)	035	1,175,955
5	RHI Program and Site Support -		
6	District Consortia (R) . . . . .	036	2,213,469
7	RHI Program and Site Support -		
8	RHEP Program Administration (R)	037	169,731
9	RHI Program and Site Support -		
10	Grad Med Ed and Fiscal		
11	Oversight (R) . . . . .	038	96,939
12	Higher Education Grant Program (R) .	164	859,002
13	Tuition Contract Program (R) . . . . .	165	1,020,852
14	Minority Doctoral Fellowship (R) . .	166	150,000
15	Underwood—Smith Scholarship		
16	Program - Student Awards (R) .	167	141,142
17	Health Sciences Scholarship (R) . . .	176	251,000
18	Vice Chancellor for Health Sciences—		
19	Rural Health Residency Program (R)	601	249,632
20	MA Public Health Program and		
21	Health Science Technology (R) .	623	57,475
22	Marshall University Graduate		
23	College Writing Project (R) . . . .	807	22,960
24	WV Engineering, Science, and		
25	Technology Scholarship Program (R)	868	470,473
26	Health Sciences Career		
27	Opportunities Program (R) . . . .	869	347,335
28	HSTA Program (R) . . . . .	870	1,278,883
29	WV Autism Training Center (R) . . .	932	1,915,060
30	Center for Excellence in		
31	Disabilities (R) . . . . .	967	<u>265,127</u>
32	Total . . . . .		\$ 11,112,120

33 Any unexpended balances remaining in the  
34 appropriations at the close of fiscal year 2010 are hereby  
35 reappropriated for expenditure during the fiscal year 2011.



36 The above appropriation for Underwood-Smith  
37 Scholarship Program - Student Awards (activity 167) shall be  
38 transferred to the Underwood -Smith Teacher Scholarship  
39 Fund (fund 4922, org 0441) established by W.Va. Code  
40 §18C-4-1.

41 The above appropriation for WV Engineering, Science,  
42 and Technology Scholarship Program (activity 868) shall be  
43 transferred to the West Virginia Engineering, Science and  
44 Technology Scholarship Fund (fund 4928, org 0441)  
45 established by W.Va. Code §18C-6-1.

46 The above appropriation for Higher Education Grant  
47 Program (activity 164) shall be transferred to the Higher  
48 Education Grant Fund (fund 4933, Org 0441) established by  
49 W.Va. Code §18C-5-3.

50 Total TITLE II, Section 4 - Lottery Revenue \$ 167,007,000

1 **Sec. 5. Appropriations from state excess lottery**  
2 **revenue fund.** - In accordance with W.Va. Code §29-22-18a,  
3 the following appropriations shall be deposited and disbursed  
4 by the director of the lottery to the following accounts in this  
5 section in the amounts indicated.

6 After first funding the appropriations required by W.V.  
7 Code §29-22-18a, the director of the lottery shall provide  
8 funding from the state excess lottery revenue fund for the  
9 remaining appropriations in this section to the extent that  
10 funds are available. In the event that revenues to the state  
11 excess lottery revenue fund are not sufficient to meet all the  
12 appropriations made pursuant to this section, then the director  
13 of the lottery shall first provide the necessary funds to meet  
14 the appropriation for Fund 7208, activity 482 of this section;  
15 next, to provide the funds necessary for Fund 3517, activity  
16 775 of this section; next, to provide the funds necessary for  
17 Fund 7208, activity 095 of this section; next, to provide the  
18 funds necessary for Fund 3517, activity 978 of this section.

19 Allocation of the funds for each appropriation shall be  
 20 allocated in succession before any funds are provided for the  
 21 next subsequent appropriation.

*261-Lottery Commission -  
 Refundable Credit*

Fund 7207 FY 2011 Org 0705

	<b>Activity</b>	<b>Lottery Funds</b>
1	Unclassified - Total - Transfer . . . . . 402	\$ 10,000,000

2 The above appropriation for Unclassified - Total -  
 3 Transfer (activity 402) shall be transferred to the General  
 4 Revenue Fund to provide reimbursement for the refundable  
 5 credit allowable under W.Va. Code §11-21-21. The amount  
 6 of the required transfer shall be determined solely by the state  
 7 tax commissioner and shall be completed by the director of  
 8 the lottery upon the commissioner's request.

*262-Lottery Commission -  
 General Purpose Account*

Fund 7206 FY 2011 Org 0705

1	Unclassified - Total - Transfer . . . . . 402	\$ 65,000,000
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2 The above appropriation for Unclassified - Total -  
 3 Transfer (activity 402) shall be transferred to the General  
 4 Revenue Fund as determined by the director of the lottery.

*263-Education Improvement Fund*

Fund 4295 FY 2011 Org 0441

1 Unclassified - Total - Transfer . . . . . 402 \$ 29,000,000

2 The above appropriation for Unclassified - Total -  
3 Transfer (activity 402) shall be transferred to the PROMISE  
4 Scholarship Fund (fund 4296, org 0441) established by  
5 W.Va. Code §18C-7-7.

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.

*264-Economic Development Authority -  
Economic Development Project Fund*

Fund 9065 FY 2011 Org 0944

1 Debt Service - Total . . . . . 310 \$ 19,000,000

2 Pursuant to W.Va. Code §29-22-18a, subsection (f),  
3 excess lottery revenues are authorized to be transferred to the  
4 lottery fund as reimbursement of amounts transferred to the  
5 economic development project fund pursuant to section four  
6 of this title and W.Va. Code §29-22-18, subsection (f).

*265-School Building Authority*

Fund 3514 FY 2011 Org 0402

1 Unclassified - Total . . . . . 096 \$ 19,000,000

*266-West Virginia Infrastructure Council*

Fund 3390 FY 2011 Org 0316

1 Unclassified - Total - Transfer . . . . . 402 \$ 40,000,000

2 The above appropriation for Unclassified - Total -  
 3 Transfer (activity 402) shall be transferred to the West  
 4 Virginia Infrastructure Fund (fund 3384, org 0316) created  
 5 by W.Va. Code §31-15A-9.

*267-Higher Education Improvement Fund*

Fund 4297 FY 2011 Org 0441

1	Unclassified - Total . . . . .	096	\$ 15,000,000
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*268-State Park Improvement Fund*

Fund 3277 FY 2011 Org 0310

1	Unclassified - Total (R) . . . . .	096	\$ 5,000,000
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5 Any unexpended balance remaining in the appropriation  
 6 at the close of the fiscal year 2010 is hereby reappropriated  
 7 for expenditure during the fiscal year 2011.

8 Appropriations to the State Park Improvement Fund are  
 9 not to be expended on personal services or employee  
 10 benefits.

*269-Lottery Commission -  
 Excess Lottery Revenue Fund Surplus*

Fund 7208 FY 2011 Org 0705

1	Teachers' Retirement Savings Realized	095	\$ 32,772,000
2	Unclassified - Transfer . . . . .	482	<u>62,900,000</u>

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\*CLERK'S NOTE: The Governor deleted the language in Item 268, on line 2 through 4.

3 Total ..... \$ 95,672,000

4 The above appropriation for Unclassified - Transfer (fund  
5 7208, activity 482) shall be transferred to the General  
6 Revenue Fund.

7 The above appropriation for Teachers' Retirement  
8 Savings Realized (fund 7208, activity 095) shall be  
9 transferred to the Employee Pension and Health Care Benefit  
10 Fund (fund 2044).

*270—Joint Expenses*

(WV Code Chapter 4)

Fund 1736 FY 2011 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,  
4 activity 929) at the close of the fiscal year 2010 is hereby  
5 reappropriated for expenditure during the fiscal year 2011.

*271—Governor's Office*

(WV Code Chapter 5)

Fund 1046 FY 2011 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 2010 is hereby reappropriated for expenditure during the  
5 fiscal year 2011.

*272-Division of Finance*

(WV Code Chapter 5A)

Fund 2208 FY 2011 Org 0209

1 Any unexpended balance remaining in the appropriation  
2 Enterprise Resource Planning System Planning Project (fund  
3 2208, activity 087) at the close of the fiscal year 2010 is  
4 hereby reappropriated for expenditure during the fiscal year  
5 2011.

6 The above appropriation for Enterprise Resource  
7 Planning System Planning Project, activity 087, shall be  
8 expended upon consultation with the executive and  
9 legislative branches.

*273—West Virginia Development Office*

(WV Code Chapter 5B)

Fund 3170 FY 2011 Org 0307

1 Any unexpended balances remaining in the  
2 appropriations for Recreational Grants or Economic  
3 Development Loans (fund 3170, activity 253), Economic  
4 Development Assistance (fund 3170, activity 900), and  
5 Connectivity Research and Development - Lottery Surplus  
6 (fund 3170, activity 923) at the close of the fiscal year 2010  
7 are hereby reappropriated for expenditure during the fiscal  
8 year 2011.

9 The above appropriation to Connectivity Research and  
10 Development - Lottery Surplus shall be used by the West  
11 Virginia Development Office for the coordinated  
12 development of technical infrastructure in areas where  
13 expanded resources and technical infrastructure may be  
14 expected or required pursuant to the provisions of W.Va.  
15 Code §5A-6-4.

*274-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 3517 FY 2011 Org 0402

1	Retirement Systems-Unfunded		
2	Liability .....	775	\$ 89,597,503
3	School Access Safety .....	978	<u>5,000,000</u>
4	Total .....		\$ 94,597,503

5 Any unexpended balance remaining in the appropriation  
 6 for Student Enrichment Program (fund 3517, org 0402) at the  
 7 close of fiscal year 2010 is hereby reappropriated for  
 8 expenditure during the fiscal year 2011.

9 The above appropriation for Retirement Systems -  
 10 Unfunded Liability (fund 3517, activity 775) shall be  
 11 transferred to the Consolidated Public Retirement Board-  
 12 West Virginia Teachers' Retirement System Employers  
 13 Accumulation Fund (fund 2601).

14 The above appropriation for School Access Safety (fund  
 15 3517, activity 978), shall be transferred to the School Access  
 16 Safety Fund (fund 3516).

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*275—Higher Education Policy Commission -  
 Administration -  
 Control Account*

(WV Code Chapter 18B)

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\*CLERK'S NOTE: The Governor deleted language in Item 274, line 17 through 20.

Fund 4932 FY 2011 Org 0441

1 Any unexpended balances remaining in the  
2 appropriations for Advanced Technology Centers (fund 4932,  
3 activity 028), and HEAPS Grant Program (fund 4932,  
4 activity 867) at the close of the fiscal year 2010 are hereby  
5 reappropriated for expenditure during the fiscal year 2011.

*276-Division of Health —  
Central Office*

(WV Code Chapter 16)

Fund 5219 FY 2011 Org 0506

1 Any unexpended balance remaining in the appropriation  
2 for Capital Outlay and Maintenance (fund 5219, activity 755)  
3 at the close of the fiscal year 2010 is hereby reappropriated  
4 for expenditure during the fiscal year 2011.

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

(WV Code Chapter 5F)

Fund 6005 FY 2011 Org 0601

1 Any unexpended balance remaining in the appropriation  
2 for Interoperable Communications System (fund 6005,  
3 activity 303) at the close of the fiscal year 2010 is hereby  
4 reappropriated for expenditure during the fiscal year 2011.

*278—Division of Corrections -  
Correctional Units*

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



Fund 6283 FY 2011 Org 0608

1 Any unexpended balances remaining in the  
2 appropriations for Capital Outlay, Repairs and Equipment  
3 (fund 6283, activity 589), and Capital Outlay and  
4 Maintenance (fund 6283, activity 755) at the close of the  
5 fiscal year 2010 are hereby reappropriated for expenditure  
6 during the fiscal year 2011.

*279—Racing Commission -*

(WV Code Chapter 19)

Fund \_\_\_\_ FY 2011 Org 0707

1	Special Breeders Compensation	
2	(WVC §29-22-18a, subsection (l)) . . . .	\$2,000,000
3	Total TITLE II, Section 5 -	
4	Excess Lottery Funds . . . . .	\$ <u>394,269,503</u>

1 **Sec. 6. Appropriations of federal funds.** - In accordance  
2 with Article 11, Chapter 4 of the Code from federal funds  
3 there are hereby appropriated conditionally upon the  
4 fulfillment of the provisions set forth in Article 2, Chapter  
5 11B of the Code the following amounts, as itemized, for  
6 expenditure during the fiscal year 2011.

**LEGISLATIVE**

*280-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 8738 FY 2011 Org 2300

	<b>Activity</b>	<b>Federal Funds</b>
1 Unclassified - Total .....	096	\$ 3,000,000

**JUDICIAL***281-Supreme Court*Fund 8867 FY 2011 Org 2400

1 Unclassified - Total .....	096	\$ 5,500,000
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**EXECUTIVE***282-Governor's Office -  
American Recovery and Reinvestment Act*

(WV Code Chapter 5)

Fund 8701 FY 2011 Org 0100

1 Federal Economic Stimulus .....	891	\$ 266,468,000
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- 2       The above appropriation for Federal Economic Stimulus  
3 shall be used in accordance with regulations and guidelines  
4 provided by the U.S. Department of Education which include  
5 restoring funding levels in the public education funding  
6 formula and higher education institutions.

*283-Governor's Office -  
ARRA NTIA Broadband Infrastructure Grant Fund*

(WV Code Chapter 5)

Fund 8717 FY 2011 Org 0100

1 Federal Economic Stimulus .....	891	\$126,000,000
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*284-Governor's Office -  
Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8797 FY 2011 Org 0100

1	Unclassified - Total	096	\$	7,272,541
2	Federal Economic Stimulus	891		<u>25,000,000</u>
3	Total		\$	32,272,541

*285-Governor's Office -  
Commission for National and Community Service*

(WV Code Chapter 5)

Fund 8800 FY 2011 Org 0100

1	Unclassified - Total	096	\$	5,662,509
2	Federal Economic Stimulus	891		<u>323,849</u>
3	Total		\$	5,986,358

*286-Department of Agriculture*

(WV Code Chapter 19)

Fund 8736 FY 2011 Org 1400

1	Unclassified - Total	096	\$	5,019,826
2	Federal Economic Stimulus	891		<u>716,000</u>
3	Total		\$	5,735,826

*287-Department of Agriculture -  
Meat Inspection*

(WV Code Chapter 19)

Fund 8737 FY 2011 Org 1400

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1 Unclassified - Total . . . . . 096 \$ 852,868

*288-Department of Agriculture -  
State Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2011 Org 1400

1 Unclassified - Total . . . . . 096 \$ 1,814,314

*289-Department of Agriculture -  
Land Protection Authority*

Fund 8896 FY 2011 Org 1400

1 Unclassified - Total . . . . . 096 \$ 60,000

*290-Secretary of State -  
State Election Fund*

(WV Code Chapter 3)

Fund 8854 FY 2011 Org 1600

1 Unclassified - Total . . . . . 096 \$ 1,650,000

**DEPARTMENT OF ADMINISTRATION**

*291-West Virginia Prosecuting Attorney's Institute*

(WV Code Chapter 7)

Fund 8834 FY 2011 Org 0228

1 Unclassified - Total . . . . . 096 \$ 81,343

292—*Children’s Health Insurance Agency*

(WV Code Chapter 5)

Fund 8838 FY 2011 Org 0230

1 Unclassified - Total 096 \$ 37,948,479

**DEPARTMENT OF COMMERCE**

*293-Division of Forestry*

(WV Code Chapter 19)

Fund 8703 FY 2011 Org 0305

1 Unclassified - Total ..... 096 \$ 10,167,091

*294-Geological and Economic Survey*

(WV Code Chapter 29)

Fund 8704 FY 2011 Org 0306

1	Unclassified - Total .....	096	\$	380,000
2	Federal Economic Stimulus .....	891		<u>1,162,000</u>
3	Total .....		\$	1,542,000

*295-West Virginia Development Office*

(WV Code Chapter 5B)

Fund 8705 FY 2011 Org 0307

1 Unclassified - Total ..... 096 \$ 9,684,681

*296-Division of Labor*

(WV Code Chapters 21 and 47)

Fund 8706 FY 2011 Org 0308

1	Unclassified - Total .....	096	\$ 566,143
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*297-Division of Natural Resources*

(WV Code Chapter 20)

Fund 8707 FY 2011 Org 0310

1	Unclassified - Total .....	096	\$ 10,519,696
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*298-Division of Miners' Health,  
Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2011 Org 0314

1	Unclassified - Total .....	096	\$ 605,548
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*299-WorkForce West Virginia*

(WV Code Chapter 23)

Fund 8835 FY 2011 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 W.Va. Code §21A-9-9, the above appropriation  
10 to Unclassified shall be used by WorkForce West Virginia  
11 for the specific purpose of administration of the state's  
12 unemployment insurance program or job service activities,  
13 subject to each and every restriction, limitation or obligation  
14 imposed on the use of the funds by those federal and state  
15 statutes.

*300-Division of Energy*

(WV Code Chapter 5B)

Fund 8892 FY 2011 Org 0328

1	Unclassified - Total .....	096	\$ 1,505,435
2	Federal Economic Stimulus .....	891	<u>27,000,000</u>
3	Total .....		\$ 28,505,435

**DEPARTMENT OF EDUCATION**

*301-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2011 Org 0402

1	Unclassified - Total .....	096	\$225,000,000
2	Federal Economic Stimulus .....	891	<u>53,000,000</u>
3	Total .....		\$278,000,000

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

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2011 Org 0402

1	Unclassified - Total	.....	096	\$115,000,000
2	Federal Economic Stimulus	.....	891	<u>450,000</u>
3	Total	.....		\$115,450,000

*303-State Board of Education -  
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2011 Org 0402

1	Unclassified - Total	.....	096	\$ 16,250,000
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*304-State Department of Education -  
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2011 Org 0402

1	Unclassified - Total	.....	096	\$ 106,800,000
2	Federal Economic Stimulus	.....	891	<u>60,000,000</u>
3	Total	.....		\$ 166,800,000

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

(WV Code Chapters 18 and 18A)

Fund 8716 FY 2011 Org 0403

1	Unclassified - Total	.....	096	\$ 320,000
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**DEPARTMENT OF EDUCATION AND THE ARTS**

*306-Department of Education and the Arts -  
Office of the Secretary*



(WV Code Chapter 5F)

Fund 8841 FY 2011 Org 0431

1	Unclassified - Total	096	\$	325,000
2	Federal Economic Stimulus	891		<u>50,000</u>
3	Total		\$	375,000

*307-Division of Culture and History*

(WV Code Chapter 29)

Fund 8718 FY 2011 Org 0432

1	Unclassified - Total	096	\$	2,233,324
2	Federal Economic Stimulus	891		<u>300,000</u>
3	Total		\$	2,533,324

*308-Library Commission*

(WV Code Chapter 10)

Fund 8720 FY 2011 Org 0433

1	Unclassified - Total	096	\$	1,950,351
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*309-Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 8721 FY 2011 Org 0439

1	Unclassified - Total	096	\$	1,500,000
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*310-State Board of Rehabilitation -  
Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 2011 Org 0932

1	Unclassified - Total .....	096	\$32,224,316
2	Federal Economic Stimulus .....	891	<u>4,808,444</u>
3	Total .....		\$37,032,760

*311-State Board of Rehabilitation -  
Division of Rehabilitation Services -  
Disability Determination Services*

(WV Code Chapter 18)

Fund 8890 FY 2011 Org 0932

1	Unclassified - Total .....	096	\$ 21,731,781
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**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

*312-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2011 Org 0313

1	Unclassified - Total .....	096	\$ 153,334,192
2	Federal Economic Stimulus .....	891	<u>48,947,000</u>
3	Total .....		\$ 202,281,192

**DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES**

*313-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 8723 FY 2011 Org 0506

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1	Unclassified - Total .....	096 \$ 7,325,557

*314-Division of Health -  
Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2011 Org 0506

1	Unclassified - Total .....	096 \$ 86,579,129
2	Federal Economic Stimulus .....	891 <u>4,256,000</u>
3	Total .....	\$ <u>90,835,129</u>

*315-Division of Health -  
West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2011 Org 0506

1	Unclassified - Total .....	096 \$ 16,000,000
2	Federal Economic Stimulus .....	891 <u>14,500,000</u>
3	Total .....	\$ <u>30,500,000</u>

*316-West Virginia Health Care Authority*

(WV Code Chapter 16)

Fund 8851 FY 2011 Org 0507

1	Unclassified - Total .....	096 \$ 2,500,000
2	Federal Economic Stimulus .....	891 <u>3,000,000</u>
3	Total .....	\$ <u>5,500,000</u>

*317-Human Rights Commission*

(WV Code Chapter 5)

## APPROPRIATIONS

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Fund 8725 FY 2011 Org 0510

1	Unclassified - Total .....	096	\$	438,899
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*318-Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2011 Org 0511

1	Unclassified .....	099	\$	155,854,516
2	Medical Services .....	189		1,950,000,000
3	Medical Services Administrative			
4	Costs .....	789		66,082,651
5	Federal Economic Stimulus .....	891		<u>128,279,584</u>
6	Total .....		\$	2,300,216,751

**DEPARTMENT OF MILITARY AFFAIRS AND  
PUBLIC SAFETY***319-Office of the Secretary*

(WV Code Chapter 5F)

Fund 8876 FY 2011 Org 0601

1	Unclassified - Total .....	096	\$	25,002,304
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*320-Adjutant General - State Militia*

(WV Code Chapter 15)

Fund 8726 FY 2011 Org 0603

1	Unclassified - Total .....	096	\$	96,633,010
2	Federal Economic Stimulus .....	891		<u>4,535,000</u>
3	Total .....		\$	101,168,010

*321-Division of Homeland Security and  
Emergency Management*

(WV Code Chapter 15)

Fund 8727 FY 2011 Org 0606

1 Unclassified - Total ..... 096 \$ 21,255,931

*322-Division of Corrections*

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

Fund 8836 FY 2011 Org 0608

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

*323-West Virginia State Police*

(WV Code Chapter 15)

Fund 8741 FY 2011 Org 0612

1	Unclassified - Total .....	096	\$ 12,266,939
2	Federal Economic Stimulus .....	891	<u>485,386</u>
3	Total .....		\$ 12,752,325

*324-Division of Veterans' Affairs*

(WV Code Chapter 9A)

Fund 8858 FY 2011 Org 0613

1 Unclassified - Total ..... 096 \$ 11,200,000

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

(WV Code Chapter 9A)

Fund 8728 FY 2011 Org 0618

1 Unclassified - Total ..... 096 \$ 1,774,230

*326-Fire Commission*

(WV Code Chapter 29)

Fund 8819 FY 2011 Org 0619

1 Unclassified - Total ..... 096 \$ 80,000

*327-Division of Criminal Justice Services*

(WV Code Chapter 15)

Fund 8803 FY 2011 Org 0620

1	Unclassified - Total .....	096	\$ 11,304,778
2	Federal Economic Stimulus .....	891	<u>5,910,000</u>
3	Total .....		\$ 17,214,778

**DEPARTMENT OF REVENUE**

*328-Tax Division -  
Consolidated Federal Fund*

(WV Code Chapter 11)

Fund 8899 FY 2011 Org 0702

1 Unclassified - Total ..... 096 \$ 10,000

*329-Insurance Commissioner*

(WV Code Chapter 33)

Fund 8883 FY 2011 Org 0704

1 Unclassified - Total ..... 096 \$ 4,200,000

**DEPARTMENT OF TRANSPORTATION**

*330-Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2011 Org 0802

1 Unclassified - Total ..... 096 \$ 18,167,668

*331-State Rail Authority*

(WV Code Chapter 29)

Fund 8733 FY 2011 Org 0804

1 Federal Economic Stimulus ..... 891 \$ 1,000,000

*332-Division of Public Transit*

(WV Code Chapter 17)

Fund 8745 FY 2011 Org 0805

1	Unclassified - Total .....	096	\$ 15,381,392
2	Federal Economic Stimulus .....	891	<u>6,000,000</u>
3	Total .....		\$21,381,392

*333-Public Port Authority*

(WV Code Chapter 17)

Fund 8830 FY 2011 Org 0806

1 Unclassified - Total ..... 096 \$ 2,600,000

### **BUREAU OF SENIOR SERVICES**

#### *334-Bureau of Senior Services*

(WV Code Chapter 29)

Fund 8724 FY 2011 Org 0508

1 Unclassified - Total ..... 096 \$ 14,515,250

### **MISCELLANEOUS BOARDS AND COMMISSIONS**

#### *335-Public Service Commission - Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2011 Org 0926

1	Unclassified - Total	.....	096	\$	1,562,171
2	Federal Economic Stimulus	.....	891		<u>796,248</u>
3	Total	.....		\$	2,358,419

#### *336-Public Service Commission - Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2011 Org 0926

1 Unclassified - Total ..... 096 \$ 282,370

#### *337-National Coal Heritage Area Authority*

(WV Code Chapter 29)



Fund 8869 FY 2011 Org 0941

1 Unclassified - Total ..... 096 \$ 600,000

*338-Coal Heritage Highway Authority*

(WV Code Chapter 29)

Fund 8861 FY 2011 Org 0942

1 Unclassified - Total ..... 096 \$ 50,000

2 Total TITLE II, Section 6 - Federal Funds \$ 4,088,736,401

1 **Sec. 7. Appropriations from federal block grants. -**  
2 The following items are hereby appropriated from federal  
3 block grants to be available for expenditure during the fiscal  
4 year 2011.

*339-Governor's Office -  
Office of Economic Opportunity  
Community Services*

Fund 8799 FY 2011 Org 0100

1 Unclassified - Total ..... 096 \$ 9,632,952

2 Federal Economic Stimulus ..... 891 5,597,000

3 Total ..... \$15,229,952

*340-West Virginia Development Office -  
Community Development*

Fund 8746 FY 2011 Org 0307

1 Unclassified - Total ..... 096 \$ 38,351,067

2 Federal Economic Stimulus ..... 891 5,000,000

3 Total ..... \$ 43,351,067

*341-WorkForce West Virginia -  
Workforce Investment Act*

Fund 8749 FY 2011 Org 0323

1	Unclassified - Total .....	096	\$25,030,749
2	Federal Economic Stimulus .....	891	<u>7,555,357</u>
3	Total .....		\$32,586,106

*342-Division of Energy -  
Energy and Conservation*

Fund 8702 FY 2011 Org 0328

1	Federal Economic Stimulus .....	891	\$ 10,000,000
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*343-Division of Health -  
Maternal and Child Health*

Fund 8750 FY 2011 Org 0506

1	Unclassified - Total .....	096	\$10,974,424
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*344-Division of Health -  
Preventive Health*

Fund 8753 FY 2011 Org 0506

1	Unclassified - Total .....	096	\$ 2,244,387
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*345-Division of Health -  
Substance Abuse Prevention and Treatment*

Fund 8793 FY 2011 Org 0506

1	Unclassified - Total .....	096	\$11,586,339
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*346-Division of Health -  
Community Mental Health Services*

Fund 8794 FY 2011 Org 0506

1 Unclassified - Total ..... 096 \$ 3,345,285

*347-Division of Health -  
Abstinence Education Program*

Fund 8825 FY 2011 Org 0506

1 Unclassified - Total ..... 096 \$ 500,000

*348-Division of Human Services -  
Energy Assistance*

Fund 8755 FY 2011 Org 0511

1 Unclassified - Total ..... 096 \$40,000,000

*349-Division of Human Services -  
Social Services*

Fund 8757 FY 2011 Org 0511

1 Unclassified - Total ..... 096 \$16,046,624

*350-Division of Human Services -  
Temporary Assistance for Needy Families*

Fund 8816 FY 2011 Org 0511

1	Unclassified - Total .....	096	\$130,250,890
2	Federal Economic Stimulus .....	891	<u>30,000,000</u>
3	Total .....		\$160,250,890

*351-Division of Human Services -  
Child Care and Development*

Fund 8817 FY 2011 Org 0511

1	Unclassified - Total .....	096	\$ 40,022,445
2	Federal Economic Stimulus .....	891	<u>6,523,500</u>
3	Total .....		\$ 46,545,945

*352-Division of Criminal Justice Services -  
Juvenile Accountability Incentive*

Fund 8829 FY 2011 Org 0620

1	Unclassified - Total .....	096	\$ <u>500,000</u>
2	Total TITLE II, Section 7 -		
3	Federal Block Grants .....		<u>\$393,161,019</u>

1     **Sec. 8. Awards for claims against the state.** – There are  
 2 hereby appropriated for fiscal year 2011, from the fund as  
 3 designated, in the amounts as specified, general revenue  
 4 funds in the amount of \$2,170,152, special revenue funds in  
 5 the amount of \$81,311, and state road funds in the amount of  
 6 \$1,565,283 for payment of claims against the state.

1     **Sec. 9. Appropriations from state excess lottery**  
 2 **revenue surplus accrued.** - The following item is hereby  
 3 appropriated from the state excess lottery revenue fund,  
 4 and is to be available for expenditure during the fiscal year  
 5 2011 out of surplus funds only, as determined by the  
 6 director of lottery, accrued from the fiscal year ending June  
 7 30, 2010, subject to the terms and conditions set forth in  
 8 this section.

9 It is the intent and mandate of the Legislature that the  
10 following appropriation be payable only from surplus  
11 accrued from the fiscal year ending June 30, 2010.

12 In the event that surplus revenues available from the  
13 fiscal year ending June 30, 2010, are not sufficient to meet  
14 the appropriation made pursuant to this section, then the  
15 appropriation made pursuant to this section shall be made to  
16 the extent that surplus funds are available.

*353-Division of Finance*

(WV Code Chapter 5A)

Fund 2208 FY 2011 Org 0209

1	Enterprise Resource Planning System -			
2	Lottery Surplus . . . . .	798	\$	0

1 **Sec. 10. Special revenue appropriations.** - There are  
2 hereby appropriated for expenditure during the fiscal year  
3 2011 appropriations made by general law from special  
4 revenues which are not paid into the state fund as general  
5 revenue under the provisions of W.Va. Code §12-2-2:  
6 Provided, That none of the money so appropriated by this  
7 section shall be available for expenditure except in  
8 compliance with and in conformity to the provisions of  
9 articles two and three, chapter twelve and article two, chapter  
10 eleven-b of the code, unless the spending unit has filed with  
11 the director of the budget and the legislative auditor prior to  
12 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.

17 In addition to the preceding provisions, from the  
 18 unexpended balance remaining in Fund 3078, the Courtesy  
 19 Patrol Fund, at the close of the fiscal year 2010, the State  
 20 Auditor shall transfer \$1,000,000 to Fund 3072, the Tourism  
 21 Promotion Fund.

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1 **Sec. 11. 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 2011,  
 4 for the purpose of making studies and recommendations  
 5 relative to improvements of the administration and  
 6 management of spending units in the executive branch of  
 7 state government, shall be deposited in the state treasury in  
 8 a separate account therein designated state improvement  
 9 fund.

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\*CLERK’S NOTE: The Governor deleted language on line 22 through 38.

10       There are hereby appropriated all moneys so deposited  
11 during the fiscal year 2011 to be expended as authorized by  
12 the governor, for such studies and recommendations which  
13 may encompass any problems of organization, procedures,  
14 systems, functions, powers or duties of a state spending unit  
15 in the executive branch, or the betterment of the economic,  
16 social, educational, health and general welfare of the state or  
17 its citizens.

1       **Sec. 12. Specific funds and collection accounts.** - A  
2 fund or collection account which by law is dedicated to a  
3 specific use is hereby appropriated in sufficient amount to  
4 meet all lawful demands upon the fund or collection account  
5 and shall be expended according to the provisions of Article  
6 3, Chapter 12 of the Code.

1       **Sec. 13. 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 or  
9 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.

1       **Sec. 14. Sinking fund deficiencies.** - There is hereby  
2 appropriated to the governor a sufficient amount to meet any  
3 deficiencies that may arise in the mortgage finance bond  
4 insurance fund of the West Virginia housing development  
5 fund which is under the supervision and control of the  
6 municipal bond commission as provided by W.Va. Code  
7 §31-18-20b, or in the funds of the municipal bond

8 commission because of the failure of any state agency for  
9 either general obligation or revenue bonds or any local taxing  
10 district for general obligation bonds to remit funds necessary  
11 for the payment of interest and sinking fund requirements.  
12 The governor is authorized to transfer from time to time such  
13 amounts to the municipal bond commission as may be  
14 necessary for these purposes.

15 The municipal bond commission shall reimburse the state  
16 of West Virginia through the governor from the first  
17 remittance collected from the West Virginia housing  
18 development fund or from any state agency or local taxing  
19 district for which the governor advanced funds, with interest  
20 at the rate carried by the bonds for security or payment of  
21 which the advance was made.

1 **Sec. 15. 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. 16. 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. 17. 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 W.Va. Code  
5 §18-9A-16.

### TITLE III - ADMINISTRATION.

#### TITLE III. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1       **Section 1. Appropriations conditional.** - The  
2 expenditure of the appropriations made by this act, except  
3 those appropriations made to the legislative and judicial  
4 branches of the state government, are conditioned upon the  
5 compliance by the spending unit with the requirements of  
6 Article 2, Chapter 11B 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 9**

**(H. B. 4668 - By Delegates Doyle, Spencer, Iaquina,  
Eldridge, Guthrie, Mahan, Marshall, Phillips,  
Carmichael, Evans and Ashley)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on March 23, 2010.]

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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 June 30, 2010, to the Crime Victims Compensation Fund, fund 8738, fiscal year 2010, organization 2300, to the Department of Education and the Arts - Division of Culture and History, fund 8718, fiscal year 2010, organization 0432, and to the Department of Environmental Protection - Division of Environmental Protection, fund 8708, fiscal year 2010, organization 0313, all supplementing and amending the appropriations for the fiscal year ending June 30, 2010.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Crime Victims Compensation Fund, fund 8738, fiscal year 2010, organization 2300, the Department of Education and the Arts - Division of Culture and History, fund 8718, fiscal year 2010, organization 0432, and the Department of Environmental Protection - Division of Environmental Protection, fund 8708, fiscal year 2010, organization 0313, 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 fiscal year ending June 30, 2010, to fund 8738, fiscal year 2010, organization 2300, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II — APPROPRIATIONS.**

**Sec. 6. Appropriations of federal funds.**

**LEGISLATIVE**

*280-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 8738 FY 2010 Org 2300

	<b>Activity</b>	<b>Federal Funds</b>
1	1 Unclassified - Total . . . . . 096	\$ 1,336,801

2 And that the total appropriation for fiscal year ending  
3 June 30, 2010, to fund 8718, fiscal year 2010, organization  
4 0432, be supplemented and amended by increasing an  
5 existing item of appropriation as follows:

**Sec. 6. Appropriations of federal funds.**

**DEPARTMENT OF EDUCATION AND THE ARTS**

*306-Division of Culture and History*

(WV Code Chapter 29)

Fund 8718 FY 2010 Org 0432

		<b>Activity</b>	<b>Federal Funds</b>
1	1	Unclassified - Total . . . . . 096	\$ 52,764

2       And that the total appropriation for fiscal year ending  
 3       June 30, 2010, to fund 8708, fiscal year 2010, organization  
 4       0313, be supplemented and amended by increasing an  
 5       existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

**Sec. 6. Appropriations of federal funds.**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*311—Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2010 Org 0313

		<b>Activity</b>	<b>Federal Funds</b>
1	1	Unclassified - Total . . . . . 096	\$ 15,524,000

2       The purpose of this supplementary appropriation bill is to  
 3       supplement and increase items of appropriation in the  
 4       aforesaid accounts for the designated spending units for  
 5       expenditure during the fiscal year 2010.

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**CHAPTER 10**

**(H. B. 4670 - By Delegates White, Marshall, Iaquina,  
Varner, Klempa, Manchin, Guthrie, Spencer,  
Perdue, Ashley and Border)**

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[Passed March 13, 2010; in effect from passage.]

[Approved by the Governor on March 23, 2010.]

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AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2010, to the Department of Agriculture - Agriculture Fees Fund, fund 1401, fiscal year 2010, organization 1400, to the Department of Health and Human Resources - Division of Health - Vital Statistics, fund 5144, fiscal year 2010, organization 0506, to the Department of Health and Human Resources - Division of Human Services - West Virginia Works Separate State Two-Parent Program Fund, fund 5468, fiscal year 2010, organization 0511, to the Department of Revenue - Racing Commission - General Administration, fund 7305, fiscal year 2010, organization 0707, to the Bureau of Senior Services - Community Based Service Fund, fund 5409, fiscal year 2010, organization 0508, and to new items of appropriation designated to the Higher Education Policy Commission - Community and Technical College Capital Improvement Fund, fund 4908, fiscal year 2010, organization 0442, and to the Higher Education Policy Commission - West Liberty University - West Liberty University Land Sale Account, fund 4566, fiscal year 2010, organization 0488, by supplementing and amending chapter ten, Acts of the Legislature, regular session, 2009, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Agriculture - Agriculture Fees Fund, fund 1401, fiscal year 2010, organization 1400, the Department of Health and Human Resources - Division of Health - Vital Statistics, fund 5144, fiscal year 2010, organization 0506, the Department of Health and Human Resources - Division of Human Services - West Virginia Works Separate State Two-Parent Program Fund, fund 5468, fiscal year 2010, organization 0511, the Department of Revenue - Racing Commission - General Administration, fund 7305, fiscal year 2010, organization 0707, the Bureau of Senior Services - Community Based Service Fund, fund 5409, fiscal year 2010, organization 0508, the Higher Education Policy Commission - Community and Technical College Capital Improvement Fund, fund 4908, fiscal year 2010, organization 0442, and the Higher Education Policy Commission - West Liberty University - West Liberty University Land Sale Account, fund 4566, fiscal year 2010, organization 0488, 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 June 30, 2010, to fund 1401, fiscal year 2010, organization 1400, be supplemented and amended by increasing an existing item of appropriation as follows:

## TITLE II — APPROPRIATIONS.

### **Sec. 3. Appropriations from other funds.**

#### **EXECUTIVE**

*104-Department of Agriculture—  
Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2010 Org 1400

		<b>Act- ivity</b>	<b>Other Funds</b>
1	1 Unclassified - Total . . . . .	096	\$ 900,000

2 And that the total appropriation for the fiscal year ending  
 3 June 30, 2010, to fund 5144, fiscal year 2010, organization  
 4 0506, be supplemented and amended by increasing an  
 5 existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

**Sec. 3. Appropriations from other funds.**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

*167-Division of Health-  
 Vital Statistics*

(WV Code Chapter 16)

Fund 5144 FY 2010 Org 0506

		<b>Act- ivity</b>	<b>Other Funds</b>
1	1 Personal Services . . . . .	001	\$ 257,741
2	2 Annual Increment . . . . .	004	4,000
3	3 Employee Benefits . . . . .	010	90,259
4	4 Unclassified . . . . .	099	40,000

5 And that the total appropriation for the fiscal year ending  
 6 June 30, 2010, to fund 5468, fiscal year 2010, organization  
 7 0511, be supplemented and amended by increasing an  
 8 existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

**Sec. 3. Appropriations from other funds.**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

*184-Division of Human Services—  
West Virginia Works Separate State Two-Parent Program Fund*

(WV Code Chapter 9)

Fund 5468 FY 2010 Org 0511

		<b>Act- ivity</b>	<b>Other Funds</b>
1	1 Unclassified - Total . . . . .	096	\$ 1,800,000
2	And that the total appropriation for the fiscal year ending		
3	June 30, 2010, to fund 7305 fiscal year 2010, organization		
4	0707, be supplemented and amended to read as follows:		

TITLE II — APPROPRIATIONS.

**Sec. 3. Appropriations from other funds.**

**DEPARTMENT OF REVENUE**

*219-Racing Commission -  
General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2010 Org 0707



		<b>Act- ivity</b>	<b>Other Funds</b>
1	1 Personal Services . . . . .	001	\$ 2,199,977
2	2 Annual Increment . . . . .	004	25,206
3	3 Employee Benefits . . . . .	010	574,580
4	4 Unclassified . . . . .	099	<u>639,540</u>
5	5 Total . . . . .		\$ 3,439,303

6 And that the total appropriation for the fiscal year ending  
 7 June 30, 2010, to fund 5409, fiscal year 2010, organization  
 8 0508, be supplemented and amended by increasing an  
 9 existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

**Sec. 3. Appropriations from other funds.**

**BUREAU OF SENIOR SERVICES**

*227-Bureau of Senior Services—  
 Community Based Service Fund*

(WV Code Chapter 22)

Fund 5409 FY 2010 Org 0508

		<b>Act- ivity</b>	<b>Other Funds</b>
1	1 Unclassified - Total . . . . .	096	\$ 620,000

2 And that chapter ten, Acts of the Legislature, regular  
 3 session, 2009, known as the Budget Bill, be supplemented  
 4 and amended by adding to Title II, section three thereof, the  
 5 following:

## TITLE II — APPROPRIATIONS.

**Sec. 3. Appropriations from other funds.****HIGHER EDUCATION**

*230a—Higher Education Policy Commission—  
Community and Technical College Capital Improvement Fund*

(WV Code Chapter 18B)

Fund 4908 FY 2010 Org 0442

		<b>Act- ivity</b>	<b>Other Funds</b>
1	1 Capital Improvements - Total (R)	. 958	\$ 80,000,000
2	The total amount of this appropriation shall be paid from		
3	the bond proceeds from the sale of the 2009 Series A		
4	Community and Technical Colleges Capital Improvement		
5	Revenue Bonds and anticipated interest earnings.		
6	Any unexpended balance remaining in the appropriation		
7	for Capital Improvements - Total (fund 4908, activity 958) at		
8	the close of the fiscal year 2010 is hereby reappropriated for		
9	expenditure during the fiscal year 2011.		
10	And that chapter ten, Acts of the Legislature, regular		
11	session, 2009, known as the Budget Bill, be supplemented		
12	and amended by adding to Title II, section three thereof, the		
13	following:		

## TITLE II — APPROPRIATIONS.

**Sec. 3. Appropriations from other funds.**

**HIGHER EDUCATION**

*232a-Higher Education Policy Commission—  
West Liberty University-  
West Liberty University Land Sale Account*

(WV Code Chapter 18B)

Fund 4566 FY 2010 Org 0488

		<b>Act- ivity</b>	<b>Other Funds</b>
1	1 Unclassified - Total (R) . . . . .	096	\$ 153,367
2	The total amount of this appropriation shall be used for		
3	the purchase of additional real property or technology, or for		
4	capital improvements at the institution.		
5	Any unexpended balance remaining in the appropriation		
6	for Unclassified - Total (fund 4566, activity 096) at the close		
7	of the fiscal year 2010 is hereby reappropriated for		
8	expenditure during the fiscal year 2011.		
9	The purpose of this supplementary appropriation bill is to		
10	supplement, decrease and increase existing items of		
11	appropriation and to provide for new items of appropriation		
12	to be established in the budget act for the designed spending		
13	units for expenditure during the fiscal year 2010.		

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## CHAPTER 11

**(Com. Sub. for H. B. 3152 - By Delegates Caputo,  
Ashley, White, Kominar and Campbell)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-20A-6 and §30-20A-7, all relating to athletic trainers; providing definitions; restricting the use of certain titles; setting forth powers and duties of the board; setting forth rulemaking authority; providing for registration of athletic trainers; establishing registration criteria; establishing renewal requirements; and allowing for disciplinary 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 article, designated §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-20A-6 and §30-20A-7, all to read as follows:

### **ARTICLE 20A. ATHLETIC TRAINERS.**

§30-20A-1. Definitions.

§30-20A-2. Title protection.

§30-20A-3. Powers and duties of the board.

§30-20A-4. Rulemaking authority.

§30-20A-5. Requirements for registration.

§30-20A-6. Renewal requirements.

§30-20A-7. Due process procedures; grounds for disciplinary action.

**§30-20A-1. Definitions.**

1 As used in this article:

2 (1) “Applicant” means any person making application for  
3 an original or renewal registration to act as an athletic trainer  
4 under the provisions of this article.

5 (2) “Board” means the West Virginia Board of Physical  
6 Therapy established under article twenty of this chapter.

7 (3) “Registrant” means a person registered as an athletic  
8 trainer under the provisions of this article.

9 (4) “Registration” means a registration issued by the  
10 board to practice athletic training.

**§30-20A-2. Title protection.**

1 (a) A person may not advertise or represent himself or  
2 herself as an athletic trainer in this state and may not use the  
3 initials “AT”, the words “registered athletic trainer” or  
4 “athletic trainer”, or any other words, abbreviations, titles or  
5 insignia that indicates, implies or represents that he or she is  
6 an athletic trainer, unless he or she is registered by the board.

7 (b) Nothing contained in this article shall be construed as  
8 preventing any person, firm, partnership or corporation from  
9 practicing athletic training, in any manner desired.

10 (c) Nothing in this article may be construed to prohibit or  
11 otherwise limit the use of the term “athletic trainer” in  
12 secondary school settings by persons who were practicing  
13 athletic training under a West Virginia Board of Education  
14 Athletic Certification, provided the practice is in accordance  
15 with Board of Education policy in effect prior to July 1, 2011.

**§30-20A-3. Powers and duties of the board.**

- 1           The board has the following powers and duties:
- 2           (1) Establish procedures for submitting, approving and  
3           denying applications for registration;
- 4           (2) Investigate alleged violations of the provisions of this  
5           article;
- 6           (3) Establish a fee schedule;
- 7           (4) Issue, renew, deny, suspend, revoke or reinstate a  
8           registration;
- 9           (5) Determine disciplinary action and issue orders;
- 10          (6) Institute appropriate legal action for the enforcement  
11          of the provisions of this article; and
- 12          (7) Maintain an accurate registry of the names and  
13          addresses of registrants.

**§30-20A-4. Rule-making authority.**

- 1           The board shall propose rules for legislative approval, in  
2           accordance with the provisions of article three, chapter  
3           twenty-nine-a of this code, to implement the provisions of  
4           this article, including:
- 5           (1) Procedures for the issuance and renewal of a  
6           registration;
- 7           (2) A fee schedule;
- 8           (3) Procedures for denying, suspending, revoking,  
9           reinstating or limiting the registration of a registrant; and

10 (4) Any other rules necessary to effectuate the provisions  
11 of this article.

**§30-20A-5. Requirements for registration.**

1 (a) To be eligible for registration by the board as an  
2 athletic trainer, an applicant shall:

3 (1) Submit an application in the form prescribed by the  
4 board;

5 (2) Submit a current certification from the National  
6 Athletic Trainers' Association Board of Certification or  
7 successor organization; and

8 (3) Pay the required fee.

9 (b) The board shall issue a registration to an applicant  
10 satisfying all the requirements in subsection (a) of this  
11 section: *Provided*, That the board may deny an application  
12 for registration if the applicant:

13 (1) Has been convicted of a felony or other crime  
14 involving moral turpitude;

15 (2) Is an alcohol or drug abuser as these terms are defined  
16 in section eleven, article one-a, chapter twenty-seven of this  
17 code: *Provided*, That the board may take into consideration  
18 that an applicant in an active recovery process, which may,  
19 in the discretion of the board, be evidenced by participation  
20 in a twelve-step program or other similar group or process;

21 (3) Has been convicted of fraudulent, false, misleading or  
22 deceptive advertising;

23 (4) Has been convicted for wrongfully prescribing  
24 medicines or drugs, or practicing any licensed profession  
25 without legal authority;

26 (5) Has had a registration or other authorization revoked,  
27 suspended, restricted or other disciplinary action taken by the  
28 proper authorities of another jurisdiction;

29 (6) Is incapacitated by a physical or mental disability  
30 which is determined by a physician to render further practice  
31 by the applicant inconsistent with competency and ethic  
32 requirements; or

33 (7) Has been convicted of sexual abuse or sexual  
34 misconduct.

35 (c) In determining whether an application should be  
36 denied for any of the reasons set forth in subsection (b), the  
37 board may consider:

38 (1) How recently the conduct occurred;

39 (2) The nature of the conduct and the context in which it  
40 occurred; and

41 (3) Any other relevant conduct of the applicant.

42 (d) A registration issued by the board is valid for two  
43 years from the date it was issued.

**§30-20A-6. Renewal requirements.**

1 (a) A registrant may apply to renew his or her registration  
2 by submitting an application for renewal in the form  
3 prescribed by the board and paying the renewal fee. The  
4 renewal application must be signed by the applicant.

5 (b) A renewal of registration issued by the board is valid  
6 for two years from the date it was issued.



- 7 (c) The board may deny an application for renewal for  
8 any reason which would justify the denial of an original  
9 application for a registration.

**§30-20A-7. Due process procedures; grounds for disciplinary action.**

- 1 (a) The board may, after notice and opportunity for  
2 hearing, suspend, restrict or revoke a registration of, impose  
3 probationary conditions upon or take disciplinary action  
4 against, any registrant if the board determines the registrant:

5 (1) Is grossly negligent in the practice of athletic training;

6 (2) Obtained a registration by fraud, misrepresentation or  
7 concealment of material facts; engaged in the practice of  
8 athletic training under a false or assumed name; or  
9 impersonated another registrant of a like or different name;  
10 or

11 (3) Has violated any of the provisions of subsection (b),  
12 section five of this article.

13 (b) For purposes of subsection (a) of this section,  
14 disciplinary action may include:

15 (1) Reprimand;

16 (2) Probation;

17 (3) Administrative fines;

18 (4) Practicing under supervision or other restriction;

19 (5) Requiring the registrant to report to the board for  
20 periodic interviews for a specified period of time; or

21 (6) Other corrective action as determined by the board.

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## CHAPTER 12

**(S. B. 573 - By Senators Minard, Yost, Snyder,  
White, Edgell, Boley, Chafin and Stollings)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §6-9-7 of the Code of West Virginia, 1931, as amended, relating to allowing audits to be published electronically with notice to the proper authorities.

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

That §6-9-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.**

#### **§6-9-7. Examinations into affairs of local public offices; penalties.**

- 1       (a) The chief inspector has the power by himself or
- 2       herself, or by any person appointed, designated or approved
- 3       by the chief inspector to perform the service, to examine into
- 4       all financial affairs of every local governmental office or
- 5       political subdivision and all boards, commissions, authorities,
- 6       agencies or other offices created under authority thereof. An
- 7       examination shall be made annually, if required, to comply
- 8       with the Single Audit Act and when otherwise required by

9 law or contract. When that act does not apply, unless  
10 otherwise required by law or by contract, the examination  
11 shall be made at least once a year, if practicable.  
12 Furthermore, the chief inspector shall furnish annually to the  
13 Legislature a list of each local government office or political  
14 subdivision and all boards, commissions, authorities,  
15 agencies or other offices created under authority thereof and  
16 the year of its most recent completed audit.

17 (b) When required for compliance with regulations for  
18 federal funds received or expended by county boards of  
19 education the chief inspector or his or her designee, including  
20 any certified public accountant approved by the chief  
21 inspector shall conduct and issue an audit report within the  
22 time specified in controlling federal regulations.  
23 Examinations of other local governments shall be conducted  
24 and audit or review reports issued in accordance with  
25 uniform procedures of the chief inspector.

26 (c) A county board of education may elect, by May 1 of  
27 the fiscal year to be audited, to have its annual examination  
28 performed by a certified public accountant approved by the  
29 chief inspector to perform the examinations. When this  
30 election is made, a copy of the order of the county board  
31 making the election shall be filed with the chief inspector and  
32 the State Board of School Finance. The county board of  
33 education is allowed to contract with any certified public  
34 accountant on the chief inspector's then current list of  
35 approved certified public accountants, unless the State Board  
36 of School Finance or the prosecuting attorney of the county  
37 in which the board is located timely submits to the chief  
38 inspector a written request for the examination to be  
39 performed by the chief inspector or a person appointed by the  
40 chief inspector, or the chief inspector determines that a  
41 special or unusual situation exists. The county board shall  
42 follow the audit bid procurement procedures established by  
43 the chief inspector in obtaining the audit.

44 (d) The chief inspector shall, at least annually, prepare a  
45 list of certified public accountants approved by the chief  
46 inspector to perform examinations of local governments.  
47 Names shall be added to or deleted from that list in  
48 accordance with uniform procedures of the chief inspector.  
49 When each list or updated list is issued, the chief inspector  
50 shall promptly file a copy of the list in the State Register and  
51 send a copy to the State Board of Education, the State Board  
52 of School Finance and to local governments who request a  
53 copy.

54 (e) A county board of education, when procuring the  
55 services of a certified public accountant on the chief  
56 inspector's list, shall follow the procurement standards  
57 prescribed by the grants management common rule, OMB  
58 Circular A-102 "Grants and Cooperative Agreements with  
59 State and Local Governments" in effect for the fiscal year  
60 being examined, or in any replacement circular or regulation  
61 of the office of management and budget and in addition shall  
62 follow those standards as determined by the office of chief  
63 inspector.

64 (f) The approved independent certified public accountant  
65 making examinations under this section shall comply with  
66 requirements of this section applicable to examinations  
67 performed by the chief inspector, including applicable  
68 requirements of the federal government and uniform  
69 procedures of the chief inspector applicable to examinations  
70 of county boards of education.

71 (1) Upon completion of the certified public accountant's  
72 examination and audit or review report, the certified public  
73 accountant shall promptly send two copies of the certified  
74 report to the county board of education who shall file one  
75 copy with the Federal Audit Clearing House. The certified  
76 public accountant shall send one copy of the certified report  
77 to the State Board of School Finance, and one copy to the  
78 chief inspector.

79           (2) If any examination discloses misfeasance,  
80 malfeasance or nonfeasance in office on the part of any  
81 public officer or employee, the certified public accountant  
82 shall submit his or her recommendation to the chief inspector  
83 regarding the legal action the approved certified public  
84 accountant considers appropriate, including, but not limited  
85 to, whether criminal prosecution or civil action to effect  
86 restitution is appropriate, and three additional copies of the  
87 certified audit report. After review of the recommendations  
88 and the audit report, the chief inspector shall proceed as  
89 provided in subsection (n) of this section. For purposes of  
90 this section and section thirteen, article nine-b, chapter  
91 eighteen of this code, a certified audit report of an approved  
92 certified public accountant shall be treated in the same  
93 manner as a report of the chief inspector.

94           (g) On every examination, inquiry shall be made as to the  
95 financial conditions and resources of the agency having  
96 jurisdiction over the appropriations and levies disbursed by  
97 the office and whether the requirements of the Constitution  
98 and statutory laws of the state and the ordinances and orders  
99 of the agency have been properly complied with and also  
100 inquire into the methods and accuracy of the accounts and  
101 such other matters of audit and accounting as the chief  
102 inspector may prescribe.

103           (h) If a local government office is not subject to a single  
104 audit requirement under federal regulations or if it is not  
105 otherwise required by law or contract to undergo an annual  
106 audit and its expenditures from all sources are less than  
107 \$300,000 during the fiscal year the chief inspector may  
108 choose to perform either a review or audit on the local  
109 government office and may in his or her discretion determine  
110 the frequency of such review or audit.

111           (i) The chief inspector or any authorized assistant may  
112 issue subpoenas and compulsory process, direct the service

113 thereof by any sheriff, compel the attendance of witnesses  
114 and the production of books and papers at any designated  
115 time and place, selected in their respective county, and  
116 administer oaths.

117 (j) If any person refuses to appear before the chief  
118 inspector or his or her authorized assistant when required to  
119 do so, refuses to testify on any matter or refuses to produce  
120 any books or papers in his or her possession or under his or  
121 her control, he or she is guilty of a misdemeanor and, upon  
122 conviction thereof, shall be fined not more than \$100 and  
123 imprisoned in jail not more than six months.

124 (k) A person convicted of willful false swearing in an  
125 examination is guilty of a misdemeanor and, upon conviction  
126 thereof, shall be fined not more than \$100 and imprisoned in  
127 jail not more than six months.

128 (l) Except as otherwise provided in this section, a copy of  
129 the certified report of each examination shall be filed in the  
130 office of the commissioner, chief inspector with the  
131 governing body of the local government and with other  
132 offices as prescribed in uniform procedures of the chief  
133 inspector.

134 (m) If any examination discloses misfeasance,  
135 malfeasance or nonfeasance in office on the part of any  
136 public officer or employee, a certified copy of the report shall  
137 be published electronically by the chief inspector with notice  
138 of the publishing sent in writing to the proper legal authority  
139 of the agency, the prosecuting attorney of the county wherein  
140 the agency is located and with the Attorney General for such  
141 legal action as is proper. At the time the certified audit report  
142 is published, the chief inspector shall notify the proper legal  
143 authority of the agency, the prosecuting attorney and the  
144 Attorney General in writing of his or her recommendation as  
145 to the legal action that the chief inspector considers proper,

146 whether criminal prosecution or civil action to effect  
147 restitution, or both.

148 (n) If the proper legal authority or prosecuting attorney,  
149 within nine months of receipt of the certified audit report and  
150 recommendations, refuses, neglects or fails to take efficient  
151 legal action by a civil suit to effect restitution or by  
152 prosecuting criminal proceedings to a final conclusion, in  
153 accordance with the recommendations, the chief inspector  
154 may institute the necessary proceedings or participate therein  
155 and prosecute the proceedings in any court of the state to a  
156 final conclusion.

157 (o) A local government that is not a county board of  
158 education may elect, by May 1 of the fiscal year to be  
159 audited, to have its annual examination performed by a  
160 certified public accountant approved by the chief inspector to  
161 perform the examinations. When this election is made, a  
162 copy of the order of the governing body making the election  
163 shall be filed with the chief inspector. An electing local  
164 government is allowed to contract with any certified public  
165 accountant on the chief inspector's then current list of  
166 approved certified public accountants, unless the prosecuting  
167 attorney of the county in which the local government is  
168 located timely submits to the chief inspector a written request  
169 for the examination to be performed by the chief inspector or  
170 a person appointed by the chief inspector, or the chief  
171 inspector determines that a special or unusual situation exists:  
172 *Provided*, That the audit of a local government may be  
173 performed by the chief inspector at his or her discretion. The  
174 local government shall follow the audit bid procurement  
175 procedures established by the chief inspector in obtaining the  
176 audit: *Provided, however*, That the chief inspector may elect  
177 to conduct the audit of a local unit of government with one or  
178 more members of his or her audit staff where, in the opinion  
179 of the chief inspector, a special or unusual situation exists.

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## CHAPTER 13

**(Com. Sub. for H. B. 4285 - By Delegates Moore,  
Walters, Reynolds and Azinger)**

[Passed March 12, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §31-17-4 of the Code of West Virginia, 1931, as amended, and to amend and reenact §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-6, §31-17A-9, §31-17A-12 and §31-17A-13 of said code, all relating to the licensing of residential mortgage brokers, lenders and loan originators by the Division of Banking; definitions; allowing the Commissioner of Banking to reduce or waive application fees, bond amounts and net worth requirements of bona-fide nonprofit business entities, including community housing development organizations; providing that mortgage loan originators may be employed by or under contract with only one mortgage broker or lender at any time; allowing the commissioner to reduce or waive the application fees for mortgage loan originators employed by bona fide nonprofit organizations or other community housing development organizations; providing that a mortgage loan originator license may not be transferred or assigned and that a mortgage loan originator changing employers must provide thirty days prior notice to the commissioner and pay a fee of \$50; increasing the amount of prelicensing education required for loan originators from twenty to twenty-two hours; providing that prelicensing education courses and requirements and continuing education courses for mortgage loan originators may be approved by the



division of banking; providing a procedure for the commissioner to follow whenever taking an enforcement action under article seventeen-a of this code; allowing any person not licensed as a mortgage lender or broker under article seventeen of chapter thirty-one of this code or article four of chapter forty-six-a of this code to register with the Nationwide Mortgage Licensing System and Registry and provide a surety bond in the appropriate amount for any mortgage loan originators it employs; and allowing the commissioner to reduce or waive the bond amounts imposed by article seventeen-a for mortgage loan originators employed by bona fide nonprofit corporations or other bona fide nonprofit business entities, including community housing development organizations, if the commissioner determines that such action would not violate any applicable law.

*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, and that §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-6, §31-17A-9, §31-17A-12 and §31-17A-13, of said code be amended and reenacted, all to read as follows:

**Article**

**17. West Virginia Residential Mortgage Lender, Broker and Servicer Act.**

**17A. West Virginia Safe Mortgage Licensing Act.**

**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) In connection with an application for licensing as a
- 2 mortgage lender or mortgage broker, the applicant shall, at a
- 3 minimum, furnish to the Nationwide Mortgage Licensing
- 4 System and Registry information concerning the applicant's
- 5 identity, including:

6 (1) Fingerprints for submission to the Federal Bureau of  
7 Investigation and any governmental agency or entity  
8 authorized to receive such information for a state, national  
9 and international criminal history background check; and

10 (2) Personal history and experience in a form prescribed  
11 by the Nationwide Mortgage Licensing System and Registry  
12 and the commissioner, including the submission of  
13 authorization for the Nationwide Mortgage Licensing System  
14 and Registry and the commissioner to obtain:

15 (A) An independent credit report obtained from a  
16 consumer reporting agency described in Section 603(p) of the  
17 Fair Credit Reporting Act; and

18 (B) Information related to any administrative, civil or  
19 criminal findings by any governmental jurisdiction.

20 (b) In order to reduce the points of contact which the  
21 Federal Bureau of Investigation may have to maintain for  
22 purposes of this article, the commissioner may use the  
23 Nationwide Mortgage Licensing System and Registry or its  
24 designated vendor as a channeling agent for requesting  
25 information from and distributing information to the  
26 Department of Justice or any governmental agency.

27 (c) In order to reduce the points of contact which the  
28 commissioner may have to maintain, for purposes of this  
29 article, the commissioner may use the Nationwide Mortgage  
30 Licensing System and Registry as a channeling agent for  
31 requesting and distributing information to and from any  
32 source so directed by the commissioner.

33 (d) Application for a lender's or broker's license shall  
34 each year be submitted under oath, in the form prescribed by  
35 the commissioner, and shall contain the full name and  
36 address of the applicant and, if the applicant is a partnership,

37 limited liability company or association, of every member  
38 thereof, and, if a corporation, of each officer, director and  
39 owner of ten percent or more of the capital stock thereof and  
40 further information as the commissioner may reasonably  
41 require. Background and credit checks shall be conducted in  
42 accordance with this section for any officer, director or  
43 owner, directly or indirectly, of ten percent or more of the  
44 capital stock of a corporation or any member of a limited  
45 liability or partnership with, directly or indirectly, a ten  
46 percent or greater ownership interest. Any application shall  
47 also disclose the location at which the business of lender or  
48 broker is to be conducted.

49 (e) At the time of making application for a lender's  
50 license, the applicant therefor shall:

51 (1) If a foreign corporation, submit a certificate from the  
52 Secretary of State certifying that the applicant is registered  
53 with the Secretary of State to transact business in this state;

54 (2) Submit proof that he or she has available for the  
55 operation of the business at the location specified in the  
56 application net worth of at least \$250,000;

57 (3) File with the commissioner a bond in favor of the  
58 state for the benefit of consumers or for a claim by the  
59 commissioner for an unpaid civil administrative penalty or an  
60 unpaid examination invoice in the amount of \$100,000 for  
61 licensees with West Virginia annual loan originations of \$0  
62 to \$3 million, \$150,000 for West Virginia annual loan  
63 originations greater than \$3 million and up to \$10 million,  
64 and \$250,000 for West Virginia annual loan originations over  
65 \$10 million in a form and with conditions as the  
66 commissioner may prescribe and executed by a surety  
67 company authorized to do business in this state: *Provided,*  
68 That lender licensees who service West Virginia mortgage  
69 loans shall file with the commissioner a bond under the same  
70 conditions listed above in the amount of \$200,000;

71 (4) Pay to the commissioner a license fee of \$1,250 plus  
72 the actual cost of fingerprint processing and the processing  
73 fees assessed by the Nationwide Mortgage Licensing System  
74 and Registry. If the commissioner shall determine that an  
75 investigation outside this state is required to ascertain facts or  
76 information relative to the applicant or information set forth  
77 in the application, the applicant may be required to advance  
78 sufficient funds to pay the estimated cost of the investigation.  
79 An itemized statement of the actual cost of the investigation  
80 outside this state shall be furnished to the applicant by the  
81 commissioner and the applicant shall pay or shall have  
82 returned to him or her, as the case may be, the difference  
83 between his or her payment in advance of the estimated cost  
84 and the actual cost of the investigation; and

85 (5) Submit a full and complete disclosure of any litigation  
86 or unresolved complaint filed by a governmental authority or  
87 class action lawsuit on behalf of consumers relating to the  
88 operation of the license applicant.

89 (f) At the time of making application for a broker's  
90 license, the applicant therefor shall:

91 (1) If a foreign corporation, submit a certificate from the  
92 Secretary of State certifying that the applicant is registered  
93 with the Secretary of State to transact business in this state;

94 (2) Submit proof that he or she has available for the  
95 operation of the business at the location specified in the  
96 application net worth of at least \$10,000;

97 (3) File with the commissioner a bond in favor of the  
98 state for the benefit of consumers or for a claim by the  
99 commissioner for an unpaid civil administrative penalty or an  
100 unpaid examination invoice in the amount of \$50,000 for  
101 licensees with West Virginia loan originations of \$0 to \$3  
102 million, \$75,000 for West Virginia loan originations greater

103 than \$3 million and up to \$10 million, and \$100,000 for West  
104 Virginia loan originations over \$10 million in a form and  
105 with conditions as the commissioner may prescribe and  
106 executed by a surety company authorized to do business in  
107 this state: *Provided*, That the bond must be in the amount of  
108 \$150,000 before a broker may participate in a table-funded  
109 residential mortgage loan;

110 (4) Pay to the commissioner a license fee of \$350 plus the  
111 actual cost of fingerprint processing and the processing fees  
112 assessed by the Nationwide Mortgage Licensing System and  
113 Registry; and

114 (5) Submit a full and complete disclosure of any litigation  
115 or unresolved complaint filed by a governmental authority or  
116 class action lawsuit on behalf of consumers relating to the  
117 operation of the license applicant.

118 (g) The aggregate liability of the surety on any bond  
119 given pursuant to the provisions of this section shall in no  
120 event exceed the amount of the bond.

121 (h) Nonresident lenders and brokers licensed under this  
122 article by their acceptance of the license acknowledge that  
123 they are subject to the jurisdiction of the courts of West  
124 Virginia and the service of process pursuant to section one  
125 hundred thirty-seven, article two, chapter forty-six-a of this  
126 code and section thirty-three, article three, chapter fifty-six of  
127 this code.

128 (i) The commissioner may elect to reduce or waive the  
129 application fees, bond amounts and net worth requirements  
130 imposed by this section for bona fide nonprofit corporations  
131 or other bona fide nonprofit business entities, including  
132 community housing development organizations, whose  
133 residential mortgage lending or brokering activities provide  
134 housing primarily to households or persons below the HUD-

135 established median income for their area of residence. Any  
136 waiver of fees or other costs under this paragraph shall not be  
137 construed as a waiver of the duty to comply with all other  
138 provisions of this article.

139 (j) Every broker and lender licensee shall pay a fee of \$5  
140 for each residential mortgage loan originated, made or  
141 brokered in a calendar year. This fee shall be paid annually  
142 for the benefit of the Division of Banking and remitted with  
143 the report required pursuant to subsection (b), section eleven  
144 of this article for loans made, brokered or originated during  
145 the previous calendar year. If a licensee ceases operation, it  
146 shall remit any fees due since the last reporting period when  
147 it relinquishes its license.

148 (k) If a claim for a consumer restitution is pending on a  
149 bond required pursuant to this section when the  
150 commissioner makes a claim for a civil administrative  
151 penalty or an unpaid examination invoice, the consumer  
152 claim shall be resolved before any payments may be made for  
153 an unpaid penalty or examination invoice.

## **ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.**

§31-17A-2. Definitions.

§31-17A-3. License and registration required.

§31-17A-4. State license application and issuance.

§31-17A-6. Prelicensing and relicensing education of loan originators.

§31-17A-9. Continuing education for mortgage loan originators.

§31-17A-12. Enforcement authorities, violations and penalties.

§31-17A-13. Surety bond required.

### **§31-17A-2. Definitions.**

1 As used in this article:

2 (a) "Commissioner" means the Commissioner of Banking  
3 of this state;

4 (b) "Depository institution" has the same meaning as in  
5 section three of the Federal Deposit Insurance Act and  
6 includes any federally insured credit union; and,

7 (c) "Division" means the West Virginia Division of  
8 Banking;

9 (d) "Federal banking agencies" means the board of  
10 Governors of the Federal Reserve System, the Comptroller of  
11 the Currency, the Director of the Office of Thrift  
12 Supervision, the National Credit Union Administration and  
13 the Federal Deposit Insurance Corporation;

14 (e) "Immediate family member" means a spouse, child,  
15 sibling, parent, grandparent or grandchild. This includes  
16 stepparents, stepchildren, stepsiblings and adoptive  
17 relationships;

18 (f) "Individual" means a natural person; and,

19 (g) "Loan processor or underwriter" means an individual  
20 who performs clerical or support duties as an employee at the  
21 direction of and subject to the supervision and instruction of  
22 a person licensed or exempt from licensing under article  
23 seventeen of this chapter.

24 (1) For purposes of this paragraph, "clerical or support  
25 duties" may include subsequent to the receipt of an  
26 application:

27 (A) The receipt, collection, distribution and analysis of  
28 information common for the processing or underwriting of a  
29 residential mortgage loan; and,

30 (B) Communicating with a consumer to obtain the  
31 information necessary for the processing or underwriting of  
32 a loan, to the extent that such communication does not

33 include offering or negotiating loan rates or terms, or  
34 counseling consumers about residential mortgage loan rates  
35 or terms; or

36 (2) An individual engaging solely in loan processor or  
37 underwriter activities shall not represent to the public,  
38 through advertising or other means of communicating or  
39 providing information, including the use of business cards,  
40 stationery, brochures, signs, rate lists or other promotional  
41 items, that such individual can or will perform any of the  
42 activities of a mortgage loan originator;

43 (h) “Mortgage loan originator” means an individual who  
44 for compensation or gain or in the expectation of  
45 compensation or gain takes a residential mortgage loan  
46 application or offers or negotiates terms of a residential  
47 mortgage loan and is sponsored by a mortgage lender, broker  
48 or regulated consumer lender licensed by the Division of  
49 Banking.

50 “Mortgage loan originator” does not include:

51 (1) An individual engaged solely as a loan processor or  
52 underwriter except as otherwise provided in section three of  
53 this article;

54 (2) A person or entity that only performs real estate  
55 brokerage activities and is licensed or registered in  
56 accordance with West Virginia law, unless the person or  
57 entity is compensated by a lender, a mortgage broker or other  
58 mortgage loan originator or by any agent of such lender,  
59 mortgage broker or other mortgage loan originator;

60 (3) A person or entity solely involved in extensions of  
61 credit relating to timeshare plans, as that term is defined in  
62 Section 101(53D) of Title 11, United States Code; or



63           (4) A manufactured or modular home retailer employee  
64           who performs purely administrative or clerical tasks and who  
65           receives only the customary salary or commission from the  
66           employer in connection with the sales transaction;

67           (i) “Real estate brokerage activity” means any activity  
68           that involves offering or providing real estate brokerage  
69           services to the public, including:

70           (1) Acting as a real estate salesperson or real estate  
71           broker for a buyer, seller, lessor or lessee of real property;

72           (2) Bringing together parties interested in the sale,  
73           purchase, lease, rental or exchange of real property;

74           (3) Negotiating, on behalf of any party, any portion of a  
75           contract relating to the sale, purchase, lease, rental or  
76           exchange of real property other than in connection with  
77           providing financing with respect to any such transaction;

78           (4) Engaging in any activity for which a person engaged  
79           in the activity is required to be registered or licensed as a real  
80           estate agent or real estate broker under any applicable law;  
81           and

82           (5) Offering to engage in any activity, or act in any  
83           capacity, described in subsection (1), (2), (3) or (4) of this  
84           section;

85           (j) “Nationwide Mortgage Licensing System and  
86           Registry” means a mortgage licensing system developed and  
87           maintained by the Conference of State Bank Supervisors and  
88           the American Association of Residential Mortgage Regulators  
89           for the licensing and registration of mortgage brokers and  
90           lenders licensed pursuant to article seventeen of this chapter  
91           and mortgage loan originators licensed pursuant to this  
92           article;

93 (k) “Nontraditional mortgage product” means any  
94 mortgage product other than a fixed rate mortgage;

95 (l) “Person” means a natural person, corporation, company,  
96 limited liability company, partnership or association;

97 (m) “Registered mortgage loan originator” means any  
98 individual who:

99 (1) Meets the definition of mortgage loan originator and  
100 is an employee of:

101 (A) A depository institution;

102 (B) A subsidiary that is:

103 (i) Owned and controlled by a depository institution; and

104 (ii) Regulated by a federal banking agency; or

105 (C) An institution regulated by the Farm Credit  
106 Administration; and

107 (2) Is registered with, and maintains a unique identifier  
108 through, the Nationwide Mortgage Licensing System and  
109 Registry;

110 (n) “Residential mortgage loan” means any loan  
111 primarily for personal, family or household use that is  
112 secured by a mortgage, deed of trust or other equivalent  
113 consensual security interest on a dwelling as defined in  
114 Section 103(v) of the Truth in Lending Act or residential real  
115 estate upon which is constructed or intended to be  
116 constructed a dwelling;

117 (o) “Residential real estate” means any real property  
118 located in West Virginia, upon which is constructed or  
119 intended to be constructed a dwelling; and

120 (p) “Unique identifier” means a number or other  
121 identifier assigned by protocols established by the  
122 Nationwide Mortgage Licensing System and Registry.

**§31-17A-3. License and registration required.**

1 (a) An individual, unless specifically exempted under  
2 subsection (c) of this section, shall not engage in the business  
3 of a mortgage loan originator with respect to any dwelling  
4 located in this state without first obtaining and maintaining  
5 annually a license under this article. Each licensed mortgage  
6 loan originator must register with and maintain a valid unique  
7 identifier issued by the Nationwide Mortgage Licensing  
8 System and Registry. A Mortgage loan originator licensed  
9 under this article may be employed by, or under contract to  
10 provide mortgage loan originator services for, only one entity  
11 licensed or exempt from licensing under article seventeen of  
12 this chapter at any time.

13 (b) To facilitate an orderly transition to licensing and  
14 minimize disruption in the mortgage marketplace, the  
15 effective date for subsection (a) of this section:

16 (1) For all individuals other than individuals described in  
17 subdivision (2) of this subsection shall be January 31, 2010;  
18 and

19 (2) For all individuals licensed as mortgage loan  
20 originators before July 1, 2009, shall be January 1, 2011.

21 (c) The following are exempt from this article:

22 (1) Registered Mortgage Loan Originators, when acting  
23 for an entity described in subdivision (11), section two of this  
24 article;

25 (2) Any individual who offers or negotiates terms of a  
26 residential mortgage loan with or on behalf of an immediate  
27 family member of the individual;

28           (3) Any individual who offers or negotiates terms of a  
29 residential mortgage loan secured by a dwelling that served  
30 as the individual's residence; and

31           (4) A licensed attorney who negotiates the terms of a  
32 residential mortgage loan on behalf of a client as an ancillary  
33 matter to the attorney's representation of the client, unless the  
34 attorney is compensated by a lender, a mortgage broker or  
35 other mortgage loan originator or by any agent of such  
36 lender, mortgage broker or other mortgage loan originator.

37           (d) A loan processor or underwriter who is an  
38 independent contractor may not engage in the activities of a  
39 loan processor or underwriter unless such independent  
40 contractor loan processor or underwriter obtains and  
41 maintains a license under subsection (a) of this section. Each  
42 independent contractor loan processor or underwriter licensed  
43 as a mortgage loan originator must have and maintain a valid  
44 unique identifier issued by the Nationwide Mortgage  
45 Licensing System and Registry.

46           (e) To implement an orderly and efficient licensing and  
47 transition process, the commissioner may establish interim  
48 policies and procedures for licensing and acceptance of  
49 applications as follows:

50           (1) Mortgage loan originators employed by or under  
51 exclusive contract to licensed mortgage brokers after the  
52 effective date of this article shall submit an application on a  
53 form prescribed by the commissioner, including all necessary  
54 information, fees and authorizations for investigation as the  
55 commissioner may determine necessary, and must meet the  
56 standards for licensure set forth in this article. Any license  
57 issued under this subdivision and any license current as of the  
58 effective date of this article will expire on December 31,  
59 2010: *Provided*, That notwithstanding the licensing  
60 requirements under this section, an individual acting

61 exclusively as an employee of a servicer who is engaging in  
62 loss mitigation efforts with respect to an existing mortgage  
63 transaction serviced by his or her employer is not required to  
64 meet the education, testing, background and licensing  
65 standards of this article until July 1, 2011, to the extent that  
66 this extension of time is not denied by guideline, rule,  
67 regulation or interpretive letter issued by the United States  
68 Department of Housing and Urban Development. In the  
69 event this extension of time is denied, such individuals shall  
70 apply for a license under this section within ninety days of  
71 the denial; and

72 (2) Mortgage loan originators employed by or under  
73 exclusive contract to licensed mortgage lenders and regulated  
74 consumer lenders shall comply with this article and submit  
75 all applications through the Nationwide Mortgage Licensing  
76 System and Registry on or before January 31, 2010.

#### **§31-17A-4. State license application and issuance.**

1 (a) Applicants for a license must apply in a form as  
2 prescribed by the commissioner. Each form shall contain  
3 content as set forth by instruction or procedure of the  
4 commissioner and may be changed or updated as necessary by  
5 the commissioner in order to carry out the purposes of this  
6 article. The application must be submitted with an application  
7 fee of \$50 plus the actual cost of fingerprint processing,  
8 together with any processing fee assessed by the Nationwide  
9 Mortgage Licensing System and Registry. The commissioner  
10 may elect to reduce or waive the application fees for mortgage  
11 loan originators employed by bona fide nonprofit organizations  
12 or other community housing development organizations that  
13 serve the housing needs of households or persons below the  
14 HUD-established median income for their area of residence.  
15 Any waiver of fees or other costs under this paragraph shall  
16 not be construed as a waiver of the duty to comply with all  
17 other provisions of this article.

18 (b) The commissioner is authorized to establish  
19 relationships or contracts with the Nationwide Mortgage  
20 Licensing System and Registry or other entities designated by  
21 the Nationwide Mortgage Licensing System and Registry to  
22 collect and maintain records and process transaction fees or  
23 other fees related to licensees or other persons subject to this  
24 article.

25 (c) In connection with an application for licensing as a  
26 mortgage loan originator, the applicant shall, at a minimum,  
27 furnish to the Nationwide Mortgage Licensing System and  
28 Registry information concerning the applicant's identity,  
29 including:

30 (1) Fingerprints for submission to the Federal Bureau of  
31 Investigation and any governmental agency or entity  
32 authorized to receive such information for a state, national  
33 and international criminal history background check; and

34 (2) Personal history and experience in a form prescribed  
35 by the Nationwide Mortgage Licensing System and Registry  
36 and the commissioner, including the submission of  
37 authorization for the Nationwide Mortgage Licensing System  
38 and Registry and the commissioner to obtain:

39 (A) An independent credit report obtained from a  
40 consumer reporting agency described in Section 603(p) of the  
41 Fair Credit Reporting Act; and

42 (B) Information related to any administrative, civil or  
43 criminal findings by any governmental jurisdiction.

44 (d) To reduce the points of contact which the Federal  
45 Bureau of Investigation may have to maintain, the  
46 commissioner may use the Nationwide Mortgage Licensing  
47 System and Registry or its designated vendor as a channeling  
48 agent for requesting information from and distributing

49 information to the Department of Justice or any governmental  
50 agency.

51 (e) To reduce the points of contact which the  
52 commissioner may have to maintain, the commissioner may  
53 use the Nationwide Mortgage Licensing System and Registry  
54 as a channeling agent for requesting and distributing  
55 information to and from any source so directed by the  
56 commissioner.

57 (f) Nonresident mortgage loan originators licensed under  
58 this article by their acceptance of the license acknowledge  
59 that they are subject to the jurisdiction of the courts of West  
60 Virginia and the service of process pursuant to section one  
61 hundred thirty-seven, article two, chapter forty-six-a of this  
62 code and section thirty-three, article three, chapter fifty-six of  
63 this code.

64 (g) The Commissioner may grant a provisional license to  
65 a mortgage loan originator who has met all other  
66 requirements for licensing under this article but: (1) has not  
67 passed a test regarding West Virginia mortgage laws and  
68 regulations required for licensure: *Provided*, That the  
69 provisionally licensed mortgage loan originator takes and  
70 passes that test within sixty days of the test becoming  
71 available; or (2) for whom the Commissioner has not  
72 received the results of a criminal background check despite  
73 the good faith effort of the applicant to provide in a timely  
74 manner the information necessary to obtain a criminal  
75 background check.

**§31-17A-6. Prelicensing and relicensing education of loan  
originators.**

1 (a) To meet the prelicensing education requirement, a  
2 person must complete at least twenty-two hours of education  
3 approved in accordance with subsection (b) of this section,  
4 which shall include at least:

- 5           (1) Three hours of federal law and regulations;
- 6           (2) Three hours of ethics, which shall include instruction  
7 on fraud, consumer protection and fair lending issues;
- 8           (3) Two hours of training related to lending standards for  
9 the nontraditional mortgage product marketplace; and
- 10          (4) Two hours of training related to West Virginia  
11 mortgage and consumer laws or issues.
- 12          (b) For purposes of subsection (a) of this section,  
13 prelicensing education courses shall be reviewed and  
14 approved by the Nationwide Mortgage Licensing System and  
15 Registry or the Division based upon reasonable standards.  
16 Review and approval of a prelicensing education course shall  
17 include review and approval of the course provider.
- 18          (c) Nothing in this section precludes any prelicensing  
19 education course, as approved by the Nationwide Mortgage  
20 Licensing System and Registry or the Division, that is  
21 provided by the employer of the applicant or an entity which  
22 is affiliated with the applicant by an agency contract, or any  
23 subsidiary or affiliate of such employer or entity.
- 24          (d) Prelicensing education may be offered either in a  
25 classroom, online or by any other means approved by the  
26 Nationwide Mortgage Licensing System and Registry.
- 27          (e) The prelicensing education requirements approved by  
28 the Nationwide Mortgage Licensing System and Registry or  
29 the Division in subdivisions (1), (2) and (3) subsection (a) of  
30 this section for any state shall be accepted as credit towards  
31 completion of prelicensing education requirements in West  
32 Virginia.
- 33          (f) A person previously licensed under this article  
34 subsequent to July 1, 2009, applying to be licensed again



35 must prove that they have completed all of the continuing  
36 education requirements for the year in which the license was  
37 last held.

**§31-17A-9. Continuing education for mortgage loan originators.**

1 (a) To meet the annual continuing education  
2 requirements, a licensed mortgage loan originator must  
3 complete at least eight hours of education approved in  
4 accordance with subsection (b) of this section, which shall  
5 include at least:

6 (1) Three hours of federal law and regulations;

7 (2) Two hours of ethics, which shall include instruction  
8 on fraud, consumer protection and fair lending issues;

9 (3) Two hours of training related to lending standards for  
10 the nontraditional mortgage product marketplace; and

11 (4) One hour of West Virginia law or regulations.

12 (b) For purposes of subsection (a) of this section,  
13 continuing education courses shall be reviewed and approved  
14 by the Nationwide Mortgage Licensing System and Registry  
15 or the Division based upon reasonable standards. Review  
16 and approval of a continuing education course shall include  
17 review and approval of the course provider.

18 (c) Nothing in this section precludes any education  
19 course, as approved by the Nationwide Mortgage Licensing  
20 System and Registry, that is provided by the employer of the  
21 mortgage loan originator or an entity which is affiliated with  
22 the mortgage loan originator by an agency contract, or any  
23 subsidiary or affiliate of the employer or entity.

24 (d) Continuing education may be offered either in a  
25 classroom, online or by any other means approved by the  
26 Nationwide Mortgage Licensing System and Registry.

27 (e) A licensed mortgage loan originator:

28 (1) Except for subsection (b), section eight of this article  
29 and subsection (i) of this section, may only receive credit for  
30 a continuing education course in the year in which the course  
31 is taken; and

32 (2) May not take the same approved course in the same  
33 or successive years to meet the annual requirements for  
34 continuing education.

35 (f) A licensed mortgage loan originator who is an  
36 approved instructor of an approved continuing education  
37 course may receive credit for the licensed mortgage loan  
38 originator's own annual continuing education requirement at  
39 the rate of two hours credit for every one hour taught.

40 (g) A person having successfully completed the education  
41 requirements approved by the Nationwide Mortgage  
42 Licensing System and Registry in subdivisions (1), (2) and  
43 (3), subsection (a) of this section for any state shall be  
44 accepted as credit towards completion of continuing  
45 education requirements in West Virginia.

46 (h) A licensed mortgage loan originator who  
47 subsequently becomes unlicensed must complete the  
48 continuing education requirements for the last year in which  
49 the license was held prior to issuance of a new or renewed  
50 license.

51 (i) A person meeting the renewal requirements of  
52 subsections (a)(1) and (3) of section eight may make up any  
53 deficiency in continuing education as established by the  
54 commissioner.

**§31-17A-12. Enforcement authorities, violations and penalties.**

1           (a) To ensure the effective supervision and enforcement  
2 of this article, the commissioner may:

3           (1) Deny, suspend, revoke, condition or decline to renew  
4 a license issued under this article for a violation of this article  
5 or rules or order or directive entered under this article;

6           (2) Deny, suspend, revoke, condition or decline to renew  
7 a license if an applicant or licensee fails at any time to meet  
8 the requirements of section five or eight of this article, or  
9 withholds information or makes a material misstatement in an  
10 application for a license or renewal of a license;

11          (3) Order restitution against persons subject to this article  
12 for violations of this article;

13          (4) Impose civil administrative penalties on persons  
14 subject to this article pursuant to subsections (b), (c) and (d)  
15 of this section; and

16          (5) Issue orders or directives under this article as follows:

17           (A) Order or direct persons subject to this article to cease  
18 and desist from conducting business, including immediate  
19 temporary orders to cease and desist;

20           (B) Order or direct persons subject to this article to cease  
21 any harmful activities or violations of this article, including  
22 immediate temporary orders to cease and desist;

23           (C) Enter immediate temporary orders to cease business  
24 under a license or interim license issued pursuant to the  
25 authority granted under section three if the commissioner  
26 determines that such license was erroneously issued or the  
27 licensee is currently in violation of this article; and

28           (D) Order or direct such other affirmative action as the  
29 commissioner deems necessary.

30 (b) The commissioner may impose a civil administrative  
31 penalty on a mortgage loan originator or person subject to  
32 this article if the commissioner finds, on the record after  
33 notice and opportunity for hearing, that such mortgage loan  
34 originator or person subject to this article has violated or  
35 failed to comply with any requirement of this article or any  
36 rule prescribed by the commissioner under this article or  
37 order issued under authority of this article.

38 (c) The maximum amount of penalty for each act or  
39 omission described in subsection (b) of this section shall be  
40 \$25,000.

41 (d) Each violation or failure to comply with any directive  
42 or order of the commissioner is a separate and distinct  
43 violation or failure.

44 (e) If the commissioner takes any enforcement action  
45 under this article, he or she shall enter an order to that effect  
46 and shall cause a copy of that order to be served in person or  
47 by certified mail, return receipt requested, or in any other  
48 manner in which process in a civil action in this state may be  
49 served, on the applicant or licensee. The commissioner shall  
50 also submit a copy of the order for publication in the  
51 Nationwide Mortgage Licensing System and Registry when  
52 that functionality of the system becomes available. An  
53 applicant or licensee adversely affected by an order may  
54 request an appeal and shall be provided a hearing as provided  
55 in section fourteen, article seventeen of this chapter.

**§31-17A-13. Surety bond required.**

1 (a) Each mortgage loan originator must be covered by a  
2 surety bond in accordance with this section in favor of the  
3 state for the benefit of consumers or for a claim by the  
4 commissioner for an unpaid civil administrative penalty or  
5 unpaid examination invoice. If the mortgage loan originator

6 is an employee or exclusive agent of a person subject to this  
7 article, article seventeen of this chapter, or article four,  
8 chapter forty-six-a of this code, the surety bond of that person  
9 may be used in lieu of the mortgage loan originator's  
10 individual surety bond requirement. Any person not subject  
11 to licensing as a mortgage lender or broker under article  
12 seventeen, chapter thirty-one of this code or article four,  
13 chapter forty-six-a of this code that employs a mortgage loan  
14 originator licensed under this article may elect to register  
15 with the Nationwide Mortgage Licensing System and  
16 Registry and provide a surety bond in the appropriate amount  
17 for the mortgage loan originator employed.

18 (1) The surety bond must provide coverage for each  
19 mortgage loan originator in an amount as prescribed in  
20 subsection (b) of this section.

21 (2) The surety bond shall be in a form as prescribed by  
22 the commissioner.

23 (3) The commissioner may promulgate rules with respect  
24 to the requirements for such surety bonds as are necessary to  
25 accomplish the purposes of this article.

26 (b) The penal sum of the surety bond shall be maintained  
27 in an amount as required by article seventeen of this chapter  
28 for licensed mortgage lenders and brokers or article four,  
29 chapter forty-six-a of this code for regulated consumer  
30 lenders.

31 (c) When an action is commenced on a licensee's bond or  
32 any bond covering the activities of a licensee under this  
33 article, the commissioner may require the filing of a new  
34 bond.

35 (d) Immediately upon recovery upon any action on a  
36 bond covering any licensee under this article, a new bond  
37 shall be filed.

38 (e) The commissioner may elect to reduce or waive the  
39 bond amounts imposed by this section for mortgage loan  
40 originators employed by bona fide nonprofit corporations or  
41 other bona fide nonprofit business entities, including  
42 community housing development organizations, or any  
43 agency or instrumentality of this state, federal, county or  
44 municipal government whose residential mortgage lending or  
45 brokering activities provide housing primarily to households  
46 or persons below the HUD-established median income for  
47 their area of residence if the commissioner determines that a  
48 reduction or waiver would not violate any applicable law.  
49 Any waiver of fees or other costs under this paragraph shall  
50 not be construed as a waiver of the duty to comply with all  
51 other provisions of this article.

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## CHAPTER 14

**(Com. Sub. for H. B. 4630 - By Delegates  
J. Miller and Andes)**

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[Passed March 12, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §31-17-8 of the Code of West Virginia, 1931, as amended, relating to refunding of appraisal fees collected by lenders, brokers and mortgage loan originators licensed by the Commissioner of Banking; providing that in the event a loan is not made, the licensee is not required to refund an appraisal fee that is collected and paid to an unrelated third-party appraiser unless required to be refunded pursuant to federal law.

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

That §31-17-8 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.**

**§31-17-8. Maximum interest rate on subordinate loans;  
prepayment rebate; maximum points, fees and  
charges; overriding of federal limitations;  
limitations on lien documents; prohibitions on  
primary and subordinate mortgage loans; civil  
remedy.**

1 (a) The maximum rate of finance charges on or in  
2 connection with any subordinate mortgage loan may not  
3 exceed eighteen percent per year on the unpaid balance of the  
4 amount financed.

5 (b) A borrower shall have the right to prepay his or her  
6 debt, in whole or in part, at any time and shall receive a  
7 rebate for any unearned finance charge, exclusive of any  
8 points, investigation fees and loan origination fees, which  
9 rebate shall be computed under the actuarial method.

10 (c) Except as provided by section one hundred nine,  
11 article three, chapter forty-six-a of this code and by  
12 subsection (g) of this section, no additional charges may be  
13 made, nor may any charge permitted by this section be  
14 assessed unless the loan is made: *Provided*, That in the event  
15 the loan is not made, the licensee is not required to refund an  
16 appraisal fee that is collected from a loan applicant by the  
17 licensee and paid to an unrelated third-party appraiser unless  
18 the fee is required to be refunded pursuant to federal law.

19 (d) Where loan origination fees, investigation fees or  
20 points have been charged by the licensee, the charges may  
21 not be imposed again in any refinancing of that loan or any

22 additional loan on that property made within twenty-four  
23 months thereof, unless the new loan has a reasonable,  
24 tangible net benefit to the borrower considering all of the  
25 circumstances, including the terms of both the new and the  
26 refinanced loans, the cost of the new loan and the borrower's  
27 circumstances. The licensee shall document this benefit in  
28 writing on a form prescribed by the commissioner and  
29 maintain such documentation in the loan file. To the extent  
30 this subdivision overrides the preemption on limiting points  
31 and other charges on first lien residential mortgage loans  
32 contained in the United States Depository Institutions  
33 Deregulation and Monetary Control Act of 1980, 12 U.S.C.  
34 §1735f-7a, the state law limitations contained in this section  
35 shall apply.

36 (e) Notwithstanding other provisions of this section, a  
37 delinquent charge or "late charge" may be charged on any  
38 installment made ten or more days after the regularly  
39 scheduled due date in accordance with section one hundred  
40 twelve or one hundred thirteen, article three, chapter forty-  
41 six-a of this code, whichever is applicable. The charge may  
42 be made only once on any one installment during the term of  
43 the primary or subordinate mortgage loan.

44 (f) Hazard insurance may be required by the lender. The  
45 charges for any insurance shall not exceed the standard rate  
46 approved by the Insurance Commissioner for the insurance.  
47 Proof of all insurance in connection with primary and  
48 subordinate mortgage loans subject to this article shall be  
49 furnished to the borrower within thirty days from and after  
50 the date of application therefor by the borrower.

51 (g) Except for fees for services provided by unrelated  
52 third parties for appraisals, inspections, title searches and  
53 credit reports, no application fee may be allowed whether or  
54 not the mortgage loan is consummated; however, the  
55 borrower may be required to reimburse the licensee for actual



56 expenses incurred by the licensee in a purchase money  
57 transaction after acceptance and approval of a mortgage loan  
58 proposal made in accordance with the provisions of this  
59 article which is not consummated because of:

60 (1) The borrower's willful failure to close the loan; or

61 (2) The borrower's false or fraudulent representation of  
62 a material fact which prevents closing of the loan as  
63 proposed.

64 (h) No licensee shall make, offer to make, accept or offer  
65 to accept any primary or subordinate mortgage loan except  
66 on the terms and conditions authorized in this article.

67 (i) No licensee shall induce or permit any borrower to  
68 become obligated to the licensee under this article, directly or  
69 contingently, or both, under more than one subordinate  
70 mortgage loan at the same time for the purpose or with the  
71 result of obtaining greater charges than would otherwise be  
72 permitted under the provisions of this article.

73 (j) No instrument evidencing or securing a primary or  
74 subordinate mortgage loan shall contain:

75 (1) Any power of attorney to confess judgment;

76 (2) Any provision whereby the borrower waives any  
77 rights accruing to him or her under the provisions of this  
78 article;

79 (3) Any requirement that more than one installment be  
80 payable in any one installment period, or that the amount of  
81 any installment be greater or less than that of any other  
82 installment, except for the final installment which may be in  
83 a lesser amount, or unless the loan is structured as a  
84 revolving line of credit having no set final payment date;

85           (4) Any assignment of or order for the payment of any  
86 salary, wages, commissions or other compensation for  
87 services, or any part thereof, earned or to be earned;

88           (5) A requirement for compulsory arbitration which does  
89 not comply with federal law; or

90           (6) Blank or blanks to be filled in after the consummation  
91 of the loan. A borrower must be given a copy of every  
92 signed document executed by the borrower at the time of  
93 closing.

94           (k) No licensee shall charge a borrower or receive from  
95 a borrower money or other valuable consideration as  
96 compensation before completing performance of all services  
97 the licensee has agreed to perform for the borrower unless the  
98 licensee also registers and complies with all requirements set  
99 forth for credit service organizations in article six-c, chapter  
100 forty-six-a of this code, including all additional bonding  
101 requirements as may be established therein.

102           (l) No licensee shall make or broker revolving loans  
103 secured by a primary or subordinate mortgage lien for the  
104 retail purchase of consumer goods and services by use of a  
105 lender credit card.

106           (m) In making any primary or subordinate mortgage loan,  
107 no licensee may, and no primary or subordinate mortgage  
108 lending transaction may, contain terms which:

109           (1) Collect a fee not disclosed to the borrower; collect  
110 any attorney fee at closing in excess of the fee that has been  
111 or will be remitted to the attorney; collect a fee for a product  
112 or service where the product or service is not actually  
113 provided; misrepresent the amount charged by or paid to a  
114 third party for a product or service; or collect duplicate fee or  
115 points to act as both broker and lender for the same mortgage

116 loan, however, fees and points may be divided between the  
117 broker and the lender as they agree, but may not exceed the  
118 total charges otherwise permitted under this article:  
119 *Provided*, That the fact of any fee, point or compensation is  
120 disclosed to the borrower consistent with the solicitation  
121 representation made to the borrower;

122 (2) Compensate, whether directly or indirectly, coerce or  
123 intimidate an appraiser for the purpose of influencing the  
124 independent judgment of the appraiser with respect to the  
125 value of real estate that is to be covered by a deed of trust or  
126 is being offered as security according to an application for a  
127 primary or subordinate mortgage loan;

128 (3) Make or assist in making any primary or subordinate  
129 mortgage loan with the intent that the loan will not be repaid  
130 and that the lender will obtain title to the property through  
131 foreclosure: *Provided*, That this subdivision shall not apply  
132 to reverse mortgages obtained under the provisions of article  
133 twenty-four, chapter forty-seven of this code;

134 (4) Require the borrower to pay, in addition to any  
135 periodic interest, combined fees, compensation, or points of  
136 any kind to the lender and broker to arrange, originate,  
137 evaluate, maintain or service a loan secured by any  
138 encumbrance on residential property that exceed, in the  
139 aggregate, six percent of the loan amount financed, including  
140 any yield spread premium paid by the lender to the broker:  
141 *Provided*, That reasonable closing costs, as defined in section  
142 one hundred two, article one, chapter forty-six-a of this code,  
143 payable to unrelated third parties may not be included within  
144 this limitation: *Provided, however*, That no yield spread  
145 premium is permitted for any loan for which the annual  
146 percentage rate exceeds eighteen percent per year on the  
147 unpaid balance of the amount financed: *Provided further*,  
148 That if no yield spread premium is charged, the aggregate of  
149 fees, compensation or points can be no greater than five

150 percent of the loan amount financed. The financing of the  
151 fees and points are permissible and, where included as part of  
152 the finance charge, does not constitute charging interest on  
153 interest. To the extent that this section overrides the  
154 preemption on limiting points and other charges on first lien  
155 residential mortgage loans contained in the United States  
156 Depository Institutions Deregulation and Monetary Control  
157 Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations  
158 contained in this section applies;

159 (5) Secure a primary or subordinate mortgage loan by any  
160 security interest in personal property unless the personal  
161 property is affixed to the residential dwelling or real estate;

162 (6) Allow or require a primary or subordinate mortgage  
163 loan to be accelerated because of a decrease in the market  
164 value of the residential dwelling that is securing the loan;

165 (7) Require terms of repayment which do not result in  
166 continuous monthly reduction of the original principal  
167 amount of the loan: *Provided*, That the provisions of this  
168 subdivision may not apply to reverse mortgage loans  
169 obtained under article twenty-four, chapter forty-seven of this  
170 code, home equity, open-end lines of credit, bridge loans  
171 used in connection with the purchase or construction of a new  
172 residential dwelling or commercial loans for multiple  
173 residential purchases;

174 (8) Secure a primary or subordinate mortgage loan in a  
175 principal amount that, when added to the aggregate total of  
176 the outstanding principal balances of all other primary or  
177 subordinate mortgage loans secured by the same property,  
178 exceeds the fair market value of the property on the date that  
179 the latest mortgage loan is made. For purposes of this  
180 paragraph, a broker or lender may rely upon a bona fide  
181 written appraisal of the property made by an independent  
182 third-party appraiser, duly licensed or certified by the West

183 Virginia real estate appraiser licensing and certification board  
184 and prepared in compliance with the uniform standards of  
185 professional appraisal practice;

186 (9) Advise or recommend that the consumer not make  
187 timely payments on an existing loan preceding loan closure  
188 of a refinancing transaction; or

189 (10) Knowingly violate any provision of any other  
190 applicable state or federal law regulating primary or  
191 subordinate mortgage loans, including, without limitation,  
192 chapter forty-six-a of this code.



## CHAPTER 15

**(Com. Sub. for H. B. 4291 - By Delegates Moore,  
Walters, Reynolds and Azinger)**

[Passed March 9, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §31A-2-4 of the Code of West Virginia, 1931, as amended, relating to criminal background investigations for applicants seeking approval to engage in certain banking activities under the jurisdiction of the Commissioner of Banking; eliminating the requirement that the investigations be done through both the West Virginia State Police and the Federal Bureau of Investigation; providing that applicants provide fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national or international criminal history check.

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

That §31A-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 2. DIVISION OF BANKING.**

### **§31A-2-4. Jurisdiction of commissioner; powers, etc., of division transferred to commissioner; powers and duties of commissioner.**

1           (a) Subject to the powers vested in the board by article  
2 three of this chapter, the commissioner has supervision and  
3 jurisdiction over state banks, regulated consumer lenders,  
4 residential mortgage lenders and brokers licensed pursuant to  
5 article seventeen, chapter thirty-one of this code, credit  
6 unions and all other persons now or hereafter made subject to  
7 his or her supervision or jurisdiction. All powers, duties,  
8 rights and privileges vested in the division are hereby vested  
9 in the commissioner. He or she shall be the chief executive  
10 officer of the Division of Banking and is responsible for the  
11 division's organization, services and personnel and for the  
12 orderly and efficient administration, enforcement and  
13 execution of the provisions of this chapter and all laws  
14 vesting authority or powers in or prescribing duties or  
15 functions for the division or the commissioner.

16           (b) The commissioner shall:

17           (1) Maintain an office for the division and there keep a  
18 complete record of all the division's transactions, of the  
19 financial conditions of all financial institutions and records of  
20 the activities of other persons as the commissioner considers  
21 important. Notwithstanding any other provision of this code,  
22 heretofore or hereafter enacted, the records relating to the  
23 financial condition of any financial institution and any  
24 information contained in the records shall be confidential for

25 the use of the commissioner and authorized personnel of the  
26 Division of Banking. No person shall divulge any information  
27 contained in any records except as authorized in this  
28 subdivision in response to a valid subpoena or subpoena  
29 duces tecum issued pursuant to law in a criminal proceeding  
30 or in a civil enforcement action brought by the state or  
31 federal regulatory authorities. Subpoenas shall first be  
32 directed to the commissioner, who shall authorize disclosure  
33 of relevant records and information from the records for good  
34 cause, upon imposing terms and conditions considered necessary  
35 to protect the confidential nature of the records, the financial  
36 integrity of the financial institution or the person to which the  
37 records relate, and the legitimate privacy interests of any  
38 individual named in the records. Conformity with federal  
39 procedures shall be sought where the institution maintains  
40 federal deposit insurance. The commissioner has and may  
41 exercise reasonable discretion as to the time, manner and  
42 extent the other records in his or her office and the  
43 information contained in the records are available for public  
44 examination;

45 (2) Require all financial institutions to comply with all  
46 the provisions of this chapter and other applicable laws, or  
47 any rule promulgated or order issued thereunder;

48 (3) Investigate all alleged violations of this chapter and  
49 all other laws which he or she is required to enforce and of  
50 any rule promulgated or order issued thereunder; and

51 (4) Require a criminal background investigation,  
52 including requiring fingerprints for submission to the Federal  
53 Bureau of Investigation or any governmental agency or entity  
54 authorized to receive such information for a state, national or  
55 international criminal history check, of each: (A) Applicant  
56 seeking approval to charter and/or control a state bank, state  
57 credit union, or a foreign bank state agency or representative  
58 office; (B) applicant seeking a license to engage in the

59 business of money transmission, currency exchange, or other  
60 activity regulated under article two, chapter thirty-two-a of  
61 this code; (C) applicant subject to the commissioner's  
62 supervision seeking a license to engage in the business of  
63 regulated consumer lending, mortgage lending or brokering;  
64 and (D) Division of Banking financial institutions regulatory  
65 employee applicant: *Provided*, That where the applicant is a  
66 company or entity already subject to supervision and  
67 regulation by the federal reserve board or other federal bank,  
68 thrift or credit union regulator, or is a direct or indirect  
69 subsidiary of a company or entity subject to the supervision  
70 and regulation, or where the applicant is a company subject  
71 to the supervision and regulation of the federal securities and  
72 exchange commission whose stock is publicly traded on a  
73 registered exchange or through the national association of  
74 securities dealers automated quotation system, or the  
75 applicant is a direct or indirect subsidiary of such a company,  
76 the investigation into criminal background is not required.  
77 The provisions of this subdivision are not applicable to  
78 applicants seeking interim bank charters organized solely for  
79 the purpose of facilitating the acquisition of another bank  
80 pursuant to section five, article four of this chapter:  
81 *Provided, however*, That where a nonexempt applicant under  
82 this subdivision is not a natural person, the principals of the  
83 applicant are subject to the requirements of this subdivision.  
84 As used in this subdivision, the term "principals" means the  
85 chief executive officer, regardless of title, managing partner  
86 if a partnership, members of the organizing group if no chief  
87 executive officer has yet been appointed, trustee or other  
88 person controlling the conduct of the affairs of a licensee. A  
89 person controlling ten percent or more of the stock of any  
90 corporate applicant shall be considered to be a principal  
91 under this provision.

92 (c) In addition to all other authority and powers vested in  
93 the commissioner by provisions of this chapter and other  
94 applicable laws, the commissioner may:



95 (1) Provide for the organization of the division and the  
96 procedures and practices of the division and implement the  
97 procedures and practices by the promulgation of rules and  
98 forms as appropriate and the rules shall be promulgated in  
99 accordance with article three, chapter twenty-nine-a of this  
100 code;

101 (2) Employ, direct, discipline, discharge and establish  
102 qualifications and duties for all personnel for the division,  
103 including, but not limited to, examiners, assistant examiners,  
104 conservators and receivers, establish the amount and  
105 condition of bonds for the personnel he or she considers  
106 appropriate and pay the premiums on the bonds and, if he or  
107 she elects, have all personnel subject to and under the  
108 classified service of the state personnel division;

109 (3) Cooperate with organizations, agencies, committees  
110 and other representatives of financial institutions of the state  
111 in connection with schools, seminars, conferences and other  
112 meetings to improve the responsibilities, services and  
113 stability of the financial institutions;

114 (4) In addition to the examinations required by section six  
115 of this article, inspect, examine and audit the books, records,  
116 accounts and papers of all financial institutions at such times  
117 as circumstances in his or her opinion may warrant;

118 (5) Call for and require any data, reports and information  
119 from financial institutions under his or her jurisdiction, at  
120 such times and in such form, content and detail considered  
121 necessary by him or her in the faithful discharge of his or her  
122 duties and responsibilities in the supervision of the financial  
123 institutions;

124 (6) Subject to the powers vested in the board by article  
125 three of this chapter, supervise the location, organization,  
126 practices and procedures of financial institutions and, without

127 limitation on the general powers of supervision of financial  
128 institutions, require financial institutions to:

129 (A) Maintain their accounts consistent with rules  
130 prescribed by the commissioner and in accordance with  
131 generally accepted accounting practices;

132 (B) Observe methods and standards which he or she may  
133 prescribe for determining the value of various types of assets;

134 (C) Charge off the whole or any part of an asset which at  
135 the time of his or her action could not lawfully be acquired;

136 (D) Write down an asset to its market value;

137 (E) Record or file writings creating or evidencing liens or  
138 other interests in property;

139 (F) Obtain financial statements from prospective and  
140 existing borrowers;

141 (G) Obtain insurance against damage and loss to real  
142 estate and personal property taken as security;

143 (H) Maintain adequate insurance against other risks as he  
144 or she may determine to be necessary and appropriate for the  
145 protection of depositors and the public;

146 (I) Maintain an adequate fidelity bond or bonds on its  
147 officers and employees;

148 (J) Take other action that in his or her judgment is  
149 required of the institution in order to maintain its stability,  
150 integrity and security as required by law and all rules  
151 promulgated by him or her; and

152 (K) Verify any or all asset or liability accounts;

153           (7) Subject to the powers vested in the board by article  
154 three of this chapter, receive from any person or persons and  
155 consider any request, petition or application relating to the  
156 organization, location, conduct, services, policies and  
157 procedures of any financial institution and to act on the  
158 request, petition or application in accordance with any  
159 provisions of law applicable thereto;

160           (8) In connection with the investigations required by  
161 subdivision (3), subsection (b) of this section, issue  
162 subpoenas and subpoenas duces tecum, administer oaths,  
163 examine persons under oath, and hold and conduct hearings.  
164 Any subpoenas or subpoenas duces tecum shall be issued,  
165 served and enforced in the manner provided in section one,  
166 article five, chapter twenty-nine-a of this code. Any person  
167 appearing and testifying at a hearing may be accompanied by  
168 an attorney employed by him or her;

169           (9) Issue declaratory rulings in accordance with the  
170 provisions of section one, article four, chapter twenty-nine-a  
171 of this code;

172           (10) Study and survey the location, size and services of  
173 financial institutions, the geographic, industrial, economic  
174 and population factors affecting the agricultural, commercial  
175 and social life of the state and the needs for reducing,  
176 expanding or otherwise modifying the services and facilities  
177 of financial institutions in the various parts of the state and  
178 compile and keep current data thereon to aid and guide him  
179 or her in the administration of the duties of his or her office;

180           (11) Implement all of the provisions of this chapter,  
181 except the provisions of article three of this chapter, and all  
182 other laws which he or she is empowered to administer and  
183 enforce by the promulgation of rules in accordance with the  
184 provisions of article three, chapter twenty-nine-a of this code;

185           (12) Implement the provisions of chapter forty-six-a of  
186 this code applicable to consumer loans and consumer credit

187 sales by the promulgation of rules in accordance with the  
188 provisions of article three, chapter twenty-nine-a of this code  
189 as long as the rules do not conflict with any rules  
190 promulgated by the state's Attorney General;

191 (13) Foster and encourage a working relationship  
192 between the Division of Banking and financial institutions,  
193 credit, consumer, mercantile and other commercial and  
194 finance groups and interests in the state in order to make  
195 current appraisals of the quality, stability and availability of  
196 the services and facilities of financial institutions;

197 (14) Provide to financial institutions and the public copies  
198 of the West Virginia statutes relating to financial institutions,  
199 suggested drafts of bylaws commonly used by financial  
200 institutions and any other forms and printed materials found  
201 by him or her to be helpful to financial institutions, their  
202 shareholders, depositors and patrons and make reasonable  
203 charges for the copies;

204 (15) Delegate the powers and duties of his or her office,  
205 other than the powers and duties excepted in this subdivision,  
206 to qualified division personnel who shall act under the  
207 direction and supervision of the commissioner and for whose  
208 acts he or she is responsible, but the commissioner may  
209 delegate to the deputy commissioner of banking and to no  
210 other division personnel the following powers, duties and  
211 responsibilities, all of which are hereby granted to and vested  
212 in the commissioner and for all of which the commissioner  
213 also is responsible. The commissioner shall:

214 (A) Order any person to cease violating any provision or  
215 provisions of this chapter or other applicable law or any rule  
216 promulgated or order issued thereunder;

217 (B) Order any person to cease engaging in any unsound  
218 practice or procedure which may detrimentally affect any  
219 financial institution or depositor of the financial institution;

220 (C) Revoke the certificate of authority, permit or license  
221 of any financial institution except a banking institution in  
222 accordance with the provisions of section thirteen of this  
223 article; and

224 (D) Accept an assurance in writing that the person will  
225 not in the future engage in the conduct alleged by the  
226 commissioner to be unlawful, which could be subject to an  
227 order under the provisions of this chapter. This assurance of  
228 voluntary compliance shall not be considered an admission  
229 of violation for any purpose, except that if a person giving the  
230 assurance fails to comply with its terms, the assurance is  
231 prima facie evidence that prior to this assurance the person  
232 engaged in conduct described in the assurance;

233 (16) Seek and obtain civil administrative penalties against  
234 any person who violates this chapter, the rules issued  
235 pursuant to this chapter, or any orders lawfully entered by the  
236 commissioner or board of banking and financial institutions  
237 in an amount not more than five thousand dollars per day for  
238 each violation: *Provided*, That all of the pertinent provisions  
239 of article five, chapter twenty-nine-a of this code shall apply  
240 to any assessment of a penalty under this subsection;

241 (17) Receive from state banking institutions applications  
242 to change the locations of their principal offices and to  
243 approve or disapprove these applications;

244 (18) Expend funds in order to promote consumer  
245 awareness and understanding of issues related to residential  
246 mortgage lending; and

247 (19) Take other action as he or she may consider  
248 necessary to enforce and administer the provisions of this  
249 chapter, except the provisions of article three of this chapter,  
250 and all other laws which he or she is empowered to  
251 administer and enforce and apply to any court of competent  
252 jurisdiction for appropriate orders, writs, processes and  
253 remedies.

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**CHAPTER 16****(S. B. 381 - By Senators Minard, Jenkins,  
McCabe, Oliverio and Plymale)**

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[Passed March 9, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 18, 2010.]

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AN ACT to amend and reenact §31A-4-26 of the Code of West Virginia, 1931, as amended, relating to restrictions against the borrowing of money or the acceptance of credit by employees of the Division of Banking from institutions regulated by the division; clarifying and amending such restrictions; prohibiting the direct or indirect borrowing of any sum of money from a state chartered depository institution by an employee of the division who engages in certain review and regulatory activities with regard to state chartered depository institutions; prohibiting the direct or indirect borrowing of any sum of money from a state licensed nondepository institution by an employee of the division who engages in certain review and regulatory activities with regard to state licensed nondepository institutions; and prohibiting the commissioner, deputy commissioner and in-house counsel of the division from directly or indirectly borrowing any sum of money from any entity that is under the jurisdiction of the division.

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

That §31A-4-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES  
GENERALLY.****§31A-4-26. Limitation on loans and extensions of credit;  
limitation on investments; loans to executive  
officers and directors of banks and employees  
of the banking department; exceptions;  
valuation of securities.**

1           (a) (1) The total loans and extensions of credit made by  
2 a state-chartered banking institution to any one person or  
3 common enterprise and not fully secured, as determined in a  
4 manner consistent with subdivision (2) of this subsection,  
5 may not exceed fifteen percent of the unimpaired capital and  
6 unimpaired surplus of that state-chartered banking institution  
7 initially determined for the period such loan or extension of  
8 credit is made.

9           (2) Where the total loans and extensions of credit by a  
10 state- chartered banking institution to any one person or  
11 common enterprise are fully secured by readily marketable  
12 collateral having a market value, as determined by reliable  
13 and continuously available price quotations, at least equal to  
14 the outstanding amount of such loans and extensions, then  
15 the bank may provide such loans or extensions of up to ten  
16 percent of the unimpaired capital and unimpaired surplus of  
17 that state-chartered banking institution initially determined  
18 for the period such loan or extension is made. This limitation  
19 shall be separate from and in addition to the limitation  
20 contained in subdivision (1) of this subsection.

21           (3) For the purposes of this subsection:

22           (A) The term “loans and extensions of credit” includes all  
23 direct or indirect advances of funds to a person made on the  
24 basis of any obligation of that person to repay the funds or  
25 repayable from specific property pledged by or on behalf of

26 the person and to the extent specified by the Commissioner  
27 of Banking, the terms also include any liability of a  
28 state-chartered banking institution to advance funds to or on  
29 behalf of a person pursuant to a contractual commitment;

30 (B) The term “person” includes an individual,  
31 partnership, sole proprietorship, society, association, firm,  
32 institution, company, public or private corporation,  
33 not-for-profit corporation, state, governmental agency,  
34 bureau, department, division or instrumentality, political  
35 subdivision, county commission, municipality, trust,  
36 syndicate, estate or any other legal entity whatsoever,  
37 formed, created or existing under the laws of this state or any  
38 other jurisdiction;

39 (C) The term “unimpaired capital and unimpaired  
40 surplus” means the amount of total equity capital outstanding  
41 as indicated in the bank’s most recent quarterly report of  
42 condition and income as filed with the Commissioner of  
43 Banking pursuant to section nineteen of this article, plus the  
44 amount of the allowance for loan losses, minus the amount of  
45 goodwill or other nonmarketable intangible assets included  
46 in the quarterly report pursuant to generally accepted  
47 accounting principles. Unrealized gains and losses on the  
48 bank’s securities and loan portfolios shall be included in the  
49 calculation of total equity capital to the extent required by  
50 generally accepted accounting principles and applicable  
51 federal or state law, rule or regulation; and

52 (D) The term “common enterprise” includes, but is not  
53 limited to, persons and entities who are so related by business  
54 or otherwise that the expected source of repayment on the  
55 loan or extension of credit is substantially the same for each  
56 person or entity.

57 (4) The limitations contained in this subsection are  
58 subject to the following exceptions:



59           (A) Loans or extensions of credit arising from the  
60 discount of commercial or business paper evidencing an  
61 obligation to the person negotiating it with recourse are not  
62 subject to any limitation based on capital and surplus;

63           (B) The purchase of bankers' acceptances of the kind  
64 described in section thirteen of the Federal Reserve Act and  
65 issued by other banks are not subject to any limitation based  
66 on capital and surplus;

67           (C) Loans and extensions of credit having a term of ten  
68 months or less and secured by bills of lading, warehouse  
69 receipts or similar documents transferring or securing title to  
70 readily marketable staples are subject to a limitation of  
71 twenty percent of unimpaired capital and unimpaired surplus  
72 in addition to the general limitations set forth in subdivision  
73 (1) of this subsection, provided the market value of the  
74 staples securing each additional loan or extension of credit at  
75 all times equals or exceeds one hundred fifteen percent of the  
76 outstanding amount of such loan or extension of credit. The  
77 staples shall be fully covered by insurance whenever it is  
78 customary to insure the staples. If collateral values of the  
79 staples fall below the levels required herein, to the extent that  
80 the loan is no longer in conformance with its collateral  
81 requirements and exceeds the general fifteen percent  
82 limitation, the loan must be brought into conformance within  
83 five business days, except where judicial proceedings,  
84 regulatory actions or other extraordinary occurrences prevent  
85 the bank from taking action;

86           (D) Loans or extensions of credit secured by bonds,  
87 notes, certificates of indebtedness or Treasury bills of the  
88 United States or by other such obligations fully guaranteed as  
89 to principal and interest by the United States or by bonds,  
90 notes, certificates of indebtedness which are general  
91 obligations of the State of West Virginia or by other such  
92 obligations fully guaranteed as to principal and interest by the

93 State of West Virginia are not subject to any limitation based  
94 on capital and surplus;

95 (E) Loans or extensions of credit to or secured by  
96 unconditional takeout commitments or guarantees of any  
97 department, agency, bureau, board, commission or  
98 establishment of the United States or of the State of West  
99 Virginia or any corporation wholly owned directly or  
100 indirectly by the United States are not subject to any  
101 limitation based on capital and surplus;

102 (F) Loans or extensions of credit secured by a segregated  
103 deposit account in the lending bank are not subject to any  
104 limitation based on capital and surplus;

105 (G) Loans or extensions of credit to any banking  
106 institution or to any receiver, conservator or other agent in  
107 charge of the business and property of such banking  
108 institution or other federally insured depository institution,  
109 when the loans or extensions of credit are approved by the  
110 Commissioner of Banking, are not subject to any limitation  
111 based on capital and surplus;

112 (H) (i) Loans and extensions of credit arising from the  
113 discount of negotiable or nonnegotiable installment consumer  
114 paper which carries a full recourse endorsement or  
115 unconditional guarantee by the person or common enterprise  
116 transferring the paper are subject under this section to a  
117 maximum limitation equal to twenty-five percent of such  
118 unimpaired capital and unimpaired surplus, notwithstanding  
119 the collateral requirements set forth in subdivision (2) of this  
120 subsection;

121 (ii) If the bank's files or the knowledge of its officers of  
122 the financial condition of each maker of consumer paper is  
123 reasonably adequate and an officer of the bank designated for  
124 that purpose by the board of directors of the bank certifies in

125 writing that the bank is relying primarily upon the  
126 responsibility of each maker for payment of such loans or  
127 extensions of credit and not upon any full or partial recourse  
128 endorsement or guarantee by the transferor, the limitations of  
129 this section as to the loans or extensions of credit of each  
130 such maker are the sole applicable loan limitations;

131 (I) (i) Loans and extensions of credit secured by shipping  
132 documents or instruments transferring or securing title  
133 covering livestock or giving a lien on livestock when the  
134 market value of the livestock securing the obligation is not at  
135 any time less than one hundred fifteen percent of the face  
136 amount of the note covered shall be subject under this section  
137 to a maximum limitation equal to twenty-five percent of the  
138 unimpaired capital and unimpaired surplus, notwithstanding  
139 the collateral requirements set forth in subdivision (2) of this  
140 subsection;

141 (ii) Loans and extensions of credit which arise from the  
142 discount by dealers in livestock of paper given in payment for  
143 livestock, which paper carries a full recourse endorsement or  
144 unconditional guarantee of the seller and which are secured  
145 by the livestock being sold, are subject under this section to  
146 a limitation of twenty-five percent of the unimpaired capital  
147 and unimpaired surplus, notwithstanding the collateral  
148 requirements set forth in subdivision (2) of this subsection;

149 (iii) If collateral values of the livestock documents,  
150 instruments or discount paper fall below the levels required  
151 herein, to the extent that the loan is no longer in conformance  
152 with its collateral requirements and exceeds the general  
153 fifteen percent limitation, the loan must be brought into  
154 conformance within thirty business days, except where  
155 judicial proceedings, regulatory actions or other  
156 extraordinary occurrences prevent the bank from taking  
157 action;

158           (J) Loans or extensions of credit to the Student Loan  
159 Marketing Association are not subject to any limitation based  
160 on capital and surplus; and

161           (K) Loans or extensions of credit to a corporation owning  
162 the property in which that state-chartered banking institution  
163 is located, when that state-chartered banking institution has  
164 an unimpaired capital and surplus of not less than one million  
165 dollars or when approved in writing by the Commissioner of  
166 Banking, are not subject to any limitation based on capital  
167 and surplus.

168           (5) (A) The Commissioner of Banking may prescribe  
169 rules to administer and carry out the purposes of this  
170 subsection including rules to define or further define terms  
171 used in this subsection and to establish limits or requirements  
172 other than those specified in this subsection for particular  
173 classes or categories of loans or extensions of credit;

174           (B) The Commissioner of Banking may also prescribe  
175 rules to deal with loans or extensions of credit, which were  
176 not in violation of this section prior to the effective date of  
177 this article, but which will be in violation of this section upon  
178 the effective date of this article; and

179           (C) The Commissioner of Banking may also determine  
180 when a loan putatively made to a person is, for purposes of  
181 this subsection, attributed to another person.

182           (b) (1) Except as hereinafter provided or otherwise  
183 permitted by law, nothing herein contained authorizes the  
184 purchase by a state-chartered banking institution for its own  
185 account of any shares of stock of any corporation: *Provided,*  
186 That a state- chartered banking institution may purchase and  
187 sell securities and stock without recourse, solely upon the  
188 order and for the account of customers.

189           (2) The total amount of investment securities of any one  
190 obligor or maker held by a state-chartered banking institution  
191 for its own account may not exceed that percentage of the  
192 unimpaired capital and unimpaired surplus of that  
193 state-chartered banking institution as is permitted for  
194 investment by national banks or for any federally insured  
195 depository institution.

196           (3) For purposes of this subsection:

197           (A) The term “investment securities” means a marketable  
198 obligation in the form of a stock, bond, note or debenture  
199 commonly regarded as an investment security and that is  
200 salable under ordinary circumstances with reasonable  
201 promptness at a fair value. “Derivative security” means a  
202 type of investment security involving a financial contract  
203 whose value depends on the values of one or more  
204 underlying assets or indexes of asset values. The term  
205 “derivative” refers inter alia to financial contracts such as  
206 collateralized mortgage obligations (“CMOs”), forwards,  
207 futures, forward rate agreements, swaps, options and  
208 caps/floors/collars whose primary purpose is to transfer price  
209 risks associated with fluctuations in asset values;

210           (B) The term “person” includes any individual,  
211 partnership, sole proprietorship, society, association, firm,  
212 institution, company, public or private corporation,  
213 not-for-profit corporation, state, governmental agency,  
214 bureau, department, division or instrumentality, political  
215 subdivision, county commission, municipality, trust,  
216 syndicate, estate or any other legal entity whatsoever,  
217 formed, created or existing under the laws of this state or any  
218 other jurisdiction; and

219           (C) The term “unimpaired capital and unimpaired  
220 surplus” has the same meaning as set forth in subsection (a)  
221 of this section.

222 (4) Notwithstanding any other provision of this  
223 subsection, a state-chartered banking institution may invest  
224 its funds in any investment authorized for national banking  
225 associations or for any other federally insured depository  
226 institution. The investments by state-chartered banking  
227 institutions shall be on the same terms and conditions  
228 applicable to national banking associations or any other  
229 federally insured depository institution: *Provided, That:* (i)  
230 The purchase of investment securities under this subdivision  
231 may be made only when in the bank's prudent judgment,  
232 which judgment may be based in part on estimates which it  
233 believes to be reliable, there is adequate evidence that the  
234 obligor will be able to perform all it undertakes to perform in  
235 connection with the securities, including all debt service  
236 requirements, and that the securities may be sold with  
237 reasonable promptness at a price that corresponds to their fair  
238 value; and (ii) the purchase conforms to the requirement of  
239 subdivision (5) of this subsection. The Commissioner of  
240 Banking may, from time to time, provide notice to  
241 state-chartered banking institutions of authorized investments  
242 under this paragraph.

243 (5) The purchase of investment securities, including  
244 derivative securities, in which the investment characteristics  
245 are considered distinctly or predominantly speculative, or the  
246 purchase of such securities that are in default, whether as to  
247 principal or interest, is prohibited. The proper management  
248 of interest rate risk through the use of derivative or other  
249 investment securities may not be held a speculative purpose.

250 (6) The Commissioner of Banking may prescribe rules to  
251 administer and carry out the purposes of this subsection,  
252 including rules to define or further define terms used in this  
253 subsection and to establish limits or requirements other than  
254 those specified in this subsection for particular classes or  
255 categories of investment securities.

256 (c) If there is a material decline of unimpaired capital and  
257 unimpaired surplus of a state-chartered bank during any  
258 quarterly reporting period of more than twenty percent from  
259 that amount reported in the bank's most recent report of  
260 income and condition, or where there is a decrease of more  
261 than thirty percent in any twelve-month period, the bank shall  
262 review its outstanding loans, extensions of credit and  
263 investments and report to the Commissioner of Banking  
264 those loans, extensions and investments that exceed the  
265 limitations of this section using the bank's current  
266 reevaluated unimpaired capital and unimpaired surplus. The  
267 report shall detail the bank's position in each such loan,  
268 extension of credit and investment. The commissioner may,  
269 within his or her discretion, require that such loans,  
270 extensions of credit and investments be brought into  
271 conformity with the bank's current reevaluated legal lending  
272 and investment limitation.

273 (d) Notwithstanding any other provision of this section,  
274 in order to ensure a bank's safety and soundness, the  
275 Commissioner of Banking retains the authority to direct any  
276 state-chartered bank to recalculate its lending and investment  
277 limits at more frequent intervals than otherwise provided  
278 herein and to require all outstanding loans, extensions of  
279 credit and investments be brought into conformance with the  
280 reevaluated limitations. In such cases, the commissioner will  
281 provide the bank a written notice explaining briefly the  
282 specific reasons why the determination was made to require  
283 the more frequent calculations.

284 (e) Loans to directors or executive officers are subject to  
285 the following limitations:

286 (1) A director or executive officer of any banking  
287 institution may not borrow, directly or indirectly, from a  
288 banking institution with which he or she is connected any  
289 sum of money without the prior approval of a majority of the

290 board of directors or discount committee of the banking  
291 institution, or of any duly constituted committee whose duties  
292 include those usually performed by a discount committee.  
293 The approval shall be by resolution adopted by a majority  
294 vote of the board or committee, exclusive of the director or  
295 executive officer to whom the loan is made.

296 (2) If any director or executive officer of any bank owns  
297 or controls a majority of the stock of any corporation, or is a  
298 partner in any partnership, a loan to the corporation or  
299 partnership constitutes a loan to the director or officer.

300 (3) For purposes of this subsection, an “executive officer”  
301 means:

302 (A) A person who participates or has authority to  
303 participate, other than in the capacity of a director, in major  
304 policy-making functions of the company or bank, regardless  
305 of any official title, salary or other compensation. The  
306 chairman of the board, the president, every vice president, the  
307 cashier, the secretary and the treasurer of a company or bank  
308 are considered executive officers unless the officer is  
309 excluded, by resolution of the board of directors or by the  
310 bylaws of the bank or company from participation, other than  
311 in the capacity of director, in major policy-making functions  
312 of the bank or company and the officer does not actually  
313 participate therein.

314 (B) An executive officer of a company of which the bank  
315 is a subsidiary, and any other subsidiary of that company,  
316 unless the executive officer of the subsidiary is excluded, by  
317 name or by title, from participation in major policy-making  
318 functions of the bank by resolutions of the boards of directors  
319 of both the subsidiary and the bank and does not actually  
320 participate in such major policy-making functions.

321 (f) An employee of the Division of Banking whose  
322 regulatory activities involve participation in an examination,



323 audit, visitation, review, investigation or any other particular  
324 matter involving depository institutions chartered by the  
325 division may not borrow, directly or indirectly, any sum of  
326 money from a state-chartered bank or state-chartered credit  
327 union. An employee of the Division of Banking whose  
328 regulatory activities involve participation in an examination,  
329 audit, visitation, review, investigation or any other particular  
330 matter involving nondepository institutions licensed by the  
331 division may not borrow, directly or indirectly, any sum of  
332 money from a nondepository entity that is licensed by the  
333 division. The commissioner, deputy commissioner and  
334 in-house legal counsel of the Division of Banking may not  
335 borrow, directly or indirectly, any sum of money from any  
336 entity that is under the jurisdiction of the division.

337 (g) Securities purchased by a state-chartered banking  
338 institution shall be entered upon the books of the bank at  
339 actual cost. For the purpose of calculating the undivided  
340 profits applicable to the payment of dividends, securities may  
341 not be valued at a valuation exceeding their present cost as  
342 determined by amortization of premiums and accretion of  
343 discounts pursuant to generally accepted accounting  
344 principles, that is, by charging to profit and loss a sum  
345 sufficient to bring them to par at maturity: *Provided*, That  
346 securities held for trade or permissible marketable equity  
347 securities and any other types of debt securities which  
348 pursuant to generally accepted accounting principles are to be  
349 carried on the bank's books at fair market value shall have  
350 the unrealized market appreciation and depreciation included  
351 in the income and capital as permitted by generally accepted  
352 accounting principles.

353 (h) The market value of securities purchased and loans  
354 extended by a state-chartered banking institution shall be  
355 reported in all public reports and quarterly reports to the  
356 commissioner pursuant to section nineteen of this article in  
357 accordance with generally accepted accounting principles and  
358 any applicable state or federal law, rule or regulation.

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## CHAPTER 17

**(H. B. 4037 - By Mr. Speaker, Mr. Thompson,  
and Delegate Armstead)  
[By Request of the Executive]**

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[Passed February 25, 2010; in effect from passage.]  
[Approved by the Governor on March 8, 2010.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §13-4-1 and §13-4-2, all relating generally to federal subsidy bonds and bond financing; defining terms; authorizing certain bond issuers to receive and use credit payments with respect to federal subsidy bonds; and exempting the bonds from taxation.

*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 §13-4-1 and §13-4-2, all to read as follows:

### **ARTICLE 4. FEDERAL SUBSIDY BONDS.**

§13-4-1. Definitions.

§13-4-2. Authority to issue federal subsidy bonds; election of credit payments; treatment of federal subsidy payments; exemption from taxation.

#### **§13-4-1. Definitions.**

1           Unless the context clearly indicates otherwise, as used in  
2    this article:

3           (1) “Federal subsidy bonds” means any state or local  
4 government bonds authorized for sale under the Internal  
5 Revenue Code of 1986, as amended, for which a credit  
6 payment is available to the issuer or its designee. Certain  
7 Build America Bonds authorized under Section 1531 of Title  
8 I of Division B of the American Recovery and Reinvestment  
9 Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009),  
10 codified at Section 54AA(g) of the Internal Revenue Code of  
11 1986, as amended, are federal subsidy bonds.

12           (2) “Credit payment” means any payment to an issuer of  
13 federal subsidy bonds or its designee authorized under the  
14 provisions of the Internal Revenue Code to offset a portion of  
15 the interest paid on the bonds. Periodic credit payments  
16 received from the United States Secretary of the Treasury, as  
17 described in Section 6431(b) of the Internal Revenue Code,  
18 are credit payments.

19           (3) “Government entity” means the State of West  
20 Virginia, including any department, division, agency, bureau,  
21 board, commission, office or authority thereof, any political  
22 subdivision of the State of West Virginia including, but not  
23 limited to, any county, municipality or school district, and  
24 any other entity authorized by the provisions of this code to  
25 issue bonds, notes or other debt obligations.

26           (4) “General revenue bond” means a bond, note or other  
27 debt obligation issued by a government entity for which the  
28 government entity has pledged the full faith and credit,  
29 including a limited pledge, of such government entity to the  
30 repayment of the obligation.

31           (5) “Special revenue bond” means a bond, note or other  
32 debt obligation issued by a government entity for which the  
33 government entity pledges a dedicated revenue stream or  
34 other security interest to secure the repayment of the  
35 obligation.

**§13-4-2. Authority to issue federal subsidy bonds; election of credit payments; treatment of federal subsidy payments; exemption from taxation.**

1           (a) A government entity authorized to issue bonds, notes  
2 or other debt obligations under the provisions of this code  
3 may issue federal subsidy bonds in the manner, and subject  
4 to the requirements, limitations and conditions, set forth in  
5 the provisions of the code that authorize the government  
6 entity to issue such bonds, notes or other debt obligations.  
7 This section may not be construed to grant bonding authority  
8 to any government entity or to expand the bonding authority  
9 of any government entity.

10           (b) A government entity that issues federal subsidy bonds  
11 may elect to receive credit payments.

12           (c) Credit payments shall be treated as special revenue in  
13 the case of special revenue bonds issued by a government  
14 entity or as general revenue in the case of general revenue  
15 bonds issued by a government entity. A government entity  
16 may use credit payments to pay future debt service on the  
17 federal subsidy bonds or for any other purpose allowable by  
18 law.

19           (d) Federal subsidy bonds issued by a government entity  
20 under this section shall be exempt from tax in the manner,  
21 and subject to the requirements, limitations and conditions,  
22 set forth in the provisions of this code that authorize the  
23 government entity to issue bonds, notes or other debt  
24 obligations.

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**CHAPTER 18**

**(Com. Sub. for H. B. 4457 - By Delegates Brown,  
Talbott, Fragale, Caputo, Hatfield,  
Wells, Fleischauer, Marshall and Perdue)**

[Passed March 11, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact §29-1-8a of the Code of West Virginia, 1931, as amended; to amend and reenact §37-13A-1, §37-13A-2 and §37-13A-5 of said code; to amend said code by adding a new section, designated §37-13A-7; and to amend and reenact §61-8-14 of said code, all relating to the access to and protection of cemeteries; clarifying procedures for protection of graves and burial sites; clarifying requirements and procedures for access to cemeteries and grave sites located on private land; clarifying conduct subject to criminal sanctions as it relates to the crime of disinterment of a dead body or damage to a cemetery.

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

That §29-1-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §37-13A-1, §37-13A-2 and §37-13A-5 of said code be amended and reenacted; that said code be amended by adding a new section, designated §37-13A-7; and that §61-8-14 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 29. Miscellaneous Boards and Officers.**
- 37. Real Property.**
- 61. Crimes and Their Punishment.**

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

**ARTICLE 1. DIVISION OF CULTURE AND HISTORY.**

**§29-1-8a. Protection of human skeletal remains, grave artifacts and grave markers; permits for excavation and removal; penalties.**

1           (a) *Legislative findings and purpose.* --

2           The Legislature finds that there is a real and growing  
3 threat to the safety and sanctity of unmarked human graves  
4 in West Virginia and the existing laws of the state do not  
5 provide equal or adequate protection for all such graves. As  
6 evident by the numerous incidents in West Virginia which  
7 have resulted in the desecration of human remains and  
8 vandalism to grave markers, there is an immediate need to  
9 protect the graves of earlier West Virginians from such  
10 desecration. Therefore, the purpose of this article is to assure  
11 that all human burials be accorded equal treatment and  
12 respect for human dignity without reference to ethnic origins,  
13 cultural backgrounds, or religious affiliations.

14           The Legislature also finds that those persons engaged in  
15 the scientific study or recovery of artifacts which have been  
16 acquired in accordance with the law are engaged in legitimate  
17 and worthy scientific and educational activities. Therefore,  
18 this legislation is intended to permit the appropriate pursuit  
19 of those lawful activities.

20           Finally, this legislation is not intended to interfere with  
21 the normal activities of private property owners, farmers, or  
22 those engaged in the development, mining or improvement  
23 of real property.

24           (b) *Definitions.*--

25           For the purposes of this section:

26           (1) “Human skeletal remains” means the bones, teeth,  
27 hair or tissue of a deceased human body;

28           (2) “Unmarked grave” means any grave or location where  
29 a human body or bodies have been buried or deposited for at  
30 least fifty years and the grave or location is not in a publicly  
31 or privately maintained cemetery or in the care of a cemetery  
32 association, or is located within such cemetery or in such care  
33 and is not commonly marked;

34           (3) “Grave artifact” means any items of human  
35 manufacture or use that are associated with the human  
36 skeletal remains in a grave;

37           (4) “Grave marker” means any tomb, monument, stone,  
38 ornament, mound, or other item of human manufacture that  
39 is associated with a grave;

40           (5) “Person” means any individual, partnership, firm,  
41 society, association, trust, corporation, other business entity  
42 or any agency, unit or instrumentality of federal, state or local  
43 government;

44           (6) “Disturb” means the excavating, removing, exposing,  
45 defacing, mutilating, destroying, molesting, or desecrating in  
46 any way of human skeletal remains, unmarked graves, grave  
47 artifacts or grave markers;

48           (7) “Native American tribe” means any Indian tribe,  
49 band, nation, or organized group or community which is  
50 recognized as eligible for the special programs and services  
51 provided by the United States to Indians because of their  
52 status as Indians;

53           (8) “Cultural affiliation” means the relationship of shared  
54 group identity which can be reasonably traced historically or  
55 prehistorically between a present day group and an  
56 identifiable earlier group;

57 (9) “Lineal descendants” means any individuals tracing  
58 his or her ancestry directly or by proven kinship; and

59 (10) “Proven kinship” means the relationship among  
60 people that exists because of genetic descent, which includes  
61 racial descent.

62 (c) *Acts prohibited; penalties; exceptions.* --

63 (1) No person may excavate, remove, destroy, or  
64 otherwise disturb any historic or prehistoric ruins, burial  
65 grounds, archaeological site, or human skeletal remains,  
66 unmarked grave, grave artifact or grave marker of historical  
67 significance unless such person has a valid permit issued to  
68 him or her by the Director of the Historic Preservation  
69 Section: *Provided*, That the supervising archaeologist of an  
70 archaeological investigation being undertaken in compliance  
71 with the federal Archaeological Resources Protection Act  
72 (Public Law 96-95 at 16 USC 470(aa)) and regulations  
73 promulgated thereunder is not required to obtain such permit,  
74 but shall notify the Director of the Historic Preservation  
75 Section that such investigation is being undertaken and file  
76 reports as are required of persons issued a permit under this  
77 section: *Provided, however*, That projects being undertaken  
78 in compliance with section 106 of the National Historic  
79 Preservation Act of 1966, as amended, or subsection (a),  
80 section five of this article are not required to obtain such  
81 permit for excavation, removal, destruction or disturbance of  
82 historic or prehistoric ruins or archaeological sites.

83 (2) A person who, either by himself or herself or through  
84 an agent, intentionally excavates, removes, destroys or  
85 otherwise disturbs any historic or prehistoric ruins, burial  
86 grounds or archaeological site, or unmarked grave, grave  
87 artifact or grave marker of historical significance without first  
88 having been issued a valid permit by the Director of the  
89 Historic Preservation Section, or who fails to comply with the  
90 terms and conditions of such permit, is guilty of a



91 misdemeanor and, upon conviction thereof, shall be fined not  
92 less than \$100 nor more than \$500, confined in jail for not  
93 more than six months, or both fined and confined.

94 (3) A person who, either by himself or herself or through  
95 an agent, intentionally excavates, removes, destroys or  
96 otherwise disturbs human skeletal remains of historical  
97 significance without first having been issued a valid permit  
98 by the Director of the Historic Preservation Section, or who  
99 fails to comply with the terms and conditions relating to  
100 disinterment or displacement of human skeletal remains of  
101 such permit, is guilty of the felony of disinterment or  
102 displacement of a dead human body or parts thereof under  
103 section fourteen, article eight, chapter sixty-one of this code  
104 and, upon conviction thereof, shall be imprisoned in a state  
105 correctional facility not more than five years.

106 (4) A person who intentionally withholds information  
107 about the excavation, removal, destruction, or other  
108 disturbance of any historic or prehistoric ruins, burial  
109 grounds, archaeological site, or human skeletal remains,  
110 unmarked grave, grave artifact or grave marker of historical  
111 significance is guilty of a misdemeanor and, upon conviction  
112 thereof, shall be fined not more than \$100, or confined in jail  
113 not more than ten days, or both fined and confined.

114 (5) A person who, either by himself or herself or through  
115 an agent, offers for sale or exchange any human skeletal  
116 remains, grave artifact or grave marker obtained in violation  
117 of this section is guilty of a misdemeanor and, upon  
118 conviction thereof, shall be fined not less than \$1,000 nor  
119 more than \$5,000 or confined in jail not more than one year,  
120 or both fined and confined.

121 (6) Each instance of excavation, removal, destruction,  
122 disturbance or offering for sale or exchange under  
123 subdivisions (1) through (5) of this subsection shall constitute  
124 a separate offense.

125           (7) It is a complete defense in a prosecution under this  
126 section if the defendant can prove by a preponderance of  
127 evidence that the alleged acts were accidental or inadvertent  
128 and that reasonable efforts were made to preserve the remains  
129 accidentally disturbed or discovered, and that the accidental  
130 discovery or disturbance was properly reported.

131           (8) This subsection does not apply to actions taken in the  
132 performance of official law-enforcement duties.

133           (d) *Notification of discovery of human skeletal remains*  
134 *in unmarked locations. --*

135           Upon the discovery of human skeletal remains, grave  
136 artifact or grave marker in an unmarked grave on any  
137 publicly or privately owned property, the person making such  
138 discovery shall immediately cease any activity which may  
139 cause further disturbance, make a reasonable effort to protect  
140 the area from further disturbance and notify the county  
141 sheriff within forty-eight hours of the discovery and its  
142 location. If the human remains, grave artifact or grave marker  
143 appear to be from an unmarked grave, the sheriff shall  
144 promptly, and prior to any further disturbance or removal of  
145 the remains, notify the Director of the Historic Preservation  
146 Section. The director shall cause an on-site inspection of the  
147 disturbance to be made to determine the potential for  
148 archaeological significance of the site: *Provided*, That when  
149 the discovery is made by an archaeological investigation  
150 permitted under state or federal law, the supervising  
151 archaeologist shall notify the Director of the Historic  
152 Preservation Section directly.

153           If the Director of the Historic Preservation Section  
154 determines that the site has no archaeological significance,  
155 the removal, transfer and disposition of the remains shall be  
156 subject to the provisions of article thirteen, chapter thirty-  
157 seven of this code, and the director shall notify the circuit  
158 court of the county wherein the site is located.

159        If the Director of the Historic Preservation Section  
160 determines that the site has a potential for archaeological  
161 significance, the director shall take such action as is  
162 reasonable, necessary and prudent, including consultation  
163 with appropriate private or public organizations, to preserve  
164 and advance the culture of the state in accordance with the  
165 powers and duties granted to the director, including the  
166 issuance of a permit for the archaeological excavation or  
167 removal of the remains. If the director determines that the  
168 issuance of a permit for the archaeological excavation or  
169 removal of the remains is not reasonable, necessary or  
170 prudent, the director shall provide written reasons to the  
171 applicant for not issuing the permit.

172        (e) *Issuance of permits.* --

173        Prior to the issuance of a permit for the disturbance of  
174 human skeletal remains, grave artifacts, or grave markers, the  
175 director of historic preservation shall convene and chair an ad  
176 hoc committee to develop permit conditions. The committee  
177 shall be comprised of the chair and six or eight members  
178 representing known or presumed lineal descendants, private  
179 and public organizations which have cultural affiliation to the  
180 presumed contents of the site, the Council for West Virginia  
181 Archaeology and the West Virginia Archaeological Society.  
182 In the case of Native American sites, the membership of the  
183 committee shall be comprised of the chair and six or eight  
184 members representing the Council for West Virginia  
185 Archaeology, the West Virginia Archaeological Society, and  
186 known or presumed lineal descendants, preferably with  
187 cultural affiliation to tribes that existed in the geographic area  
188 that is now West Virginia.

189        In the case of a site of less than five acres, which is  
190 owned by an individual or partnership, the ad hoc committee  
191 must be formed within thirty days of application for same by  
192 the property owner, must meet within sixty days of such  
193 application, and must render a decision within ninety days of  
194 such application.

195 All such permits shall at a minimum address the  
196 following conditions: (1) The methods by which lineal  
197 descendants of the deceased are notified prior to the  
198 disturbance; (2) the respectful manner in which the remains,  
199 artifacts or markers are to be removed and handled; (3)  
200 scientific analysis of the remains, artifacts or markers and the  
201 duration of those studies; (4) the way in which the remains  
202 may be reburied in consultation with any lineal descendants,  
203 when available; (5) methods for the respectful curation of  
204 recovered items; and (6) such other conditions as the director  
205 may deem necessary. Expenses accrued in meeting the  
206 permit conditions shall be borne by the permit applicant,  
207 except in cases where the deceased descendants or sponsors  
208 are willing to share or assume the costs. A permit to disturb  
209 human skeletal remains, grave artifacts or grave markers will  
210 be issued only after alternatives to disturbance and other  
211 mitigative measures have been considered.

212 In addition, a person applying for a permit to excavate or  
213 remove human skeletal remains, grave artifacts, grave  
214 markers, or any historic or prehistoric features of  
215 archaeological significance may provide to the ad hoc  
216 committee information he or she deems appropriate and shall:

217 (1) Provide a detailed statement to the Director of the  
218 Historic Preservation Section giving the reasons and  
219 objectives for excavation or removal and the benefits  
220 expected to be obtained from the contemplated work;

221 (2) Provide data and results of any excavation, study or  
222 collection in annual reports to the Director of the Historic  
223 Preservation Section and submit a final report to the director  
224 upon completion of the excavation;

225 (3) Obtain the prior written permission of the owner if the  
226 site of such proposed excavation is on privately owned land;  
227 and

228 (4) Provide any additional information the ad hoc  
229 committee deems necessary in developing the permit  
230 conditions.

231 The permits shall be issued for a period of two years and  
232 may be renewed at expiration. The permits are not  
233 transferable but other persons who have not been issued a  
234 permit may work under the direct supervision of the person  
235 holding the permit. The person or persons to whom a permit  
236 was issued must carry the permit while exercising the  
237 privileges granted and must be present at the site whenever  
238 work is being done.

239 Notwithstanding any other penalties to which a person  
240 may be subject under this section for failing to comply with  
241 the terms and conditions of a permit, the permit of a person  
242 who violates any of the provisions of this subsection shall be  
243 revoked.

244 As permits are issued, the Director of the Historic  
245 Preservation Section shall maintain a catalogue of unmarked  
246 grave locations throughout the state.

247 (f) *Property tax exemption for unmarked grave sites.* --

248 To serve as an incentive for the protection of unmarked  
249 graves, the owner, having evidence of the presence of  
250 unmarked graves on his or her property, may apply to the  
251 Director of the Historic Preservation Section for a  
252 determination as to whether such is the case. Upon making  
253 such a determination in the affirmative, the Director of the  
254 Historic Preservation Section shall provide written  
255 certification to the landowner that the site containing the  
256 graves is a cemetery and as such is exempt from property  
257 taxation upon presentation of the certification to the county  
258 assessor. The area of the site to receive property tax exempt  
259 status shall be determined by the Director of the Historic  
260 Preservation Section. Additionally, a property owner may

261 establish protective easements for the location of unmarked  
262 graves.

263 (g) *Additional provisions for enforcement; civil penalties;*  
264 *rewards for information. --*

265 (1) The prosecuting attorney of the county in which a  
266 violation of any provision of this section is alleged to have  
267 occurred may be requested by the Director of the Historic  
268 Preservation Section to initiate criminal prosecutions or to  
269 seek civil damages, injunctive relief and any other  
270 appropriate relief. The Director of the Historic Preservation  
271 Section shall cooperate with the prosecuting attorney in  
272 resolving such allegations.

273 (2) Persons convicted of any prohibited act involving the  
274 excavation, removal, destruction, disturbance or offering for  
275 sale or exchange of historic or prehistoric ruins, burial  
276 grounds, archaeological site, human skeletal remains,  
277 unmarked grave, grave artifact or grave marker under the  
278 provisions of subdivisions (1) and (2), subsection (c) of this  
279 section shall also be liable for civil damages to be assessed  
280 by the prosecuting attorney in consultation with the Director  
281 of the Historic Preservation Section.

282 Civil damages may include:

283 (i) Forfeiture of any and all equipment used in disturbing  
284 the protected unmarked graves or grave markers;

285 (ii) Any and all costs incurred in cleaning, restoring,  
286 analyzing, accessioning and curating the recovered material;

287 (iii) Any and all costs associated with recovery of data,  
288 and analyzing, publishing, accessioning and curating  
289 materials when the prohibited activity is so extensive as to  
290 preclude the restoration of the unmarked burials or grave  
291 markers;

292 (iv) Any and all costs associated with restoring the land to  
293 its original contour or the grave marker to its original condition;

294 (v) Any and all costs associated with reinterment of the  
295 human skeletal remains; and

296 (vi) Any and all costs associated with the determination  
297 and collection of the civil damages.

298 When civil damages are recovered, the proceeds, less the  
299 costs of the prosecuting attorney associated with the  
300 determination and collection of such damages, shall be  
301 deposited into the Endangered Historic Properties Fund and  
302 may be expended by the Commissioner of Culture and  
303 History for archaeological programs at the state level,  
304 including the payment of rewards for information leading to  
305 the arrest and conviction of persons violating the provisions  
306 of subdivisions (1) and (2), subsection (c) of this section.

307 (3) The Commissioner of Culture and History is  
308 authorized to offer and pay rewards of up to \$1,000 from  
309 funds on deposit in the Endangered Historic Properties Fund  
310 for information leading to the arrest and conviction of  
311 persons who violate the provisions of subdivisions (1) and  
312 (2), subsection (c) of this section.

313 (h) *Disposition of remains and artifacts not subject to*  
314 *reburial.* --

315 All human skeletal remains and grave artifacts found in  
316 unmarked graves on public or private land, and not subject to  
317 reburial, under the provisions of subsection (e) of this section,  
318 are held in trust for the people of West Virginia by the state and  
319 are under the jurisdiction of the Director of Historic  
320 Preservation. All materials collected and not reburied through  
321 this section shall be maintained with dignity and respect for the  
322 people of the state under the care of the West Virginia State  
323 Museum.

**CHAPTER 37. REAL PROPERTY.****ARTICLE 13A. GRAVES LOCATED UPON PRIVATELY OWNED LANDS.**

§37-13A-1. Access of certain persons to cemeteries and graves located on private land.

§37-13A-2. Definitions.

§37-13A-5. Cause of action for injunctive relief.

§37-13A-7. Existence of cemetery or grave site, notification.

**§37-13A-1. Access of certain persons to cemeteries and graves located on private land.**

1           (a) Any authorized person who wishes to visit a cemetery or  
2           grave site located on privately owned land and for which no  
3           public ingress or egress is available, shall have the right to  
4           reasonable ingress or egress for the purposes described in  
5           subsection (b) after providing the owner of the privately owned  
6           land with reasonable notice as defined in section two of this  
7           article.

8           (b) The right of access to cemeteries or grave sites  
9           provided in subsection (a) shall be during reasonable hours  
10          and only for the purposes of:

11          (1) Visiting graves;

12          (2) Maintaining the grave site or cemetery;

13          (3) Burying a deceased person in a cemetery plot by  
14          those granted rights of burial to that plot; and

15          (4) Conducting genealogy research.

16          (c) (1) The access route to the cemetery or grave site may  
17          be designated by the landowner if no traditional access route  
18          is obviously visible by a view of the property. If no  
19          traditional access route is obviously visible by a view of the  
20          property, the landowner is not required to incur any expense  
21          in improving a designated access route.



22           (2) Unless the property owner has caused a traditional  
23 access route to the cemetery or grave site to be unusable or  
24 unavailable, the property owner is not required to make any  
25 improvements to their property to satisfy the requirement of  
26 providing reasonable ingress and egress to a cemetery or  
27 burial site pursuant to this section.

28           (d) A property owner who is required to permit  
29 authorized persons reasonable ingress and egress for the  
30 purpose of visiting a cemetery or grave site and who acts in  
31 good faith and in a reasonable manner pursuant to this section  
32 is not liable for any personal injury or property damage that  
33 occurs in connection with the access to the cemetery or grave  
34 site.

35           (e) Nothing in this section shall be construed to limit or  
36 modify the power or authority of a court in any action of law  
37 or equity to order the disinterment and removal of the  
38 remains from a cemetery and interment in a suitable location.

### **§37-13A-2. Definitions.**

1           In this article:

2           (1) “Authorized person” means:

3           (A) A family member, close friend or descendant of a  
4 deceased person;

5           (B) A cemetery plot owner; or

6           (C) A person engaged in genealogy research.

7           (2) “Governmental subdivision” means any county  
8 commission or municipality.

9           (3) “Reasonable ingress and egress” or “reasonable  
10 access” means access to the cemetery or grave site within ten  
11 days of the receipt of written notice of the intent to visit the

12 cemetery or grave site. If the property owner cannot provide  
13 reasonable access to the cemetery or grave on the desired  
14 date, the property owner shall provide reasonable alternative  
15 dates when the property owner can provide access within five  
16 days of the receipt of the initial notice.

17 (4) “Reasonable notice” means written notice of the date  
18 and time the authorized person intends to visit the cemetery  
19 or grave site delivered to the property owner at least ten days  
20 prior to the date of the intended visit.

#### **§37-13A-5. Cause of action for injunctive relief.**

1 (a) An authorized person denied reasonable access under  
2 the provisions of this article, including the denial of  
3 permission to use vehicular access, may institute a  
4 proceeding in the circuit court of the county in which the  
5 cemetery or grave site is located to enjoin the owner of the  
6 private lands on which the cemetery or grave site is located,  
7 or his or her agent, from denying the authorized person  
8 reasonable ingress and egress to the cemetery or grave site  
9 for the purposes set forth in this article. In granting relief, the  
10 court may set the frequency of access, hours and duration of  
11 the access.

12 (b) The court or the judge thereof may issue a preliminary  
13 injunction in any case pending a decision on the merits of any  
14 application filed without requiring the filing of a bond or  
15 other equivalent security.

#### **§37-13A-7. Existence of cemetery or grave site, notification.**

1 If a governmental subdivision is notified of the existence  
2 of a cemetery, or a marked grave site that is not located in a  
3 dedicated cemetery, within its jurisdiction, the governmental  
4 subdivision shall, as soon as is practicable, notify the owner  
5 of the land upon which the cemetery or burial site is located  
6 of the cemetery’s or grave site’s existence and location. The  
7 governmental subdivision shall, upon notification of grave

8 site location, document the location. Data collected shall be  
9 deposited with the Division of Culture and History. The  
10 notification shall include an explanation of the provisions of  
11 this article.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

#### **§61-8-14. Disinterment or displacement of dead body or part thereof; damage to cemetery or graveyard; penalties; damages in civil action.**

1 (a) Any person who unlawfully and intentionally disinters  
2 or displaces a dead human body, or any part of a dead human  
3 body, placed or deposited in any vault, mausoleum or any  
4 temporary or permanent burial place, removes personal  
5 effects of the decedent removes or damages caskets,  
6 surrounds, outer burial containers, or any other device used  
7 in making the original burial; transports unlawfully removed  
8 human remains from the cemetery; or knowingly receives  
9 unlawfully removed human remains from the cemetery is  
10 guilty of a felony, and, upon conviction thereof, shall be  
11 confined in a state correctional facility for a determinate  
12 sentence of not more than five years.

13 (b)(1) Any person who intentionally desecrates any tomb,  
14 plot, monument, memorial, or marker in a cemetery, or any  
15 gate, door, fence, wall, post, or railing, or any enclosure for  
16 the protection of a cemetery or any property in a cemetery,  
17 graveyard, mausoleum or other designated human burial site  
18 is guilty of a misdemeanor, and, upon conviction thereof,  
19 shall be fined not more than \$2,000, or confined in jail not  
20 more than one year, or both fined and confined.

21 (2) Any person who intentionally and without legal right  
22 destroys, cuts, breaks, removes, or injures any building,  
23 statuary, ornamentation, landscape contents, including a tree,

24 shrub, flower, or plant, within the limits of a cemetery, is  
25 guilty of a misdemeanor, and, upon conviction thereof, shall  
26 be fined not more than \$2,000, or confined in jail not more  
27 than one year, or both fined and confined.

28 (3) For the purposes of this subsection, “desecrate”  
29 means destroying, cutting, mutilating, effacing, injuring,  
30 tearing down, removing, defacing, damaging or otherwise  
31 physically mistreating in a way that a reasonable person  
32 knows will outrage the sensibilities of persons likely to  
33 observe or discover his or her actions.



## CHAPTER 19

**(Com. Sub. for H. B. 4248 - By Delegates  
Wells, Reynolds, Manypenny and Lawrence)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §29-19-2, §29-19-5 and §29-19-6 of the Code of West Virginia, 1931, as amended, all relating to the solicitation of charitable funds; defining the terms “audit” and “financial review”; including other methods of communications in the definition of the term “solicitation”; raising the threshold for exemption from filing audits and registering; and requiring financial reviews for charitable organization raising between \$100,000 and \$200,000 in contributions.

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

That §29-19-2, §29-19-5 and §29-19-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS  
ACT.**

§29-19-2. Definitions.

§29-19-5. Registration of charitable organizations; fee.

§29-19-6. Certain persons and organizations exempt from registration.

**§29-19-2. Definitions.**

1 As used in this article:

2 (1) "Audit" means the systematic examination of records  
3 and documents and the securing of other evidence by  
4 confirmation, physical inspection, or otherwise, that includes  
5 a written assurance that financial statements and reports are  
6 fairly presented in conformity with generally accepted  
7 accounting principles issued by the American Institute of  
8 Certified Public Accountants.

9 (2) "Charitable organization" means a person who is or  
10 holds itself out to be a benevolent, educational, philanthropic,  
11 humane, patriotic, religious or eleemosynary organization, or  
12 any person who solicits or obtains contributions solicited  
13 from the public for charitable purposes, or any person who in  
14 any manner employs any appeal for contributions which may  
15 be reasonably interpreted to suggest that any part of those  
16 contributions will be used for charitable purposes. A chapter,  
17 branch, area, office or similar affiliate or any person  
18 soliciting contributions within the state for a charitable  
19 organization which has its principal place of business outside  
20 the state is a charitable organization for the purposes of this  
21 article.

22 (3) "Contribution" means the promise or grant of any  
23 money or property of any kind or value.

24 (4) "Financial review" means an examination of financial  
25 statements in accordance with generally accepted accounting

26 principles issued by the American Institute of Certified  
27 Public Accountants, in which a certified public accountant  
28 has a reasonable basis for expressing limited assurance that  
29 the reviewed statements are free of material misstatements or  
30 false or missing information and are found to be accurate,  
31 complete and fairly presented to meet the requirements of the  
32 generally accepted accounting principles.

33 (5) "Solicit" and "solicitation" means the request or  
34 appeal, directly or indirectly, for any contribution on the plea  
35 or representation that the contribution will be used for a  
36 charitable purpose, including, without limitation, the  
37 following methods of requesting a contribution:

38 (A) Any oral or written request;

39 (B) Any announcement to the press, over the radio or  
40 television, or by telephone, electronic mail or messaging,  
41 electronic bulletin board, or Internet technology, concerning  
42 an appeal or campaign to which the public is requested to  
43 make a contribution for any charitable purpose connected  
44 therewith;

45 (C) The distribution, circulation, posting or publishing of  
46 any handbill, written advertisement or other publication  
47 which directly or by implication seeks to obtain public  
48 support; or

49 (D) The sale of, offer or attempt to sell, any  
50 advertisement, advertising space, subscription, ticket or any  
51 service or tangible item in connection with which any appeal  
52 is made for any charitable purpose or where the name of any  
53 charitable or civic organization is used or referred to in an  
54 appeal as an inducement or reason for making the sale, or  
55 when or where in connection with the sale, any statement is  
56 made that the whole or any part of the proceeds from the sale  
57 will be donated to any charitable purpose.

58           “Solicitation”, as defined herein, occurs when the request  
59   is made, at the place the request is received, whether or not  
60   the person making the request actually receives any  
61   contribution.

62           (6) “Federated fund-raising organization” means a  
63   federation of independent charitable organizations which  
64   have voluntarily joined together, including, but not limited to,  
65   a united fund or community chest, for purposes of raising and  
66   distributing money for and among themselves and where  
67   membership does not confer operating authority and control  
68   of the individual agencies upon the federated group  
69   organization.

70           (7) “Parent organization” is that part of a charitable  
71   organization which coordinates, supervises or exercises  
72   control over policy, fund raising and expenditures, or assists,  
73   receives funds from or advises one or more chapters,  
74   branches or affiliates in the state.

75           (8) “Person” means any individual, organization, trust,  
76   foundation, group, association, partnership, corporation,  
77   society or any combination of them.

78           (9) “Professional fund-raising counsel” means any person  
79   who for a flat fixed fee under a written agreement plans,  
80   conducts, manages, carries on, advises or acts as a consultant,  
81   whether directly or indirectly, in connection with soliciting  
82   contributions for, or on behalf of any charitable organization  
83   but who actually solicits no contributions as a part of the  
84   services. A bona fide salaried officer or employee of a  
85   charitable organization maintaining a permanent establishment  
86   within the state is not a professional fund-raising counsel.

87           (10) “Professional solicitor” means any person who, for  
88   a financial or other consideration, solicits contributions for,  
89   or on behalf of a charitable organization, whether the

90 solicitation is performed personally or through that person's  
91 agents, servants or employees specially employed by, or for  
92 a charitable organization, who are engaged in the solicitation  
93 of contributions under the direction of that person, or a  
94 person who plans, conducts, manages, carries on, advises or  
95 acts as a consultant to a charitable organization in connection  
96 with the solicitation of contributions but does not qualify as  
97 "professional fund-raising counsel" within the meaning of  
98 this article. A bona fide salaried officer or employee of a  
99 charitable organization maintaining a permanent establishment  
100 within the state is not a professional solicitor.

101 No attorney, investment counselor or banker, who  
102 advises any person to make a contribution to a charitable  
103 organization, is considered, as the result of the advice, a  
104 professional fund-raising counsel or a professional solicitor.

**§29-19-5. Registration of charitable organizations; fee.**

1 (a) Every charitable organization, except as provided in  
2 section six of this article, which intends to solicit  
3 contributions, donations or grants within this state or to have  
4 funds solicited or received on its behalf shall, prior to any  
5 solicitation, file a registration statement with the Secretary of  
6 State upon forms prescribed by him or her which shall be  
7 good for one full year and which shall be refiled in the next  
8 and each following year in which the charitable organization  
9 is engaged in solicitation activities. If an organization  
10 discontinues solicitation at any time after its last registration  
11 filing, then it shall file a registration statement reflecting its  
12 activities during its last fiscal year in which solicitation in  
13 West Virginia took place. It is the duty of the president,  
14 chairman or principal officer of the charitable organization to  
15 file the statements required under this article. The statements  
16 shall be sworn to and shall contain the following information:

17 (1) The name of the organization and the purpose for  
18 which it was organized;



19           (2) The principal address of the organization and the  
20 address of any offices in this state. If the organization does  
21 not maintain an office, the name and address of the person  
22 having custody of its financial records;

23           (3) The names and addresses of any chapters, branches or  
24 affiliates in this state;

25           (4) The place where and the date when the organization  
26 was legally established and the form of its organization;

27           (5) The names and addresses of the officers, directors,  
28 trustees and the principal salaried executive staff officer;

29           (6) A copy of a balance sheet and a statement or report of  
30 income and expenses for the organization's immediately  
31 preceding fiscal year or a financial statement reporting  
32 information showing the kind and amount of funds raised  
33 during the preceding fiscal year, the costs and expenses  
34 incidental to the fundraising and showing how the funds were  
35 disbursed or allocated for the same fiscal year: *Provided,*  
36 That in addition to the financial documents required by this  
37 subdivision:

38           (A) Charitable organizations raising more than \$200,000  
39 per year in contributions, excluding grants from  
40 governmental agencies or private foundations, shall submit  
41 a report of an audit by an independent certified public  
42 accountant, and

43           (B) Charitable organizations raising more than \$100,000  
44 per year but less than \$200,001 per year in contributions,  
45 excluding grants from governmental agencies or private  
46 foundations, shall submit a statement of financial review by  
47 an independent certified public accountant. Organizations are  
48 required to report the amount of money received in the state  
49 and the amount spent in the state for charitable purposes;

50 (7) A copy of any determination of the organization's tax  
51 exempt status under the provisions of 26 U.S.C. §501(c)(3)  
52 and a copy of the last filed Internal Revenue Service Form  
53 990 and Schedule A for every charitable organization and  
54 any parent organization;

55 (8) Whether the organization intends to solicit  
56 contributions, donations or grants from the public directly or  
57 have other solicitation done on its behalf by others;

58 (9) Whether the organization is authorized by any other  
59 governmental authority to solicit contributions, donations or  
60 grants and whether it is or has ever been enjoined by any  
61 court from soliciting contributions;

62 (10) The general purpose or purposes for which the  
63 contributions to be solicited shall be used;

64 (11) The name or names under which it intends to solicit  
65 contributions;

66 (12) The names of the individuals or officers of the  
67 organization who will have final responsibility for the  
68 custody of the contributions;

69 (13) The names of the individuals or officers of the  
70 organization responsible for the final distribution of the  
71 contributions; and

72 (14) Copies of all contract documentation from  
73 professional fund-raising counsels and professional solicitors  
74 as provided in subsection (d), section seven of this article.

75 (b) Each chapter, branch or affiliate, except an  
76 independent member agency of a federated fund-raising  
77 organization, may separately report the information required  
78 by this section or report the information to its parent

79 organization which shall then furnish the information  
80 regarding its West Virginia affiliates, chapters and branches  
81 in a consolidated form to the Secretary of State. An  
82 independent member agency of a federated fund-raising  
83 organization, as defined in section two of this article, shall  
84 comply with the provisions of this article independently.  
85 Each organization shall file a separate registration form for  
86 each name under which funds will be solicited.

87 (c) The registration forms and any other documents  
88 prescribed by the Secretary of State shall be signed by an  
89 authorized officer or by an independent public accountant  
90 and by the chief fiscal officer of the charitable organization  
91 and shall be verified under oath.

92 (d) Every charitable organization receiving less than \$1  
93 million during any year which submits an independent  
94 registration to the Secretary of State shall pay an annual  
95 registration fee of \$15; every charitable organization  
96 collecting more than \$1 million during one year which  
97 submits an independent registration to the Secretary of State  
98 shall pay an annual registration fee of \$50; and a parent  
99 organization filing on behalf of one or more chapters,  
100 branches or affiliates or a single organization filing under  
101 different names shall pay a single annual registration fee of  
102 \$50 for itself and the chapters, branches or affiliates included  
103 in the registration statement. All fees and moneys collected  
104 by the Secretary of State pursuant to the provisions of this  
105 article shall be deposited by the Secretary of State as follows:  
106 One-half shall be deposited in the state General Revenue  
107 Fund and one-half shall be deposited in the services fees and  
108 collections account established by section two, article one,  
109 chapter fifty-nine of this code for the operation of the office  
110 of the Secretary of State. The Secretary of State shall  
111 dedicate sufficient resources from that fund or other funds to  
112 provide the services required in this article.

113 (e) For good cause shown, the Secretary of State may  
114 extend the due date for the annual filing of a registration  
115 statement or report by a charitable organization or a  
116 professional fundraiser for a period not to exceed ninety  
117 days. During that period, the previously filed registration  
118 statement or report of the charitable organization which has  
119 been granted the extension remains in effect.

120 (f) In addition to the registration fee required by this  
121 section, a charitable organization or professional fundraiser,  
122 or both, which fails to file a registration statement or report  
123 by the original or extended due date for filing as required by  
124 this section shall, for each month or part of the month  
125 thereafter in which the registration statement or report is not  
126 filed, pay an additional fee of \$25: *Provided*, That the total  
127 amount of the additional fees for a registration statement or  
128 report required to be filed in any one year may not exceed  
129 \$500. All fees and moneys collected by the Secretary of  
130 State pursuant to the provisions of this article shall be  
131 deposited by the Secretary of State as follows: One-half shall  
132 be deposited in the state General Revenue Fund and one-half  
133 shall be deposited in the service fees and collections account  
134 established by section two, article one, chapter fifty-nine of  
135 this code for the operation of the Office of the Secretary of  
136 State. The Secretary of State shall dedicate sufficient  
137 resources from that fund or other funds to provide the  
138 services required in this article.

**§29-19-6. Certain persons and organizations exempt from registration.**

1 The following charitable organizations are not required  
2 to file an annual registration statement with the Secretary of  
3 State:

4 (1) Educational institutions, the curriculums of which, in  
5 whole or in part, are registered or approved by the State

6 Board of Education, either directly or by acceptance of  
7 accreditation by an accrediting body recognized by the State  
8 Board of Education; and any auxiliary associations,  
9 foundations and support groups which are directly  
10 responsible to the educational institutions;

11 (2) Persons requesting contributions for the relief of any  
12 individual specified by name at the time of the solicitation  
13 when all of the contributions collected without any  
14 deductions whatsoever are turned over to the named  
15 beneficiary for his or her use;

16 (3) Hospitals and licensed nursing homes which are  
17 nonprofit and charitable;

18 (4) Organizations which solicit only within the  
19 membership of the organization by the members thereof:  
20 *Provided*, That the term "membership" does not include  
21 those persons who are granted a membership upon making a  
22 contribution as the result of solicitation. For the purpose of  
23 this section, "member" means a person having membership  
24 in a nonprofit corporation, or other organization, in  
25 accordance with the provisions of its articles of  
26 incorporation, bylaws or other instruments creating its form  
27 and organization; and having bona fide rights and privileges  
28 in the organization, including the right to vote, to elect  
29 officers, directors and issues, to hold office or otherwise as  
30 ordinarily conferred on members of the organizations;

31 (5) Churches, synagogues, associations or conventions of  
32 churches, religious orders or religious organizations that are  
33 an integral part of a church which qualifies as tax exempt  
34 under the provisions of 26 U.S.C. §501(c)(3) and which  
35 qualifies as being exempt from filing an annual return under  
36 the provisions of 26 U.S.C. §6033;

37 (6) Any person, firm, corporation or organization that  
38 sponsors a single fund-raising event for the benefit of a

39 named charitable organization where all or part of the funds  
40 collected are donated to the named charitable organization:  
41 *Provided*, That the named charitable organization receiving  
42 the funds is registered pursuant to this article, reports each of  
43 these donations individually and certifies that no funds were  
44 withheld by the organization that solicited the funds;

45 (7) Any charitable organization that does not employ a  
46 professional solicitor or fundraiser and does not intend to  
47 solicit and receive and does not actually raise or receive  
48 contributions, donations or grants from the public in excess  
49 of \$25,000 during a calendar year.

50 Charitable organizations which do not intend to solicit  
51 and receive contributions, donations or grants in excess of  
52 \$25,000, but do receive in excess of that amount from the  
53 public, shall file the annual registration statement within  
54 thirty days after contributions are in excess of \$25,000.

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## CHAPTER 20

**(Com. Sub. for H. B. 4164 - By Delegates  
Hatfield, Perdue, Brown, Guthrie, Campbell,  
Wells, Wooton, Marshall, Mahan and Givens)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2010.]

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AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new section, designated §49-7-35, relating  
to the creation of a pilot program for the placement of children  
four to ten years of age in foster care.

*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 §49-7-35, to read as follows:

**ARTICLE 7. GENERAL PROVISIONS.**

**§49-7-35. Pilot program for the placement of children four to ten years of age in foster care; requirements.**

1           (a) This section shall be known as “Jacob’s Law.”

2           (b) The Legislature finds that:

3           (1) The needs of young children are not always  
4 adequately addressed when the Department of Health and  
5 Human Resources is required to take custody of them;

6           (2) Often the behavior of young children taken from their  
7 homes pose special challenges for the department and other  
8 individuals who are charged with their care;

9           (3) The department must take extraordinary precautions  
10 to prevent serious emotional damage to these children; and

11           (4) The department has resources within the department  
12 that can be redirected to meet many of the needs of the  
13 program required by this section.

14           (c) The department shall choose four regions in which to  
15 implement a two-year pilot program to address children ages  
16 four through ten immediately after removal from their homes  
17 by the Child Protective Service Division due to child abuse  
18 and neglect and who, by the nature of their removal, are in  
19 crisis.

20           (d) The program shall:

- 21           (1) Include early intervention for children in crisis;
- 22           (2) Provide for the development of a short-term and an  
23 ongoing long-term plan for each child;
- 24           (3) Provide that each child is evaluated for emotional and  
25 physical trauma and other medical, educational, dental and  
26 other needs, in a timely manner;
- 27           (4) Require that each child be assigned an independent  
28 advocate through the community advocacy programs as staff  
29 or volunteers are made available; and
- 30           (e) The plans required by subsection (d) of this section  
31 shall:
- 32           (1) Address abandonment, separation anxiety, post  
33 traumatic stress and other emotional and physical needs of  
34 the child;
- 35           (2) Be developed by appropriately trained professional  
36 staff;
- 37           (3) Require the participation of a child care agency, the  
38 Department of Education, community programs and other  
39 appropriate agencies providing services to children ages four  
40 through ten; and
- 41           (4) Be developed to meet the ongoing emotional needs of  
42 each child.
- 43           (f) The short-term plan required by subsection (d) of this  
44 section shall address the child's needs for the first thirty days  
45 under the department's supervision.
- 46           (g) During the initial evaluation period, and when the  
47 child is being placed into foster care, the department shall  
48 when possible place the child into an enhanced specialized  
49 foster care home. Providers offering enhanced specialized



50 foster care homes shall include crisis intervention staffed  
51 with trained and educated professional individuals and  
52 specialized training on how to manage a child's reaction to  
53 trauma and the crisis of being removed from the custody of  
54 a parent, parents or other guardians, with emphasis on the  
55 child's emotional needs. This program shall limit the number  
56 of children in one location to three foster children at a time.  
57 A greater number is permitted if all of the children are  
58 siblings.

59 (h) After a short-term and long-term plan is developed,  
60 the department shall:

61 (1) Provide the foster family with training and education  
62 in the plan;

63 (2) Evaluate the child and foster parent or parents on the  
64 interaction between the child and parents;

65 (3) Train the foster parent on how to respond to the  
66 child's emotional crisis and how to understand the child's  
67 crisis reactive behavior; and

68 (4) Evaluate the foster family on its understanding of the  
69 need for this early intervention and the need for appropriate  
70 crisis management.

71 (i) The providers of enhanced specialized foster care  
72 services shall:

73 (1) Create and train a team to provide crisis intervention;

74 (2) Provide a call system for the enhanced specialized  
75 foster parents and the child so that the enhanced specialized  
76 foster parents or the child can speak to a team member or  
77 other appropriately trained professional during a crisis; and

78 (3) Require a crisis team member to visit the home if  
79 unable to adequately resolve the crisis over the telephone and

80 to do a follow up visit within two days to meet with the  
81 enhanced specialized foster parents and child, individually,  
82 to determine the crisis was satisfactorily resolved.

83 (j) The department shall develop a system to evaluate the  
84 pilot program for outcomes and standards of care and report  
85 back to public, private and community partners. In addition  
86 the evaluation shall be reported to the Joint Committee on  
87 Government and Finance or other designated committees  
88 every six months for two years. The evaluation shall be  
89 contracted by the department through an external entity who  
90 shall:

91 (1) Establish measurable outcomes for purposes of  
92 evaluation;

93 (2) Collect, analyze and report data quarterly and  
94 annually;

95 (3) Identify trends and make recommendations for  
96 program improvement;

97 (4) Conduct an analysis of the impact of the pilot  
98 program on the child's emotional stability including the  
99 number of placements that the child experiences and the  
100 basis for required moves;

101 (5) Provide technical assistance and training to the pilot  
102 program;

103 (6) Provide leadership in the development of data  
104 collection and outcome reporting models;

105 (7) Provide feedback for quality improvement to those  
106 responsible for the pilot program; and

107 (8) Monitor, research and present best practices through  
108 everyday communication and training opportunities.

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**CHAPTER 21**

**(Com. Sub. for S. B. 51 - By Senators Wells,  
D. Facemire and Chafin)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 24, 2010.]

AN ACT to amend and reenact §48-9-205 of the Code of West Virginia, 1931, as amended, relating to requiring a permanent parenting plan to contain a provision concerning the custody of a child if either parent, as a member of the National Guard, a reserve component or an active duty component, is mobilized, deployed or called to active duty.

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

That §48-9-205 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. ALLOCATION OF CUSTODIAL  
RESPONSIBILITY AND DECISION-  
MAKING RESPONSIBILITY OF  
CHILDREN.**

**§48-9-205. Permanent parenting plan.**

- 1 (a) A party seeking a judicial allocation of custodial
- 2 responsibility or decision-making responsibility under this
- 3 article shall file a proposed parenting plan with the court.
- 4 Parties may file a joint plan. A proposed plan shall be
- 5 verified and shall state, to the extent known or reasonably
- 6 discoverable by the filing party or parties:

7           (1) The name, address and length of residence of any  
8 adults with whom the child has lived for one year or more, or  
9 in the case of a child less than one year old, any adults with  
10 whom the child has lived since the child's birth;

11           (2) The name and address of each of the child's parents  
12 and any other individuals with standing to participate in the  
13 action under section one hundred three of this article;

14           (3) A description of the allocation of care taking and  
15 other parenting responsibilities performed by each person  
16 named in subdivisions (1) and (2) of this subsection during  
17 the twenty-four months preceding the filing of an action  
18 under this article;

19           (4) A description of the work and child-care schedules of  
20 any person seeking an allocation of custodial responsibility,  
21 and any expected changes to these schedules in the near  
22 future;

23           (5) A description of the child's school and extracurricular  
24 activities;

25           (6) A description of any of the limiting factors as  
26 described in section two hundred nine of this article that are  
27 present, including any restraining orders against either parent  
28 to prevent domestic or family violence, by case number and  
29 jurisdiction;

30           (7) Required financial information; and

31           (8) A description of the known areas of agreement and  
32 disagreement with any other parenting plan submitted in the  
33 case.

34           The court shall maintain the confidentiality of any  
35 information required to be filed under this section when the  
36 person giving that information has a reasonable fear of

37 domestic abuse and disclosure of the information would  
38 increase that fear.

39 (b) The court shall develop a process to identify cases in  
40 which there is credible information that child abuse or  
41 neglect, as defined in section three, article one, chapter forty-  
42 nine of this code, or domestic violence as defined in section  
43 two hundred two, article twenty-seven of this chapter has  
44 occurred. The process shall include assistance for possible  
45 victims of domestic abuse in complying with subdivision (6),  
46 subsection (a) of this section, and referral to appropriate  
47 resources for safe shelter, counseling, safety planning,  
48 information regarding the potential impact of domestic abuse  
49 on children and information regarding civil and criminal  
50 remedies for domestic abuse. The process shall also include  
51 a system for ensuring that jointly submitted parenting plans  
52 that are filed in cases in which there is credible information  
53 that child abuse or domestic abuse has occurred receive the  
54 court review that is mandated by subsection (b), section two  
55 hundred one of this article.

56 (c) Upon motion of a party and after consideration of the  
57 evidence, the court shall order a parenting plan consistent  
58 with the provisions of sections two hundred six, two hundred  
59 seven, two hundred eight and two hundred nine of this article,  
60 containing:

61 (1) A provision for the child's living arrangements and  
62 each parent's custodial responsibility, which shall include  
63 either:

64 (A) A custodial schedule that designates in which  
65 parent's home each minor child will reside on given days of  
66 the year; or

67 (B) A formula or method for determining such a schedule  
68 in sufficient detail that, if necessary, the schedule can be  
69 enforced in subsequent proceedings by the court;

70 (2) An allocation of decision-making responsibility as to  
71 significant matters reasonably likely to arise with respect to  
72 the child;

73 (3) A provision consistent with section two hundred two  
74 of this article for resolution of disputes that arise under the  
75 plan, and remedies for violations of the plan; and

76 (4) A plan for the custody of the child should one or both  
77 of the parents as a member of the National Guard, a reserve  
78 component or an active duty component be mobilized,  
79 deployed or called to active duty.

80 (d) A parenting plan may, at the court's discretion,  
81 contain provisions that address matters that are expected to  
82 arise in the event of a party's relocation, or provide for future  
83 modifications in the parenting plan if specified contingencies  
84 occur.

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## CHAPTER 22

**(S. B. 610 - By Senators Helmick, McCabe,  
Bowman, Edgell, D. Facemire, Fanning,  
Green, Prezioso, Unger, Wells, White,  
Boley, K. Facemyer, Guills and Sypolt)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §49-2B-3 of the Code of West Virginia, 1931, as amended, relating to child care services; providing requirements for out-of-school time programs; exempting certain programs; requiring registration of certain programs; requiring licensed or registered child care centers to

have an annually updated written plan for evacuation in the event of an emergency; providing for plan requirements; providing for plan distribution and availability requirements; and making the evacuation plan a point of investigation before a new license is received.”

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

That §49-2B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2B. DUTIES OF SECRETARY OF HEALTH AND HUMAN RESOURCES FOR CHILD WELFARE.**

**\*§49-2B-3. Licensure, certification, approval and registration requirements.**

1           (a) Any person, corporation or child welfare agency,  
2 other than a state agency, which operates a residential child  
3 care center shall obtain a license from the department.

4           (b) Any residential child care facility, day care center or  
5 any child-placing agency operated by the state shall obtain  
6 approval of its operations from the secretary: *Provided*, That  
7 this requirement does not apply to any juvenile detention  
8 facility or juvenile correctional facility operated by or under  
9 contract with the Division of Juvenile Services, created  
10 pursuant to section two, article five-e of this chapter, for the  
11 secure housing or holding of juveniles committed to its  
12 custody. The facilities and placing agencies shall maintain  
13 the same standards of care applicable to licensed facilities,  
14 centers or placing agencies of the same category.

15           (c) Any family day care facility which operates in this  
16 state, including family day care facilities approved by the

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\*CLERK'S NOTE: This section was also amended by S. B. 349 (Chapter 23) which passed prior to this act.

17 department for receipt of funding, shall obtain a statement of  
18 certification from the department.

19 (d) Every family day care home which operates in this  
20 state, including family day care homes approved by the  
21 department for receipt of funding, shall obtain a certificate of  
22 registration from the department.

23 (e) This section does not apply to:

24 (1) A kindergarten, preschool or school education  
25 program which is operated by a public school or which is  
26 accredited by the state Department of Education, or any other  
27 kindergarten, preschool or school programs which operate  
28 with sessions not exceeding four hours per day for any child;

29 (2) An individual or facility which offers occasional care  
30 of children for brief periods while parents are shopping,  
31 engaging in recreational activities, attending religious  
32 services or engaging in other business or personal affairs;

33 (3) Summer recreation camps operated for children  
34 attending sessions for periods not exceeding thirty days;

35 (4) Hospitals or other medical facilities which are  
36 primarily used for temporary residential care of children for  
37 treatment, convalescence or testing;

38 (5) Persons providing family day care solely for children  
39 related to them;

40 (6) Any juvenile detention facility or juvenile  
41 correctional facility operated by or under contract with the  
42 Division of Juvenile Services, created pursuant to section  
43 two, article five-e of this chapter, for the secure housing or  
44 holding of juveniles committed to its custody.

45 (7) Any out-of-school time program that has been  
46 awarded a grant by the West Virginia Department of  
47 Education to provide out-of-school time programs to



48 kindergarten through twelfth grade students when the  
49 program is monitored by the West Virginia Department of  
50 Education; or

51 (8) Any out-of-school time program serving children six  
52 years of age or older and meets all of the following  
53 requirements, or is an out-of-school time program that is  
54 affiliated and in good standing with a national  
55 Congressionally chartered organization and meets all of the  
56 following requirements:

57 (i) The program is located in a facility that meets all fire  
58 and health codes;

59 (ii) The program performs background checks on all  
60 volunteers and staff;

61 (iii) The program's primary source of funding is not from  
62 fees for service; and,

63 (iv) The program has a formalized monitoring system in  
64 place.

65 (f) The secretary is authorized to issue an emergency rule  
66 relating to conducting a survey of existing facilities in this  
67 state in which children reside on a temporary basis in order  
68 to ascertain whether they should be subject to licensing under  
69 this article or applicable licensing provisions relating to  
70 behavioral health treatment providers.

71 (g) Any informal family child care home or relative  
72 family child care home may voluntarily register and obtain a  
73 certificate of registration from the department.

74 (h) All facilities or programs that provide out-of-school  
75 time care shall register with the department upon  
76 commencement of operations and on an annual basis  
77 thereafter. The department shall obtain information such as

78 the name of the facility or program, the description of the  
79 services provided and any other information relevant to the  
80 determination by the department as to whether the facility or  
81 program meets the criteria for exemption under this section.

82 (i) Any child care service that is licensed or receives a  
83 certificate of registration shall have a written plan for  
84 evacuation in the event of fire, natural disaster or other  
85 threatening situation that may pose a health or safety hazard  
86 to the children in the child care service.

87 (1) The plan shall include, but not be limited to:

88 (A) A designated relocation site and evacuation;

89 (B) Procedures for notifying parents of the relocation and  
90 ensuring family reunification;

91 (C) Procedures to address the needs of individual  
92 children including children with special needs;

93 (D) Instructions relating to the training of staff or the  
94 reassignment of staff duties, as appropriate;

95 (E) Coordination with local emergency management  
96 officials; and

97 (F) A program to ensure that appropriate staff are familiar  
98 with the components of the plan.

99 (2) A child care service shall update the evacuation plan  
100 by December 31, of each year. If a child care service fails to  
101 update the plan, no action shall be taken against the child care  
102 service's license or registration until notice is provided and  
103 the child care service is given thirty days after the receipt of  
104 notice to provide an updated plan.

105 (3) A child care service shall retain an updated copy of  
106 the plan for evacuation and shall provide notice of the plan  
107 and notification that a copy of the plan will be provided upon  
108 request to any parent, custodian or guardian of each child at  
109 the time of the child's enrollment in the child care service  
110 and when the plan is updated.

111 (4) All child care centers and family child care facilities  
112 shall provide the plan and each updated copy of the plan to  
113 the Director of the Office of Emergency Services in the  
114 county where the center or facility is located.

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## CHAPTER 23

**(Com. Sub. for S. B. 349 - By Senators Palumbo,  
Browning, McCabe, Foster, Laird, Wells,  
Stollings and D. Facemire)**

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[Passed March 5, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 16, 2010.]

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AN ACT to amend and reenact §49-2B-3 and §49-2B-8 of the Code of West Virginia, 1931, as amended, all relating to requiring licensed or registered child care centers to have an annually updated written plan for evacuation in the event of an emergency; providing for plan requirements; providing for plan distribution and availability requirements; and making the evacuation plan a point of investigation before a new license is received.

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

That §49-2B-3 and §49-2B-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 2B. DUTIES OF SECRETARY OF HEALTH AND  
HUMAN RESOURCES FOR CHILD  
WELFARE.**

§49-2B-3. Licensure, certification, approval and registration requirements.

§49-2B-8. Application for license or approval.

**\*§49-2B-3. Licensure, certification, approval and registration  
requirements.**

1           (a) Any person, corporation or child welfare agency,  
2 other than a state agency, which operates a residential child  
3 care facility, a child-placing agency or a day care center shall  
4 obtain a license from the department.

5           (b) Any residential child care facility, day care center or  
6 any child-placing agency operated by the state shall obtain  
7 approval of its operations from the secretary: *Provided*, That  
8 this requirement does not apply to any juvenile detention  
9 facility or juvenile correctional facility operated by or under  
10 contract with the Division of Juvenile Services, created  
11 pursuant to section two, article five-e of this chapter, for the  
12 secure housing or holding of juveniles committed to its  
13 custody. The facilities and placing agencies shall maintain  
14 the same standards of care applicable to licensed facilities,  
15 centers or placing agencies of the same category.

16           (c) Any family day care facility which operates in this  
17 state, including family day care facilities approved by the  
18 department for receipt of funding, shall obtain a statement of  
19 certification from the department.

20           (d) Every family day care home which operates in this  
21 state, including family day care homes approved by the  
22 department for receipt of funding, shall obtain a certificate of  
23 registration from the department.

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\***CLERK'S NOTE:** This section was also amended by S. B. 610 (Chapter 22)  
which passed subsequent to this act.

24 (e) This section does not apply to:

25 (1) A kindergarten, preschool or school education  
26 program which is operated by a public school or which is  
27 accredited by the state Department of Education, or any other  
28 kindergarten, preschool or school programs which operate  
29 with sessions not exceeding four hours per day for any child;

30 (2) An individual or facility which offers occasional care  
31 of children for brief periods while parents are shopping,  
32 engaging in recreational activities, attending religious  
33 services or engaging in other business or personal affairs;

34 (3) Summer recreation camps operated for children  
35 attending sessions for periods not exceeding thirty days;

36 (4) Hospitals or other medical facilities which are  
37 primarily used for temporary residential care of children for  
38 treatment, convalescence or testing;

39 (5) Persons providing family day care solely for children  
40 related to them; or

41 (6) Any juvenile detention facility or juvenile  
42 correctional facility operated by or under contract with the  
43 Division of Juvenile Services, created pursuant to section  
44 two, article five-e of this chapter, for the secure housing or  
45 holding of juveniles committed to its custody.

46 (f) The secretary is hereby authorized to issue an  
47 emergency rule relating to conducting a survey of existing  
48 facilities in this state in which children reside on a temporary  
49 basis in order to ascertain whether they should be subject to  
50 licensing under this article or applicable licensing provisions  
51 relating to behavioral health treatment providers.

52 (g) Any informal family child care home or relative  
53 family child care home may voluntarily register and obtain a  
54 certificate of registration from the department.

55 (h) Any child care service that is licensed or receives a  
56 certificate of registration shall have a written plan for  
57 evacuation in the event of fire, natural disaster or other  
58 threatening situation that may pose a health or safety hazard  
59 to the children in the child care service.

60 (1) The plan shall include, but not be limited to:

61 (A) A designated relocation site and evacuation;

62 (B) Procedures for notifying parents of the relocation and  
63 ensuring family reunification;

64 (C) Procedures to address the needs of individual  
65 children including children with special needs;

66 (D) Instructions relating to the training of staff or the  
67 reassignment of staff duties, as appropriate;

68 (E) Coordination with local emergency management  
69 officials; and

70 (F) A program to ensure that appropriate staff are familiar  
71 with the components of the plan.

72 (2) A child care service shall update the evacuation plan  
73 by December 31, of each year. If a child care service fails to  
74 update the plan, no action shall be taken against the child care  
75 service's license or registration until notice is provided and  
76 the child care service is given thirty days after the receipt of  
77 notice to provide an updated plan.

78 (3) A child care service shall retain an updated copy of  
79 the plan for evacuation and shall provide notice of the plan  
80 and notification that a copy of the plan will be provided upon  
81 request to any parent, custodian or guardian of each child at  
82 the time of the child's enrollment in the child care service  
83 and when the plan is updated.

84           (4) All child care centers and family child care facilities  
85 shall provide the plan and each updated copy of the plan to  
86 the Director of the Office of Emergency Services in the  
87 county where the center or facility is located.

**§49-2B-8. Application for license or approval.**

1           (a) Any person or corporation or any governmental  
2 agency intending to act as a child welfare agency shall apply  
3 for a license, approval or registration certificate to operate  
4 child care facilities regulated by this article. Applications for  
5 licensure, approval or registration shall be made separately  
6 for each child care facility to be licensed, approved, certified  
7 or registered.

8           (b) The secretary shall prescribe forms and reasonable  
9 application procedures including, but not limited to,  
10 fingerprinting of applicants and other persons responsible for  
11 the care of children for submission to the State Police and, if  
12 necessary, to the Federal Bureau of Investigation for criminal  
13 history record checks.

14           (c) Before issuing a license, or approval, the secretary  
15 shall investigate the facility, program and persons responsible  
16 for the care of children. The investigation shall include, but  
17 not be limited to, review of resource need, reputation,  
18 character and purposes of applicants, a check of personnel  
19 criminal records, if any, and personnel medical records, the  
20 financial records of applicants, review of the facilities  
21 emergency evacuation plan and consideration of the proposed  
22 plan for child care from intake to discharge.

23           (d) Before a home registration is granted, the secretary  
24 shall make inquiry as to the facility, program and persons  
25 responsible for the care of children. The inquiry shall include  
26 self-certification by the prospective home of compliance with  
27 standards including, but not limited to:

- 28           (1) Physical and mental health of persons present in the  
29     home while children are in care;
- 30           (2) Criminal and child abuse or neglect history of persons  
31     present in the home while children are in care;
- 32           (3) Discipline;
- 33           (4) Fire and environmental safety;
- 34           (5) Equipment and program for the children in care;
- 35           (6) Health, sanitation and nutrition.
- 36           (e) Further inquiry and investigation may be made as the  
37     secretary may direct.
- 38           (f) The secretary shall make a decision on each  
39     application within sixty days of its receipt and shall provide  
40     to unsuccessful applicants written reasons for the decision.

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## CHAPTER 24

**(Com. Sub. for S. B. 669 - By Senators  
Kessler, Foster, Prezioso and Plymale)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §49-5-11 and §49-5-13d of the Code of West Virginia, 1931, as amended, all relating to juvenile proceedings; providing circuit court judges the option to refer truant juveniles to be supervised by his or her probation office in judicial circuits that operate a truancy program; allowing



municipalities to operate teen courts; clarifying jurisdiction and procedures for teen courts; authorizing the establishment additional mandatory municipal court fees to support a municipal teen court; and providing for supervision of juveniles referred by teen courts.

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

That §49-5-11 and §49-5-13d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 5. JUVENILE PROCEEDINGS.**

§49-5-11. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.

§49-5-13d. Teen court program.

#### **§49-5-11. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.**

1 At the outset of an adjudicatory hearing, the court shall  
2 inquire of the juvenile whether he or she wishes to admit or deny  
3 the allegations in the petition. The juvenile may elect to stand  
4 mute, in which event the court shall enter a general denial of all  
5 allegations in the petition.

6 (a) If the respondent juvenile admits the allegations of the  
7 petition, the court shall consider the admission to be proof of the  
8 allegations if the court finds: (1) The respondent fully  
9 understands all of his or her rights under this article; (2) the  
10 respondent voluntarily, intelligently and knowingly admits all  
11 facts requisite for an adjudication; and (3) the respondent in his  
12 or her admission has not set forth facts which constitute a  
13 defense to the allegations.

14 (b) If the respondent juvenile denies the allegations, the  
15 court shall dispose of all pretrial motions and the court or jury  
16 shall proceed to hear evidence.

17 (c) If the allegations in a petition alleging that the juvenile is  
18 delinquent are admitted or are sustained by proof beyond a  
19 reasonable doubt, the court shall schedule the matter for  
20 disposition pursuant to section thirteen of this article.

21 (d) If the allegations in a petition alleging that the juvenile is  
22 a status offender are admitted or sustained by clear and  
23 convincing proof, the court shall refer the juvenile to the  
24 department of health and human resources for services, pursuant  
25 to section eleven-a of this article and order the department to  
26 report back to the court with regard to the juvenile's progress at  
27 least every ninety days or until the court, upon motion or sua  
28 sponte, orders further disposition under section eleven-a of this  
29 article or dismisses the case from its docket: *Provided*, That in  
30 a judicial circuit operating its own truancy program, a circuit  
31 judge may in lieu of referring truant juveniles to the department,  
32 order that the juveniles be supervised by his or her probation  
33 office.

34 (e) If the allegations in a petition are not sustained by proof  
35 as provided in subsections (c) and (d) of this section, the petition  
36 shall be dismissed and the juvenile shall be discharged if he or  
37 she is in custody.

38 (f) Findings of fact and conclusions of law addressed to all  
39 allegations in the petition shall be stated on the record or  
40 reduced to writing and filed with the record or incorporated into  
41 the order of the court.

**§49-5-13d. Teen court program.**

1 (a) Notwithstanding any provision of this article to the  
2 contrary, in any county or municipality that chooses to institute  
3 a teen court program in accordance with the provisions of this  
4 section, any juvenile who is alleged to have committed a status  
5 offense or an act of delinquency which would be a misdemeanor  
6 if committed by an adult or in the case of a violation of a

7 municipal ordinance, an offense over which municipal courts  
8 have concurrent jurisdiction, and who is otherwise subject to the  
9 provisions of this article may be given the option of proceeding  
10 in the teen court program as an alternative to the filing of a  
11 formal petition under section seven of this article or proceeding  
12 to a disposition as provided by section eleven-a or thirteen of this  
13 article, as the case may be. The decision to extend the option to  
14 enter the teen court program as an alternative procedure shall be  
15 made by the circuit or municipal court if the court finds that the  
16 offender is a suitable candidate for the program. No juvenile  
17 may enter the teen court program unless he or she and his or her  
18 parent or guardian consent. Any juvenile who does not  
19 successfully cooperate in and complete the teen court program  
20 and any disposition imposed therein shall be returned to the  
21 circuit court for further disposition as provided by section  
22 eleven-a or thirteen of this article, as the case may be or return  
23 to a municipal court for further disposition for cases originating  
24 in circuit court consistent with any applicable ordinance.

25 (b) The following provisions apply to all teen court  
26 programs:

27 (1) The judge for each teen court proceeding shall be an  
28 acting or retired circuit court judge or an active member of the  
29 West Virginia State Bar, who serves on a voluntary basis.

30 (2) Any juvenile who selects the teen court program as an  
31 alternative disposition shall agree to serve thereafter on at least  
32 two occasions as a teen court juror.

33 (3) Volunteer students from grades seven through twelve of  
34 the schools within the county shall be selected to serve as  
35 defense attorney, prosecuting attorney, court clerk, bailiff and  
36 jurors for each proceeding.

37 (4) Disposition in a teen court proceeding shall consist of  
38 requiring the juvenile to perform sixteen to forty hours of  
39 community service, the duration and type of which shall be

40 determined by the teen court jury from a standard list of  
41 available community service programs provided by the county  
42 juvenile probation system and a standard list of alternative  
43 consequences that are consistent with the purposes of this  
44 article. The performance of the juvenile shall be monitored by  
45 the county juvenile probation system for cases originating in the  
46 circuit court's jurisdiction, or municipal teen court coordinator  
47 or other designee for cases originating in the municipal court's  
48 jurisdiction. The juvenile shall also perform at least two sessions  
49 of teen court jury service and, if considered appropriate by the  
50 circuit court judge or teen court judge, participate in an  
51 education program. Nothing in this section may be construed so  
52 as to deny availability of the services provided under section  
53 eleven-a of this article to juveniles who are otherwise eligible for  
54 such service.

55 (c) The rules for administration, procedure and admission of  
56 evidence shall be determined by the chief circuit judge or teen  
57 court judge, but in no case may the court require a juvenile to  
58 admit the allegation against him or her as a prerequisite to  
59 participation in the teen court program. A copy of these rules  
60 shall be provided to every teen court participant.

61 (d) Each county or municipality that operates, or wishes to  
62 operate, a teen court program as provided in this section is  
63 hereby authorized to adopt a mandatory fee of up to five dollars  
64 to be assessed as provided in this subsection. Municipal courts  
65 may assess a fee pursuant to the provisions of this section upon  
66 authorization by the city council of the municipality.  
67 Assessments collected by the clerk of the court pursuant to this  
68 subsection shall be deposited into an account specifically for the  
69 operation and administration of a teen court program. The clerk  
70 of the court of conviction shall collect the fees established in this  
71 subsection and shall remit the fees to the teen court program.

72 Any mandatory fee established by a county commission or  
73 city council in accordance with the provisions of this subsection  
74 shall be paid by the defendant on a judgment of guilty or a plea

75 of nolo contendere for each violation committed in the county or  
76 municipality of any felony, misdemeanor or any local ordinance,  
77 including traffic violations and moving violations but excluding  
78 municipal parking ordinances. Municipalities operating teen  
79 courts are authorized to use fees assessed in municipal court  
80 pursuant to this subsection for operation of a teen court in their  
81 municipality.

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## CHAPTER 25

**(S. B. 636 - By Senators Prezioso,  
Jenkins and Foster)**

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[Passed March 10, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 22, 2010.]

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AN ACT to amend and reenact §49-7-34 of the Code of West Virginia, 1931, as amended, relating to reconstituting the Commission to Study Residential Placement of Children.

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

That §49-7-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 7. GENERAL PROVISIONS.**

#### **§49-7-34. Commission to Study Residential Placement of Children.**

1 (a) The Legislature finds that the state's current system  
2 of serving children and families in need of or at risk of  
3 needing social, emotional and behavioral health services is

4 fragmented. The existing categorical structure of government  
5 programs and their funding streams discourages  
6 collaboration, resulting in duplication of efforts and a waste  
7 of limited resources. Children are usually involved in  
8 multiple child-serving systems, including child welfare,  
9 juvenile justice and special education. More than ten percent  
10 of children presently in care are presently in out-of-state  
11 placements. Earlier efforts at reform have focused on quick  
12 fixes for individual components of the system at the expense  
13 of the whole. It is the purpose of this section to establish a  
14 mechanism to achieve systemic reform by which all of the  
15 state's child-serving agencies involved in the residential  
16 placement of at-risk youth jointly and continually study and  
17 improve upon this system and make recommendations to  
18 their respective agencies and to the Legislature regarding  
19 funding and statutory, regulatory and policy changes. It is  
20 further the Legislature's intent to build upon these  
21 recommendations to establish an integrated system of care for  
22 at-risk youth and families that makes prudent and  
23 cost-effective use of limited state resources by drawing upon  
24 the experience of successful models and best practices in this  
25 and other jurisdictions, which focuses on delivering services  
26 in the least restrictive setting appropriate to the needs of the  
27 child, and which produces better outcomes for children,  
28 families and the state.

29 (b) There is hereby created within the Department of  
30 Health and Human Resources the Commission to Study the  
31 Residential Placement of Children. The commission consists  
32 of the Secretary of the Department of Health and Human  
33 Resources, the Commissioner of the Bureau for Children and  
34 Families, the Commissioner for the Bureau for Behavioral  
35 Health and Health Facilities, the Commissioner for the  
36 Bureau for Medical Services, the State Superintendent of  
37 Schools, a representative of local educational agencies, the  
38 Director of the Office of Institutional Educational Programs,

39 the Director of the Office of Special Education Programs and  
40 Assurance, the Director of the Division of Juvenile Services  
41 and the Executive Director of the Prosecuting Attorney's  
42 Institute. At the discretion of the West Virginia Supreme  
43 Court of Appeals, circuit and family court judges and other  
44 court personnel, including the Administrator of the Supreme  
45 Court of Appeals and the Director of the Juvenile Probation  
46 Services Division, may serve on the commission. These  
47 statutory members may further designate additional persons  
48 in their respective offices who may attend the meetings of the  
49 commission if they are the administrative head of the office  
50 or division whose functions necessitate their inclusion in this  
51 process. In its deliberations, the commission shall also  
52 consult and solicit input from families and service providers.

53 (c) The Secretary of the Department of Health and  
54 Human Resources shall serve as chair of the commission,  
55 which shall meet on a quarterly basis at the call of the chair.

56 (d) At a minimum, the commission shall study:

57 (1) The current practices of placing children out-of-home  
58 and into in-residential placements, with special emphasis on  
59 out-of-state placements;

60 (2) The adequacy, capacity, availability and utilization of  
61 existing in-state facilities to serve the needs of children  
62 requiring residential placements;

63 (3) Strategies and methods to reduce the number of  
64 children who must be placed in out-of-state facilities and to  
65 return children from existing out-of-state placements, initially  
66 targeting older youth who have been adjudicated delinquent;

67 (4) Staffing, facilitation and oversight of multidisciplinary  
68 treatment planning teams;

69 (5) The availability of and investment in community-  
70 based, less restrictive and less costly alternatives to  
71 residential placements;

72 (6) Ways in which up-to-date information about in-state  
73 placement availability may be made readily accessible to  
74 state agency and court personnel, including an interactive  
75 secure web site;

76 (7) Strategies and methods to promote and sustain  
77 cooperation and collaboration between the courts, state and  
78 local agencies, families and service providers, including the  
79 use of inter-agency memoranda of understanding, pooled  
80 funding arrangements and sharing of information and staff  
81 resources;

82 (8) The advisability of including “no-refusal” clauses in  
83 contracts with in-state providers for placement of children  
84 whose treatment needs match the level of licensure held by  
85 the provider;

86 (9) Identification of in-state service gaps and the  
87 feasibility of developing services to fill those gaps, including  
88 funding;

89 (10) Identification of fiscal, statutory and regulatory  
90 barriers to developing needed services in-state in a timely and  
91 responsive way;

92 (11) Ways to promote and protect the rights and  
93 participation of parents, foster parents and children involved  
94 in out-of-home care;

95 (12) Ways to certify out-of-state providers to ensure that  
96 children who must be placed out-of-state receive high quality  
97 services consistent with this state’s standards of licensure and  
98 rules of operation; and



99           (13) Any other ancillary issue relative to foster care  
100 placement.

101           (e) On or before December 1, 2010, the commission shall  
102 report to the Legislative Oversight Commission on Health  
103 and Human Resources Accountability its conclusions and  
104 recommendations, including an implementation plan  
105 whereby:

106           (1) Out-of-state placements shall be reduced by at least  
107 ten percent per year and by at least fifty percent within three  
108 years;

109           (2) Child-serving agencies shall develop joint operating  
110 and funding proposals to serve the needs of children and  
111 families that cross their jurisdictional boundaries in a more  
112 seamless way;

113           (3) Steps shall be taken to obtain all necessary federal  
114 plan waivers or amendments in order for agencies to work  
115 collaboratively while maximizing the availability of federal  
116 funds;

117           (4) Agencies shall enter into memoranda of  
118 understanding to assume joint responsibilities;

119           (5) System of care components and cooperative  
120 relationships shall be incrementally established at the local,  
121 state and regional levels, with links to existing resources,  
122 such as family resource networks and regional summits,  
123 wherever possible; and

124           (6) Recommendations for changes in fiscal, statutory and  
125 regulatory provisions are included for legislative action.

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**CHAPTER 26**

**(Com. Sub. for H. B. 4374 - By Delegates  
Moore, C. Miller, Staggers, Lawrence,  
Phillips, T. Walker, Hatfield, Manypenny,  
Hamilton, Moye and Perry)**

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[Passed March 8, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 16, 2010.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-11-1, §49-11-2, §49-11-3, §49-11-4, §49-11-5, §49-11-6, §49-11-7, §49-11-8, §49-11-9 and §49-11-10, all relating to establishing the Caregivers Consent Act; defining terms; setting parameters of caregiver's consent for minor's health care; detailing duties of health care facilities or practitioners; stating requirements for affidavits of caregiver consent; providing for revocation or termination of consent; limiting liability for good faith reliance on affidavit; stating exceptions to applicability; creating a criminal penalty for false statement; and establishing rule-making authority.

*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 §49-11-1, §49-11-2, §49-11-3, §49-11-4, §49-11-5, §49-11-6, §49-11-7, §49-11-8, §49-11-9 and §49-11-10, all to read as follows:

**ARTICLE 11. CAREGIVERS CONSENT ACT.**

- §49-11-1. Short title.
- §49-11-2. Definitions.
- §49-11-3. Caregiver consent for minor's health care.
- §49-11-4. Duty of health care facility or practitioner.
- §49-11-5. Affidavit of caregiver consent.
- §49-11-6. Revocation and termination of consent.
- §49-11-7. Good faith reliance on affidavit.
- §49-11-8. Exception to applicability.
- §49-11-9. Penalty for false statement.
- §49-11-10. Rule-making authority.

#### **§49-11-1. Short title.**

- 1 This article may be cited as the Caregivers Consent Act.

#### **§49-11-2. Definitions.**

- 1 As used in this article:

- 2 (1) "Caregiver" means any person who is at least
- 3 eighteen years of age and:

- 4 (A) Is related by blood, marriage or adoption to the
- 5 minor, but who is not the legal custodian or guardian of the
- 6 minor; or

- 7 (B) Has resided with the minor continuously during the
- 8 immediately preceding period of six months or more.

- 9 (2) "Health care and treatment" means:

- 10 (A) Developmental screening;

- 11 (B) Mental health screening;

- 12 (C) Mental health treatment;

- 13 (D) Ordinary and necessary medical and dental examination
- 14 and treatment;

15 (E) Preventive care including ordinary immunizations,  
16 tuberculin testing and well-child care; and

17 (F) Non-emergency diagnosis and treatment: *Provided*,  
18 That non-emergency diagnosis and treatment does not  
19 include an abortion.

**§49-11-3. Caregiver consent for minor's health care.**

1 (a) Except for minor children placed under the custody of  
2 the Department of Health and Human Resources pursuant to  
3 proceedings established by this chapter, a caregiver who  
4 possesses and presents a notarized affidavit pursuant to  
5 section five of this article may consent on behalf of a minor  
6 to health care and treatment.

7 (b) Examination and treatment shall be prescribed by or  
8 under the supervision of a physician, advanced practice  
9 nurse, dentist or mental health professional licensed to  
10 practice in the state.

**§49-11-4. Duty of health care facility or practitioner.**

1 The decision of a caregiver who possesses and presents  
2 a notarized affidavit of caregiver consent for a minor's health  
3 care pursuant to section five of this article shall be honored  
4 by a health care facility or practitioner unless the health care  
5 facility or practitioner has actual knowledge that a parent,  
6 legal custodian or guardian of a minor has made a  
7 contravening decision to consent to or to refuse medical  
8 treatment for the minor.

**§49-11-5. Affidavit of caregiver consent.**

1 An affidavit of caregiver consent for a minor's health  
2 care shall include the following:

- 3           (1) The caregiver's name and current home address;
- 4           (2) The caregiver's birth date;
- 5           (3) The relationship of the caregiver to the minor;
- 6           (4) The minor's name;
- 7           (5) The minor's birth date;
- 8           (6) The length of time the minor has resided with the  
9 caregiver;
- 10          (7) The caregiver's signature under oath affirming the  
11 truth of the matter asserted in the affidavit;
- 12          (8) The signature of the minor's parent, guardian or legal  
13 custodian consenting to the caregiver's authority over the  
14 minor's health care: *Provided*, That the signature of the  
15 minor's parent, guardian or legal custodian is not necessary if  
16 the affidavit includes the following: (A) a statement that the  
17 caregiver has attempted, but has been unable to obtain, the  
18 signature of the minor's parent, guardian or legal custodian;  
19 (B) a statement that the minor's parent, guardian or legal  
20 custodian has not refused to give consent for health care and  
21 treatment of the minor child; and (C) a description, in detail, of  
22 the attempts the caregiver made to obtain the signature of the  
23 minor's parent, guardian or legal custodian; and
- 24          (9) A statement, as follows:
- 25          "General Notices:
- 26          This declaration does not affect the rights of the minor's  
27 parent, guardian or legal custodian regarding the care,  
28 custody and control of the minor, other than with respect to

29 health care, and does not give the caregiver legal custody of  
30 the minor.

31 This affidavit is valid for one year unless the minor no  
32 longer resides in the caregiver's home. Furthermore, the  
33 minor's parent, guardian or legal custodian may at any time  
34 rescind this affidavit of caregiver consent for a minor's health  
35 care by providing written notification of the rescission to the  
36 appropriate health care professional.

37 A person who relies in good faith on this affidavit of  
38 caregiver consent for a minor's health care has no obligation  
39 to conduct any further inquiry or investigation and shall not  
40 be subject to civil or criminal liability or to professional  
41 disciplinary action because of that reliance."

#### **§49-11-6. Revocation and termination of consent.**

1 (a) The affidavit of caregiver consent for a minor's health  
2 care is superseded by written notification from the minor's  
3 parent, guardian or legal custodian to the health care  
4 professionals providing services to the minor that the  
5 affidavit has been rescinded.

6 (b) The affidavit of caregiver consent for a minor's health  
7 care is valid for one year unless the minor no longer resides  
8 in the caregiver's home or a parent, guardian or legal  
9 custodian revokes his or her approval by written notification  
10 to the health care professionals providing services to the  
11 minor that the affidavit has been rescinded. If a parent,  
12 guardian or legal custodian revokes approval, the caregiver  
13 shall notify any health care provider or health service plans  
14 with which the minor has been involved through the  
15 caregiver.

#### **§49-11-7. Good faith reliance on affidavit.**

1 (a) Any person who relies in good faith on the affidavit  
2 of caregiver consent for a minor's health care:

3 (1) Has no obligation to conduct any further inquiry or  
4 investigation; and

5 (2) Is not subject to civil or criminal liability or to  
6 professional disciplinary action because of the reliance.

7 (b) The provisions of subsection (a) of this section apply  
8 even if medical treatment is provided to a minor in  
9 contravention of a decision of a parent, legal custodian or  
10 guardian of the minor who signed the affidavit if the person  
11 providing care has no actual knowledge of the decision of the  
12 parent, legal custodian or guardian.

**§49-11-8. Exceptions to applicability.**

1 The consent authorized by this section shall not be  
2 applicable for purposes of the Individuals with Disabilities  
3 Education Act, 20 U. S. C. §1400 *et seq.*, or Section 504 of  
4 the Rehabilitation Act of 1973, 29 U. S. C. §791.

**§49-11-9. Penalty for false statement.**

1 A person who knowingly makes a false statement in an  
2 affidavit under this article is guilty of a misdemeanor and,  
3 upon conviction thereof, shall be fined not more than \$1,000.

**§49-11-10. Rule-making authority.**

1 The Secretary of the Department of Health and Human  
2 Resources is authorized to propose rules necessary to  
3 implement the provisions of this article for legislative  
4 approval in accordance with the provisions of article three,  
5 chapter twenty-nine-a of this code.

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## CHAPTER 27

**(H. B. 4373 - By Delegates Cann, Eldridge,  
Guthrie, Hatfield, Lawrence, Mahan, Manypenny,  
Michael, C. Miller, Perdue and Phillips)**

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[Passed March 12, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §5-16B-6d of the Code of West Virginia, 1931, as amended, regarding the eligibility of uninsured children to receive insurance under the Children's Health Insurance Program; eliminating the period of potential ineligibility of an uninsured child to receive insurance under the Children's Health Insurance Program if they were previously insured by an employer sponsored insurance plan.

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

That §5-16B-6d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.**

#### **§5-16B-6d. Modified benefit plan implementation.**

- 1 (a) Upon approval by the Centers for Medicare and  
2 Medicaid Services, the board shall implement a benefit plan for  
3 uninsured children of families with income between two  
4 hundred and three hundred percent of the federal poverty level.
  
- 5 (b) The benefit plans offered pursuant to this section shall  
6 include services determined to be appropriate for children,  
7 but may vary from those currently offered by the board.



8 (c) The board shall structure the benefit plans for this  
9 expansion to include premiums, coinsurance or copays and  
10 deductibles. The board shall develop the cost sharing features  
11 in such a manner as to keep the program fiscally stable  
12 without creating a barrier to enrollment. Such features may  
13 include different cost-sharing features within this group  
14 based upon the percentage of the federal poverty level.

15 (d) Provider reimbursement schedules shall be no lower  
16 than the reimbursement provided for the same services under  
17 the plans offered in article sixteen of this chapter.

18 (e) All provisions of this article are applicable to this  
19 expansion unless expressly addressed in this section.

20 (f) Nothing in this section may be construed to require  
21 any appropriation of State General Revenue Funds for the  
22 payment of any benefit provided pursuant to this section,  
23 except for the state appropriation used to match the federal  
24 financial participation funds. In the event that federal funds  
25 are no longer authorized for participation by individuals  
26 eligible at income levels above two hundred percent, the  
27 board shall take immediate steps to terminate the expansion  
28 provided for in this section and notify all enrollees of such  
29 termination. In the event federal appropriations decrease for  
30 the programs created pursuant to Title XXI of the Social  
31 Security Act of 1997, the board is directed to make those  
32 decreases in this expansion program before making changes  
33 to the programs created for those children whose family  
34 income is less than two hundred percent of the federal  
35 poverty level.

36 (g) The board is directed to report no less than quarterly  
37 to the Legislative Oversight Commission on Health and  
38 Human Resources Accountability on the development,  
39 implementation and progress of the expansion authorized in  
40 this section.



## CHAPTER 28

**(Com. Sub. for S. B. 471 - By Senator Kessler)**

[Passed March 13, 2010; in effect July 1, 2010.]  
[Approved by the Governor on March 10, 2010.]

AN ACT to amend and reenact §59-1-11 of the Code of West Virginia, 1931, as amended, relating to increasing the amount circuit clerks may charge for copies.

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

That §59-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 1. FEES AND ALLOWANCES.**

#### **§59-1-11. Fees to be charged by clerk of circuit court.**

1           (a) The clerk of a circuit court shall charge and collect for  
2 services rendered by the clerk the following fees which shall  
3 be paid in advance by the parties for whom services are to be  
4 rendered:

5           (1) For instituting any civil action under the Rules of  
6 Civil Procedure, any statutory summary proceeding, any  
7 extraordinary remedy, the docketing of civil appeals or any  
8 other action, cause, suit or proceeding, \$145, of which \$30 of  
9 that amount shall be deposited in the Courthouse Facilities  
10 Improvement Fund created by section six, article twenty-six,  
11 chapter twenty-nine of this code and \$10 shall be deposited  
12 in the special revenue account created in section six hundred

13 three, article twenty-six, chapter forty-eight of this code to  
14 provide legal services for domestic violence victims;

15 (2) For instituting an action for medical professional  
16 liability, \$260, of which \$10 of that amount shall be  
17 deposited in the Courthouse Facilities Improvement Fund  
18 created by section six, article twenty-six, chapter twenty-nine  
19 of this code;

20 (3) Beginning on and after July 1, 1999, for instituting an  
21 action for divorce, separate maintenance or annulment, \$135;

22 (4) For petitioning for the modification of an order  
23 involving child custody, child visitation, child support or  
24 spousal support, \$85; and

25 (5) For petitioning for an expedited modification of a  
26 child support order, \$35.

27 (b) In addition to the foregoing fees, the following fees  
28 shall likewise be charged and collected:

29 (1) For preparing an abstract of judgment, \$5;

30 (2) For any transcript, copy or paper made by the clerk  
31 for use in any other court or otherwise to go out of the office,  
32 for each page, seventy-five cents;

33 (3) For issuing a suggestion and serving notice to the  
34 debtor by certified mail, \$25;

35 (4) For issuing an execution, \$25;

36 (5) For issuing or renewing a suggestee execution and  
37 serving notice to the debtor by certified mail, \$25;

38 (6) For vacation or modification of a suggestee execution,  
39 \$1;

40           (7) For docketing and issuing an execution on a transcript  
41 of judgment from magistrate court, \$3;

42           (8) For arranging the papers in a certified question, writ  
43 of error, appeal or removal to any other court, \$10, of which  
44 \$5 of that amount shall be deposited in the Courthouse  
45 Facilities Improvement Fund created by section six, article  
46 twenty-six, chapter twenty-nine of this code;

47           (9) For postage and express and for sending or receiving  
48 decrees, orders or records, by mail or express, three times the  
49 amount of the postage or express charges;

50           (10) For each subpoena, on the part of either plaintiff or  
51 defendant, to be paid by the party requesting the same, 50¢;

52           (11) For additional service (plaintiff or appellant) where  
53 any case remains on the docket longer than three years, for  
54 each additional year or part year, \$20; and

55           (12) For administering funds deposited into a federally  
56 insured interest-bearing account or interest-bearing  
57 instrument pursuant to a court order, \$50, to be collected  
58 from the party making the deposit. A fee collected pursuant  
59 to this subdivision shall be paid into the general county fund.

60           (c) The clerk shall tax the following fees for services in  
61 any criminal case against any defendant convicted in such  
62 court:

63           (1) In the case of any misdemeanor, \$85; and

64           (2) In the case of any felony, \$105, of which \$10 of that  
65 amount shall be deposited in the Courthouse Facilities  
66 Improvement Fund created by section six, article twenty-six,  
67 chapter twenty-nine of this code.

68           (d) The clerk of a circuit court shall charge and collect a  
69 fee of \$25 per bond for services rendered by the clerk for  
70 processing of criminal bonds and the fee shall be paid at the  
71 time of issuance by the person or entity set forth below:

72           (1) For cash bonds, the fee shall be paid by the person  
73 tendering cash as bond;

74           (2) For recognizance bonds secured by real estate, the fee  
75 shall be paid by the owner of the real estate serving as surety;

76           (3) For recognizance bonds secured by a surety company,  
77 the fee shall be paid by the surety company;

78           (4) For ten-percent recognizance bonds with surety, the  
79 fee shall be paid by the person serving as surety; and

80           (5) For ten-percent recognizance bonds without surety,  
81 the fee shall be paid by the person tendering ten percent of  
82 the bail amount.

83           In instances in which the total of the bond is posted by  
84 more than one bond instrument, the above fee shall be  
85 collected at the time of issuance of each bond instrument  
86 processed by the clerk and all fees collected pursuant to this  
87 subsection shall be deposited in the Courthouse Facilities  
88 Improvement Fund created by section six, article twenty-six,  
89 chapter twenty-nine of this code. Nothing in this subsection  
90 may be construed as authorizing the clerk to collect the above  
91 fee from any person for the processing of a personal  
92 recognizance bond.

93           (e) The clerk of a circuit court shall charge and collect a  
94 fee of \$10 for services rendered by the clerk for processing  
95 of bailpiece and the fee shall be paid by the surety at the time  
96 of issuance. All fees collected pursuant to this subsection

97 shall be deposited in the Courthouse Facilities Improvement  
98 Fund created by section six, article twenty-six, chapter  
99 twenty-nine of this code.

100 (f) No clerk shall be required to handle or accept for  
101 disbursement any fees, cost or amounts of any other officer  
102 or party not payable into the county treasury except on  
103 written order of the court or in compliance with the  
104 provisions of law governing such fees, costs or accounts.



## CHAPTER 29

**(H. B. 4416 - By Delegates Marshall,  
Jaquinta, Craig, Manchin, Evans and Anderson)**

\_\_\_\_\_  
[Passed March 11, 2010; in effect from passage.]

[Approved by the Governor on March 26, 2010.]  
\_\_\_\_\_

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 the  
2 state has received the benefit of the commodities received or  
3 services rendered, or both, by certain claimants herein and  
4 has 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  
7 spending units, the claims having been previously  
8 considered by the Court of Claims which also found that the  
9 state has received the benefit of the commodities received  
10 or services rendered, or both, by the claimants, but were  
11 denied by the Court of Claims on the purely statutory  
12 grounds that to allow the claims would be condoning illegal  
13 acts contrary to the laws of the state. The Legislature,  
14 pursuant to its findings of fact and also by the adoption of  
15 the findings of fact by the Court of Claims as its own, while  
16 not condoning such illegal acts, hereby declares it to be the  
17 moral obligation of the state to pay these claims in the  
18 amounts specified below and directs the Auditor to issue  
19 warrants upon receipt of properly executed requisitions  
20 supported by itemized invoices, statements or other  
21 satisfactory documents as required by section ten, article  
22 three, chapter twelve of the Code of West Virginia, 1931, as  
23 amended, for the payments thereof out of any fund  
24 appropriated and available for the purpose.

25           (a) *Claims against the Division of Corrections:*

26           (TO BE PAID FROM GENERAL REVENUE FUND)

27           (1) Monongalia General Hospital   \$                   5,085.90

28           (2) Montgomery General Hospital   \$                   5,135.75

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## CHAPTER 30

**(S. B. 526 - By Senators Fanning, Edgell,  
White, Sypolt and Unger)**

[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on March 31, 2010.]

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 Department of Administration; Department of Health and Human Resources; Division of Corrections; Division of Highways; Division of Motor Vehicles; Library Commission; Public Service Commission; Regional Jail and Correctional Facility Authority and the West Virginia State Police 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 Department of Administration:*

14 (TO BE PAID FROM SPECIAL REVENUE FUND)

15 (1) Roy J. McDaniel \$250

16 (b) *Claims against the Department of Health and Human*  
17 *Resources:*

18 (TO BE PAID FROM SPECIAL REVENUE FUND)

19 (1) Diskriter Inc. \$69,011.05

20 (2) Verizon \$5,042.93

21 (c) *Claims against the Division of Corrections:*

22 (TO BE PAID FROM GENERAL REVENUE FUND)

23 (1) Abner D. Allen \$113.65

24 (2) Astar Abatement Inc. \$20,411.77

25 (3) Ryan Baker \$120

26 (4) Jessie Davis \$18.85

27 (5) Miguel Delgado \$40

28 (6) Donald Eakle \$127.05

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- 29 (7) Aron Joseph Freeland \$149.87
- 30 (8) Glock Inc. \$24
- 31 (9) Mark F. Hanna \$32.90
- 32 (10) Marlin J. McClain \$28.55
- 33 (11) Roger McKinney \$38.00
- 34 (12) Monongahela Power Co., dba Allegheny Power  
35 \$1,012.40
- 36 (13) Samuel Nibert \$19.85
- 37 (14) Roy Posey \$32.90
- 38 (15) Regional Jail and Correctional Facility Authority  
39 \$2,131,927.32
- 40 (16) Clifford Rice \$28.00
- 41 (17) Ricoh Americas Corporation \$4,631.29
- 42 (d) *Claims against the Division of Highways:*
- 43 (TO BE PAID FROM STATE ROAD FUND)
- 44 (1) John Scott Allen \$19,000
- 45 (2) James D. Amick \$254.87
- 46 (3) William D. Anderson \$500
- 47 (4) Donna Anthony \$2,000
- 48 (5) Dottie Arbogast \$500

- 49 (6) Stacy Armstrong \$217.94
- 50 (7) Sue L. Baney \$250
- 51 (8) Carl Bawgus \$500
- 52 (9) Bonita Bell \$240.40
- 53 (10) Patricia A. Blankenship \$951.36
- 54 (11) Stephanie D. Blasingim \$90.10
- 55 (12) Larry J. Boughner and Brenda L. Boughner \$317.07
- 56 (13) Deborah C. Bouvy \$125.08
- 57 (14) Sarah E. Brickner \$362.91
- 58 (15) Michael H. Brown \$457.39
- 59 (16) Robert E. Burns \$93.97
- 60 (17) Daniel Cantis and Deborah Cantis \$500
- 61 (18) Kate Cosby Cardwell \$187.50
- 62 (19) Jeffery S. Chumley \$250
- 63 (20) Thomas G. Coberly \$246.93
- 64 (21) John S. Cochran and Jami L. Cochran \$500
- 65 (22) Michael A. Corcoglioniti \$200
- 66 (23) Tammy Cranfield \$100
- 67 (24) Bobby P. Darnell \$2,366.55

- 68 (25) Danny R. Davis and Sonya Davis \$500
- 69 (26) Shane A. Day \$442.29
- 70 (27) James W. Dean \$191.32
- 71 (28) Rosalind Drake \$100
- 72 (29) Donna Durand and Walter Durand \$280.79
- 73 (30) Bernard Eddy and Reta June Eddy \$379.13
- 74 (31) Karen Elischer \$172.78
- 75 (32) John R. Elko Jr. \$196.73
- 76 (33) James W. Elliott \$145.54
- 77 (34) Judy Lynn Farley \$118.16
- 78 (35) Kevin Farley \$250
- 79 (36) Jeffrey Ferrell and Melissa Ferrell \$500
- 80 (37) Nika Mai Fields \$262.28
- 81 (38) Susan Renee Finley \$580
- 82 (39) Gary R. Fling and Tracy A. Fling \$250
- 83 (40) Linda L. Floyd \$1,555.05
- 84 (41) Larry D. Ford \$200.87
- 85 (42) Thomas H. Freshwater \$250
- 86 (43) Donald Garnes \$500

- 87 (44) Stephen J. Gawthrop \$249.19
- 88 (45) Justin Gordon and Allison Gordon \$978.36
- 89 (46) Gerald E. Greene \$205.75
- 90 (47) Richard R. Greene II \$694.94
- 91 (48) Charles Gregory \$1,000
- 92 (49) Lori Haldren \$158.96
- 93 (50) Jason E. Hardy \$500
- 94 (51) Marilyn T. Hargett \$57.19
- 95 (52) Lee Harris \$254.40
- 96 (53) James H. Hassig and Teresa A. Hassig \$319.39
- 97 (54) Dennis Helmick \$383.86
- 98 (55) Paul D. Helmick \$1,158.10
- 99 (56) Melissa Herold and Herbert H. Herold \$333.05
- 100 (57) Anthony M. Hicks \$250
- 101 (58) Wesley B. Holley \$352.56
- 102 (59) Wandell Huffman \$500
- 103 (60) Melvin R. Hyre \$111.25
- 104 (61) Mona L. Iddings \$144.16
- 105 (62) Melissa Isner and Robert Isner \$286.75

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106 (63) Amber Johnson \$100

107 (64) Elyssa Jo Johnson and Terry Blaine McManaway  
108 \$225.82

109 (65) Jerry L. Johnson and Earlene Johnson \$500

110 (66) Rose Anna Johnson and Ronald Wayne Johnson  
111 \$232.60

112 (67) Alvin Jackson Jones and Teresa Elaine Jones  
113 \$346.05

114 (68) Antoine Katiny \$454.61

115 (69) Gregory L. Keffer \$500

116 (70) Katrina S. Kelley and Michel L. Kelley \$500

117 (71) Gary Allen Ketterman \$3,100

118 (72) Howard L. Keyser \$133.13

119 (73) Leigh Ann Kinder \$30,000

120 (74) Paul Joseph King \$452.49

121 (75) Gregory S. Kipp \$500

122 (76) Donna Kiser, Admin. Of the Estate of Melvin Kiser  
123 \$300,000

124 (77) Donna Kiser, Admin. Of the Estate of Michael Kiser  
125 \$610,000

126 (78) Clark A. Lawrence \$2,497.41

- 127 (79) Kelly M. Levy and Peter D. Levy \$500
- 128 (80) Barbara A. Lorenzo and Lou Lorenzo \$500
- 129 (81) Christopher N. Mann and Meresa Mann \$261.56
- 130 (82) Doris C. Mayo \$86.50
- 131 (83) Plura McClanahan \$257.77
- 132 (84) Sherry McCoy \$500
- 133 (85) Michele Merigo \$122,500
- 134 (86) Lisa Metz and Brian K. Metz \$257.32
- 135 (87) Ronda L. Miller \$496.76
- 136 (88) Roy H. Miller \$200
- 137 (89) Richard P. Morrone \$702.20
- 138 (90) Teresa M. Myers and Anthony D. Myers \$400
- 139 (91) Stanley G. Nash \$1,000
- 140 (92) Richard L. Newman and Marqueta Sue Newman  
141 \$281.50
- 142 (93) Ernestine Nigh \$200
- 143 (94) Michelle D. Oney \$500
- 144 (95) Gary Orndorff and Kathryn Orndorff \$350
- 145 (96) Jason Robert Pickens \$341.75

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146	(97) Eugene Pleasant Jr. \$280.73	
147	(98) Sherry L. Post \$530.43	
148	(99) Stanley E. Powers and Francis Powers \$50,000	
149	(100) Ronald Lee Price \$411.73	
150	(101) Tamara Pritt \$22.74	
151	(102) Crystal Pruett \$56.75	
152	(103) David A. Ratliff \$378.83	
153	(104) Noah Edward Rawlings and Sherry L. Rawlings	
154	\$300.23	
155	(105) RLI Insurance Company \$167,634.95	
156	(106) Gail S. Robbins \$50	
157	(107) Robert L. Rogers and Melissa J. Rogers \$500	
158	(108) Peggy A. Sanders \$54.13	
159	(109) Dirk Robert Hugo Schlingmann and Catherine	
160	Ellen Schlingmann \$68,250	
161	(110) Randy L. Searls \$500	
162	(111) Jana Lynne Shannon \$5,436.13	
163	(112) Alicia G. Shaver and Robert H. Shaver Jr. \$468.75	
164	(113) Kendall C. Shepard \$307.58	
165	(114) Sherill A. Simmons and Dick F. Simmons \$500	



- 166 (115) Greg Six and Ray Six \$100
- 167 (116) Franklin T. Smith \$100
- 168 (117) Judy K. Snider \$250
- 169 (118) Kim Sovine \$519.29
- 170 (119) Loyd Dale Spotloe \$543.68
- 171 (120) Mary Stewart \$500
- 172 (121) Robert L. Summers \$45,000
- 173 (122) Russell G. Swecker and Wanda L. Swecker  
174 \$441.54
- 175 (123) Allen Tennant \$90.58
- 176 (124) K. Brooke Vance \$135.43
- 177 (125) Judy A. Walter \$67.05
- 178 (126) Ann S. Walters \$192.87
- 179 (127) Carol White and Nancy White \$346.15
- 180 (128) Ruth M. Whittaker and Vernon B. Whittaker  
181 \$4,000
- 182 (129) David Wilfong \$897.75
- 183 (130) Robert Woods \$90,000
- 184 (131) Robert C. Wright and Kimberly S. Wright \$500
- 185 (132) Robin L. Wright and Robert L. Wright \$231.50

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186 (133) Wesley R. Yoho Sr. \$500

187 (e) *Claims against the Division of Motor Vehicles:*

188 (TO BE PAID FROM STATE ROAD FUND)

189 (1) John H. Halstead \$292.50

190 (2) Joan Lorraine Jarvis-Halstead \$989

191 (f) *Claim against the Library Commission:*

192 (TO BE PAID FROM GENERAL REVENUE FUND)

193 (1) Jo Anne Cooke \$895.63

194 (g) *Claim against the Public Service Commission:*

195 (TO BE PAID FROM SPECIAL REVENUE FUND)

196 (1) Lynada Woods \$677.25

197 (h) *Claims against the Regional Jail and Correctional*  
198 *Facility Authority:*

199 (TO BE PAID FROM SPECIAL REVENUE FUND)

200 (1) Sammy Ray Copley \$39.16

201 (2) Wallace Davis \$62.00

202 (3) Roxanne Lee Funk \$2,091.97

203 (4) Robert Gladhill \$129.99

204 (5) Larry Edward Harmon \$426.96

- 205 (6) Robin Diahann Jenkins \$240
- 206 (7) Joseph J. Johnson \$871.50
- 207 (8) Christina L. King \$30
- 208 (9) Frank McKeiver \$210.94
- 209 (10) Roosevelt Motley II \$1,696
- 210 (11) Terry J. Shaver \$372.45
- 211 (12) Robert L. Stewart \$18.77
- 212 (13) Jimmy R. Taylor \$140
- 213 (i) *Claim against the State Police:*
- 214 (TO BE PAID FROM GENERAL REVENUE FUND)
- 215 (1) Kenny S. Willett \$277.44

216 The Legislature finds that the above moral obligations  
217 and the appropriations made in satisfaction thereof shall be  
218 the full compensation for all claimants and that prior to the  
219 payments to any claimant provided in this bill, the Court of  
220 Claims shall receive a release from said claimant releasing  
221 any and all claims for moral obligations arising from the  
222 matters considered by the Legislature in the finding of the  
223 moral obligations and the making of the appropriations for  
224 said claimant. The Court of Claims shall deliver all releases  
225 obtained from claimants to the department against which the  
226 claim was allowed.

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## CHAPTER 31

**(Com. Sub. for H. B. 4339 - By Delegates  
H. White and Campbell)**

[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on April 1, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §14-1-37, relating to collecting debts through the United States Treasury Offset Program; authorizing the State Auditor to enter into agreements with the United States Treasury's Financial Management Service; specifying reduction and offset of payments for collection of debt; authorizing rules; specifying cost-effective actions to aggressively collect; and authorizing interagency agreements.

*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 §14-1-37, to read as follows:

### **ARTICLE 1. CLAIMS DUE THE STATE.**

#### **§14-1-37. United States Treasury offset program authorized; setoff of federal debts.**

- 1 (a) The auditor is authorized to enter into an agreement
- 2 with the Secretary of the Treasury to participate in the
- 3 Treasury Offset Program pursuant to 31 U.S.C. §3716 for the

4 collection of any debts owed to the state or to state agencies  
5 from federal payments to vendors, contractors and taxpayers.  
6 The agreement may provide for the United States to submit  
7 nontax debts owed to federal agencies for offset against state  
8 payments otherwise due and owing to taxpayers, vendors and  
9 contractors providing goods or services to the state, its  
10 departments, agencies or institutions.

11 (b) For purposes of this section the following words have  
12 the meanings indicated.

13 (1) "Federal official" means a unit or official of the  
14 federal government charged with the collection of nontax  
15 liabilities payable to the federal government and with the  
16 authority to enter into the offset agreement.

17 (2) "Offset agreement" is the agreement authorized by  
18 this section.

19 (3) "Person" means an individual, vendor, contractor,  
20 partnership, society, association, joint stock company, limited  
21 liability company, corporation, estate, receiver, trustee,  
22 assignee, and any other person acting in a fiduciary or  
23 representative capacity whether appointed by a court or  
24 otherwise, or any combination of the foregoing.

25 (4) "State payments" shall include tax refunds pursuant  
26 to the Tax Procedure and Administration Act, article ten,  
27 chapter eleven of this code, and vendor or contractor  
28 payments made by the state to any person including expense  
29 reimbursements to an employee of the state: *Provided*, That  
30 "state payments" do not include salary, wages, pension and  
31 any other type, class or amount of payment as the auditor  
32 determines to impact the health or welfare of the citizens of  
33 the state.

34 (c) Pursuant to the agreement authorized herein, a federal  
35 official may:

36 (1) Certify to the auditor the existence of a person's  
37 delinquent, nontax debt owed by the person to the federal  
38 government by providing:

39 (A) The name of the person;

40 (B) The social security number or federal tax  
41 identification number;

42 (C) The amount of the nontax debt; and

43 (D) Any other information pursuant to the agreement  
44 authorized herein;

45 (2) Request the auditor to withhold any state payment to  
46 which the person is entitled; and

47 (3) Retain a portion of the proceeds of any federal  
48 administrative setoff pursuant to 31 CSR 285.6.

49 (d) As required or permitted by state law, federal law or  
50 the offset agreement, the State Auditor:

51 (1) Shall determine if a person for whom a certification  
52 is received is due a state payment;

53 (2) Shall withhold a state payment that is due a person  
54 whose name has been certified by a federal official;

55 (3) Shall notify the person of the amount withheld in  
56 accordance with the offset agreement;

57 (4) Shall pay to the federal official the lesser of:

58 (A) The entire state payment; or

59 (B) The amount certified; and

60 (C) Pay any refund or state payment in excess of the  
61 certified amount to the person less any fee pursuant to  
62 subsection (e);

63 (5) May certify to a federal official a person's delinquent  
64 debt owed to the state by providing the federal official:

65 (A) The name of the person;

66 (B) The social security number or tax identification  
67 number;

68 (C) The amount of the debt due the state; and

69 (D) Any other information required by the offset  
70 agreement; and

71 (6) May request that the federal official withhold any  
72 federal vendor or other federal payment pursuant to the offset  
73 agreement to which the person is entitled.

74 (e) The auditor may, by rule, establish a reasonable  
75 administrative fee to be charged to the person for the  
76 provision of state offset of federal debt. The fee is a separate  
77 debt and may be withheld from any refund, reimbursement or  
78 other moneys held for the person. The auditor may charge  
79 the person who is the subject of federal offset of a state debt,  
80 a fee equal to the fee authorized in subsection (c).

81 (f) Each state agency and institution shall take all  
82 appropriate and cost-effective actions to aggressively collect  
83 its accounts receivable. Each agency and institution may  
84 participate in the Treasury Offset program of the United  
85 States under 31 U.S.C. §3716.

86 (g) The auditor may propose rules for legislative approval  
87 in accordance with the provisions of article three, chapter

88 twenty-nine-a of this code to administer and implement this  
89 section and the offset agreement.

90 (h) The auditor and the chief administrators of the various  
91 state agencies are authorized by this section to enter into  
92 interagency agreements for the purpose of protecting a  
93 person's return information as defined in section ten, article  
94 five-d, chapter eleven of this code and collecting debts, fees  
95 and penalties due the state, its departments, agencies or  
96 institutions.



## CHAPTER 32

**(Com. Sub. for H. B. 4134 - By Delegates  
Morgan, Stephens, Swartzmiller,  
Hartman, D. Poling, Givens, Manypenny  
and Stagers)**

[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2010.]

AN ACT to repeal §4-8-6 of the Code of West Virginia, 1931, as amended; to repeal §5-1D-11 of said code; to repeal §5-10D-8 of said code; to repeal §5-11-21 of said code; to repeal §5-14-12 of said code; to repeal §5-16-4a and §5-16-27 of said code; to repeal §5-16B-4a of said code; to repeal §5-16C-10 of said code; to repeal §5-22A-15 of said code; to repeal §5-26A-6 of said code; to repeal §5-28-4 of said code; to repeal §5A-3-57 of said code; to repeal §5A-8-15a of said code; to repeal §5A-11-8 of said code; to repeal §5B-2-13 of said code; to repeal §5B-2A-13 of said code; to repeal §5B-2C-8 of said code; to repeal §5C-2-6 of said code; to repeal §5D-1-24 of said code; to repeal §6B-2-11 of said code; to repeal §6C-3-5 of said code;



to repeal §9A-1-2a of said code; to repeal §10-5-6 of said code; to repeal §11-1-8 of said code; to repeal §12-6-20 of said code; to repeal §12-6C-20 of said code; to repeal §15-2-50 of said code; to repeal §15-2D-6 of said code; to repeal §15-2E-8 of said code; to repeal §16-1-13a of said code; to repeal §16-5P-15 of said code; to repeal §16-5Q-3 of said code; to repeal §16-29B-28 of said code; to repeal §16-41-7 of said code; to repeal §17-2A-1a of said code; to repeal §17A-2-24 of said code; to repeal §17A-6-18b of said code; to repeal §17B-1D-10 of said code; to repeal §18-2F-9 of said code; to repeal §18-9D-18 of said code; to repeal §18-10C-3 of said code; to repeal §18-10L-8 of said code; to repeal §18A-3A-4 of said code; to repeal §18B-16-6b of said code; to repeal §19-1-3b of said code; to repeal §19-2B-1a of said code; to repeal §19-2F-11 of said code; to repeal §19-23-30 of said code; to repeal §20-1-18d and §20-1-21 of said code; to repeal §20-2-23f of said code; to repeal §20-5-20 of said code; to repeal §21-1-5 of said code; to repeal §21-9-13 of said code; to repeal §21-11-19 of said code; to repeal §21A-1-9 of said code; to repeal §21A-2-9 of said code; to repeal §22-1-4 and §22-1-7a of said code; to repeal §22-3A-11 of said code; to repeal §22-15A-15 of said code; to repeal §22-20-2 of said code; to repeal §22-25-13 of said code; to repeal §22B-3-5 of said code; to repeal §22C-7-4 of said code; to repeal §22C-9-4a of said code; to repeal §22C-11-6 of said code; to repeal §24-1-10 of said code; to repeal §25-1-2 of said code; to repeal §29-1-1b of said code; to repeal §29-1A-5 of said code; to repeal §29-2-10 of said code; to repeal §29-3-31 of said code; to repeal §29-6-5a of said code; to repeal §29-12-12 of said code; to repeal §29-18-24 of said code; to repeal §29-20-7 of said code; to repeal §29-21-3a of said code; to repeal §29-22-26 of said code; to repeal §30-3-18 of said code; to repeal §30-4-30 of said code; to repeal §30-5-25 and §30-5-29 of said code; to repeal §30-6-32 of said code; to repeal §30-7-17 of said code; to repeal §30-7A-12 of said code; to repeal §30-7B-10 of said code; to repeal §30-9-32 of said code; to repeal §30-12-15 of said code; to repeal §30-13-25 of said code; to repeal §30-14-16 of said code; to repeal §30-21-16 of said code; to repeal §30-22-29 of said code; to repeal §30-23-

30 of said code; to repeal §30-30-14 of said code; to repeal §30-32-22 of said code; to repeal §30-34-17 of said code; to repeal §30-35-15 of said code; to repeal §30-36-20 of said code; to repeal §30-37-12 of said code; to repeal §30-38-19 of said code; to repeal §30-40-28 of said code; to repeal §31-16-5 of said code; to repeal §31A-3-5 of said code; to repeal §48-18-134 of said code; and to repeal §48-26-1102 of said code, all relating to removing outmoded code sections regarding sunset provisions.

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

#### **CHAPTER 4. THE LEGISLATURE.**

##### **ARTICLE 8. CAPITOL BUILDING COMMISSION.**

###### **§1 Repeal of section relating to the sunset review of the West Virginia Capitol Building Commission.**

1       That §4-8-6 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

#### **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 1D. GOVERNOR'S OFFICE OF FISCAL RISK ANALYSIS AND MANAGEMENT.**

###### **§1 Repeal of section relating to the sunset review of the Governor's Office of Fiscal Risk Analysis and Management.**

1       That §5-1D-11 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

**ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.**

**§1 Repeal of section relating to the sunset review of the West Virginia Consolidated Public Retirement Board.**

1           That §5-10D-8 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 11. HUMAN RIGHTS COMMISSION.**

**§1 Repeal of section relating to the sunset review of the Human Rights Commission.**

1           That §5-11-21 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.**

**§1 Repeal of section relating to the sunset review of the West Virginia Commission for the Deaf and Hard of Hearing.**

1           That §5-14-12 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§1 Repeal of section relating to the sunset review of the Public Employees Insurance Agency Finance Board.**

1           That §5-16-4a of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**§2 Repeal of section relating to the sunset review of the Public Employees Insurance Agency.**

1           That §5-16-27 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH  
INSURANCE PROGRAM.**

**§1 Repeal of section relating to the sunset review of the  
Children's Health Insurance Board.**

1           That §5-16B-4a of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 16C. PRESCRIPTION DRUG COST  
MANAGEMENT ACT.**

**§1 Repeal of section relating to the sunset review of the  
Prescription Drug Cost Management Act.**

1           That §5-16C-10 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.**

**§1 Repeal of section relating to the sunset review of the Design-  
Build Board.**

1           That §5-22A-15 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 26A. WEST VIRGINIA COMMISSION FOR  
NATIONAL AND COMMUNITY  
SERVICE.**

**§1 Repeal of section relating to the sunset review of the West  
Virginia Commission for National and Community  
Service.**

1           That §5-26A-6 of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**ARTICLE 28.           COMMISSION ON HOLOCAUST  
                              EDUCATION.**

**§1 Repeal of section relating to the sunset review of the West  
Virginia Commission on Holocaust Education.**

1           That §5-28-4 of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

**ARTICLE 3. PURCHASING DIVISION.**

**§1 Repeal of section relating to the sunset review of the Division  
of Purchasing.**

1           That §5A-3-57 of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND  
PRESERVATION ACT.**

**§1 Repeal of section relating to the sunset review of the Records  
Management and Preservation Board.**

1           That §5A-8-15a of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**ARTICLE 11. PUBLIC LAND CORPORATION.**

**§1 Repeal of section relating to the sunset review of the Public  
Land Corporation.**

1           That §5A-11-8 of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF  
1985.**

**ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

**§1 Repeal of section relating to the sunset review of the Tourism  
Commission.**

1 That §5B-2-13 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY  
DEVELOPMENT.**

**§1 Repeal of section relating to the sunset review of the Office of  
Coalfield Community Development.**

1 That §5B-2A-13 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 2C. WEST VIRGINIA ACADEMY OF SCIENCE  
AND TECHNOLOGY.**

**§1 Repeal of section relating to the sunset review of the West  
Virginia Academy of Science and Technology.**

1 That §5B-2C-8 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**CHAPTER 5C. BASIC ASSISTANCE FOR INDUSTRY  
AND TRADE.**

**ARTICLE 2. WEST VIRGINIA CLEAN COAL  
TECHNOLOGY ACT.**

**§1 Repeal of section relating to the sunset review of the Council  
for Clean Coal Technology.**

1       That §5C-2-6 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

**CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.**

**ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE  
STATE OF WEST VIRGINIA.**

**§1 Repeal of section relating to the sunset review of the West  
Virginia Public Energy Authority Board.**

1       That §5D-1-24 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

**CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES;  
ETHICS; CONFLICTS OF INTEREST; FINANCIAL  
DISCLOSURE.**

**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.**

**§1 Repeal of section relating to the sunset review of the West  
Virginia Ethics Commission.**

1       That §6B-2-11 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

**CHAPTER 6C. PUBLIC EMPLOYEES.**

**ARTICLE 3. WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD.**

**§1 Repeal of section relating to the sunset review of the West Virginia Public Employees Grievance Board.**

1 That §6C-3-5 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**CHAPTER 9A. VETERANS AFFAIRS.**

**ARTICLE 1. DIVISION OF VETERANS AFFAIRS.**

**§1. Repeal of section relating to the sunset review of the Veterans' Council.**

1 That §9A-1-2a of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING AUTHORITY.**

**ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.**

**§1 Repeal of section relating to the sunset review of the West Virginia Educational Broadcasting Authority.**

1 That §10-5-6 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**CHAPTER 11. TAXATION.**

**ARTICLE 1. SUPERVISION.**

**§1 Repeal of section relating to the sunset review of the Department of Tax and Revenue.**



1           That §11-1-8 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

**ARTICLE 6. WEST VIRGINIA INVESTMENT  
MANAGEMENT BOARD.**

**§1 Repeal of section relating to the sunset review of the West  
Virginia Investment Management Board.**

1           That §12-6-20 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY  
INVESTMENTS.**

**§1 Repeal of section relating to the sunset review of the West  
Virginia Board of Treasury Investments.**

1           That §12-6C-20 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**CHAPTER 15. PUBLIC SAFETY.**

**ARTICLE 2. WEST VIRGINIA STATE POLICE.**

**§1 Repeal of section relating to the sunset review of the West  
Virginia State Police.**

1           That §15-2-50 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.**

**§1 Repeal of section relating to the sunset review of the Division  
of Protective Services.**

1 That §15-2D-6 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 2E. STATE POLICE ACADEMY POST EXCHANGE.**

**§1 Repeal of section relating to the sunset review of the state Police Academy Post Exchange.**

1 That §15-2E-8 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

**§1 Repeal of section relating to the sunset review of the Office of Health Facility Licensure and Certification.**

1 That §16-1-13a of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 5P. SENIOR SERVICES.**

**§1 Repeal of section relating to the sunset review of the Bureau of Senior Services.**

1 That §16-5P-15 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 5Q. THE JAMES "TIGER" MORTON CATASTROPHIC ILLNESS FUND.**

**§1 Repeal of section relating to the sunset review of the James "Tiger" Morton Catastrophic Illness Commission.**

1 That §16-5Q-3 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 29B. HEALTH CARE AUTHORITY.**

**§1 Repeal of section relating to the sunset review of the Health Care Authority.**

1       That §16-29B-28 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

**ARTICLE 41. ORAL HEALTH IMPROVEMENT ACT.**

**§1 Repeal of section relating to the sunset review of the Oral Health Program.**

1       That §16-41-7 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

**CHAPTER 17. ROADS AND HIGHWAYS.**

**ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.**

**§1 Repeal of section relating to the sunset review of the Division of Highways.**

1       That §17-2A-1a of the Code of West Virginia, 1931, as  
2       amended, be repealed.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.**

**ARTICLE 2. DIVISION OF MOTOR VEHICLES.**

**§1 Repeal of section relating to the sunset review of the Division of Motor Vehicles.**

1       That §17A-2-24 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS  
OR DISMANTLERS; SPECIAL PLATES;  
TEMPORARY PLATES OR MARKERS.**

**§1 Repeal of section relating to the sunset review of the Motor  
Vehicle Dealers Advisory Board.**

1           That §17A-6-18b of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**CHAPTER 17B. MOTOR VEHICLE DRIVER'S  
LICENSES.**

**ARTICLE 1D. MOTORCYCLE SAFETY EDUCATION.**

**§1 Repeal of section relating to the sunset review of the  
Motorcycle Safety Awareness Board.**

1           That §17B-1D-10 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**CHAPTER 18. EDUCATION.**

**ARTICLE 2F. INCENTIVES AND RESULTS BASED  
SCHOLARSHIP PROGRAM.**

**§1 Repeal of section relating to the sunset review of the Share in  
Your Future Commission.**

1           That §18-2F-9 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

**§1 Repeal of section relating to the sunset review of the School  
Building Authority.**

1           That §18-9D-18 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 10C. THE SOUTHERN REGIONAL EDUCATION  
COMPACT.**

**§1 Repeal of section relating to the sunset review of West  
Virginia's membership in the Southern Regional  
Education Compact.**

1           That §18-10C-3 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 10L. RON YOST PERSONAL ASSISTANCE  
SERVICES ACT.**

**§1 Repeal of section relating to the sunset review of the Ron  
Yost Personal Assistance Services Program.**

1           That §18-10L-8 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**CHAPTER 18A. SCHOOL PERSONNEL.**

**ARTICLE 3A. CENTER FOR PROFESSIONAL  
DEVELOPMENT.**

**§1 Repeal of section relating to the sunset review of the Center  
for Professional Development Board.**

1           That §18A-3A-4 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**CHAPTER 18B. HIGHER EDUCATION.**

**ARTICLE 16. HEALTH CARE EDUCATION.**

**§1 Repeal of section relating to the sunset review of the Rural Health Advisory Panel.**

1           That §18B-16-6b of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**CHAPTER 19. AGRICULTURE.**

**ARTICLE 1. DEPARTMENT OF AGRICULTURE.**

**§1 Repeal of section relating to the sunset review of the Marketing and Development Division of the Department of Agriculture.**

1           That §19-1-3b of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**ARTICLE 2B. INSPECTION OF MEAT AND POULTRY.**

**§1 Repeal of section relating to the sunset review of the Meat and Poultry Inspection Program.**

1           That §19-2B-1a of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**ARTICLE 2F. BEEF INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.**

**§1 Repeal of section relating to the sunset review of the Beef Industry Self-improvement Assessment Program.**

1           That §19-2F-11 of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**ARTICLE 23. HORSE AND DOG RACING.**

**§1 Repeal of section relating to the sunset review of the Racing Commission.**

- 1 That §19-23-30 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

## **CHAPTER 20. NATURAL RESOURCES.**

### **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

#### **§1 Repeal of section relating to the sunset review of the United States Geological Survey Program within the Department of Natural Resources.**

- 1 That §20-1-18d of the Code of West Virginia, 1931, as  
2 amended, be repealed.

#### **§2 Repeal of section relating to the sunset review of the Division of Natural Resources.**

- 1 That §20-1-21 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

### **ARTICLE 2. WILDLIFE RESOURCES.**

#### **§1 Repeal of section relating to the sunset review of the Whitewater Commission.**

- 1 That §20-2-23f of the Code of West Virginia, 1931, as  
2 amended, be repealed.

### **ARTICLE 5. PARKS AND RECREATION.**

#### **§1 Repeal of section relating to the sunset review of the Parks Section of Division of Natural Resources.**

- 1 That §20-5-20 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

## **CHAPTER 21. LABOR.**

**ARTICLE 1. DIVISION OF LABOR.****§1 Repeal of section relating to the sunset review of the Division of Labor.**

1           That §21-1-5 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 9. MANUFACTURED HOUSING  
CONSTRUCTION AND SAFETY  
STANDARDS.****§1 Repeal of section relating to the sunset review of the West Virginia Board of Manufactured Housing Construction and Safety.**

1           That §21-9-13 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 11. WEST VIRGINIA CONTRACTOR  
LICENSING ACT.****§1 Repeal of section relating to the sunset review of the West Virginia Contractor Licensing Board.**

1           That §21-11-19 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**CHAPTER 21A. UNEMPLOYMENT COMPENSATION.****ARTICLE 1. UNEMPLOYMENT COMPENSATION.****§1 Repeal of section relating to the sunset review of the Division of Unemployment Compensation.**

1           That §21A-1-9 of the Code of West Virginia, 1931, as  
2    amended, be repealed.



**ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF  
EMPLOYMENT PROGRAMS.**

**§1 Repeal of section relating to the sunset review of the  
authority of Commissioner to administer unemployment  
compensation.**

1       That §21A-2-9 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

**CHAPTER 22. ENVIRONMENTAL RESOURCES.**

**ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL  
PROTECTION.**

**§1 Repeal of section relating to the sunset review of the  
Department of Environmental Protection.**

1       That §22-1-4 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

**§2 Repeal of section relating to the sunset review of the Office of  
Water Resources.**

1       That §22-1-7a of the Code of West Virginia, 1931, as  
2       amended, be repealed.

**ARTICLE 3A. OFFICE OF EXPLOSIVES AND BLASTING.**

**§1 Repeal of section relating to the sunset review of the Office of  
Explosives and Blasting.**

1       That §22-3A-11 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION  
ENVIRONMENTAL ACTION PLAN.**

**§1 Repeal of section relating to the sunset review of the Waste Tire Remediation Program.**

1 That §22-15A-15 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 20. ENVIRONMENTAL ADVOCATE.**

**§1 Repeal of section relating to the sunset review of the Office of Environmental Advocate.**

1 That §22-20-2 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 25. ENVIRONMENTAL EXCELLENCE PROGRAM.**

**§1 Repeal of section relating to the sunset review of the Environmental Excellence Program.**

1 That §22-25-13 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**CHAPTER 22B. ENVIRONMENTAL BOARDS.**

**ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.**

**§1 Repeal of section relating to the sunset review of the Environmental Quality Board.**

1 That §22B-3-5 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;  
BOARDS, AUTHORITIES, COMMISSIONS AND  
COMPACTS.**

**ARTICLE 7. ENVIRONMENTAL RESOURCES.**

**§1 Repeal of section relating to the sunset review of the Oil and Gas Inspectors' Examining Board.**

1        That §22C-7-4 of the Code of West Virginia, 1931, as  
2        amended, be repealed.

**ARTICLE 9. OIL AND GAS CONSERVATION.**

**§1 Repeal of section relating to the sunset review of the Oil and Gas Conservation Commission.**

1        That §22C-9-4a of the Code of West Virginia, 1931, as  
2        amended, be repealed.

**ARTICLE 11. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.**

**§1 Repeal of section relating to the sunset review of West Virginia's membership in the Interstate Commission on the Potomac River Basin.**

1        That §22C-11-6 of the Code of West Virginia, 1931, as  
2        amended, be repealed.

**CHAPTER 24. PUBLIC SERVICE COMMISSION.**

**ARTICLE 1. GENERAL PROVISIONS.**

**§1 Repeal of section relating to the sunset review of the Public Service Commission.**

1        That §24-1-10 of the Code of West Virginia, 1931, as  
2        amended, be repealed.

**CHAPTER 25. DIVISION OF CORRECTIONS.**

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.**

**§1 Repeal of section relating to the sunset review of the Division of Corrections.**

1           That §25-1-2 of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

**ARTICLE 1. DIVISION OF CULTURE AND HISTORY.**

**§1 Repeal of section relating to the sunset review of the Division of Culture and History.**

1           That §29-1-1b of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**ARTICLE 1A. COMMISSION ON UNIFORM STATE LAWS.**

**§1 Repeal of section relating to the sunset review of the Interstate Commission on Uniform State Laws.**

1           That §29-1A-5 of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**ARTICLE 2. GEODETIC AND GEOLOGICAL SURVEY.**

**§1 Repeal of section relating to the sunset review of the state Geological and Economic Survey.**

1           That §29-2-10 of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

**§1 Repeal of section relating to the sunset review of the state Fire Commission.**

1       That §29-3-31 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

#### **ARTICLE 6. CIVIL SERVICE SYSTEM.**

##### **§1 Repeal of section relating to the sunset review of the Division of Personnel.**

1       That §29-6-5a of the Code of West Virginia, 1931, as  
2       amended, be repealed.

#### **ARTICLE 12. STATE INSURANCE.**

##### **§1 Repeal of section relating to the sunset review of the state Board of Risk and Insurance Management.**

1       That §29-12-12 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

#### **ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.**

##### **§1 Repeal of section relating to the sunset review of the West Virginia State Rail Authority.**

1       That §29-18-24 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

#### **ARTICLE 20. WOMEN'S COMMISSION.**

##### **§1 Repeal of section relating to the sunset review of the West Virginia Women's Commission.**

1       That §29-20-7 of the Code of West Virginia, 1931, as  
2       amended, be repealed.

#### **ARTICLE 21. PUBLIC DEFENDER SERVICES.**

**§1 Repeal of section relating to the sunset review of the Public Defender Services.**

1           That §29-21-3a of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**ARTICLE 22. STATE LOTTERY ACT.**

**§1 Repeal of section relating to the sunset review of the state Lottery Commission.**

1           That §29-22-26 of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

**ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**

**§1 Repeal of section relating to the sunset review of the board of Medicine.**

1           That §30-3-18 of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.**

**§1 Repeal of section relating to the sunset review of the West Virginia Board of Dental Examiners.**

1           That §30-4-30 of the Code of West Virginia, 1931, as  
2           amended, be repealed.

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS,  
PHARMACY INTERNS AND PHARMACIES.**

**§1 Repeal of section relating to the sunset review of the West Virginia Board of Pharmacy.**

1        That §30-5-25 of the Code of West Virginia, 1931, as  
2        amended, be repealed.

**§2 Repeal of section relating to the sunset review of the  
pharmacy collaborative agreements in community  
settings.**

1        That §30-5-29 of the Code of West Virginia, 1931, as  
2        amended, be repealed.

**ARTICLE 6.        BOARD OF FUNERAL SERVICE  
EXAMINERS.**

**§1 Repeal of section relating to the sunset review of the board of  
Embalmers and Funeral Directors.**

1        That §30-6-32 of the Code of West Virginia, 1931, as  
2        amended, be repealed.

**ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

**§1 Repeal of section relating to the sunset review of the board of  
Examiners for Registered Professional Nurses.**

1        That §30-7-17 of the Code of West Virginia, 1931, as  
2        amended, be repealed.

**ARTICLE 7A. PRACTICAL NURSES.**

**§1 Repeal of section relating to the sunset review of the board of  
Examiners for Licensed Practical Nurses.**

1        That §30-7A-12 of the Code of West Virginia, 1931, as  
2        amended, be repealed.

**ARTICLE 7B. CENTER FOR NURSING.**

**§1 Repeal of section relating to the sunset review of the West Virginia Center for Nursing.**

1           That §30-7B-10 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 9. ACCOUNTANTS.**

**§1 Repeal of section relating to the sunset review of the West Virginia Board of Accountancy.**

1           That §30-9-32 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 12. ARCHITECTS.**

**§1 Repeal of section relating to the sunset review of the board of Architects.**

1           That §30-12-15 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 13. ENGINEERS.**

**§1 Repeal of section relating to the sunset review of the board of Registration for Professional Engineers.**

1           That §30-13-25 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.**

**§1 Repeal of section relating to the sunset review of the West Virginia Board of Osteopathy.**

1           That §30-14-16 of the Code of West Virginia, 1931, as  
2    amended, be repealed.



**ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.**

**§1 Repeal of section relating to the sunset review of the board of Examiners of Psychologists.**

1           That §30-21-16 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 22. LANDSCAPE ARCHITECTS.**

**§1 Repeal of section relating to the sunset review of the West Virginia Board of Landscape Architects.**

1           That §30-22-29 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.**

**§1 Repeal of section relating to the sunset review of the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners.**

1           That §30-23-30 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 30. SOCIAL WORKERS.**

**§1 Repeal of section relating to the sunset review of the board of Social Work Examiners.**

1           That §30-30-14 of the Code of West Virginia, 1931, as  
2    amended, be repealed.

**ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.**

**§1 Repeal of section relating to the sunset review of the West Virginia Board of Examiners for Speech-language Pathology and Audiology.**

1 That §30-32-22 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.**

**§1 Repeal of section relating to the sunset review of the board of Respiratory Care Practitioners.**

1 That §30-34-17 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 35. BOARD OF DIETITIANS.**

**§1 Repeal of section relating to the sunset review of the board of Licensed Dietitians.**

1 That §30-35-15 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 36. ACUPUNCTURISTS.**

**§1 Repeal of section relating to the sunset review of the West Virginia Acupuncture Board.**

1 That §30-36-20 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 37. MASSAGE THERAPISTS.**

**§1 Repeal of section relating to the sunset review of the Massage Therapy Licensure Board.**

1 That §30-37-12 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.**

**§1 Repeal of section relating to the sunset review of the Real Estate Appraiser Licensing and Certification Board.**

1 That §30-38-19 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.**

**§1 Repeal of section relating to the sunset review of the West Virginia Real Estate Commission.**

1 That §30-40-28 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**CHAPTER 31. CORPORATIONS.**

**ARTICLE 16. WEST VIRGINIA STEEL FUTURES PROGRAM.**

**§1 Repeal of section relating to the sunset review of the West Virginia Steel Futures Program.**

1 That §31-16-5 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**CHAPTER 31A. BANKS AND BANKING.**

**ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.**

**§1 Repeal of section relating to the sunset review of the West Virginia Board of Banking and Financial Institutions.**

1 That §31A-3-5 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**CHAPTER 48. DOMESTIC RELATIONS.****ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.****§1 Repeal of section relating to the sunset review of the Bureau for Child Support Enforcement.**

1 That §48-18-134 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**ARTICLE 26. DOMESTIC VIOLENCE ACT.****§1 Repeal of section relating to the sunset review of the Family Protection Services Board.**

1 That §48-26-1102 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

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**CHAPTER 33**

**(S. B. 648 - By Senators Plymale,  
Wells, Oliverio and Stollings)**

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[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2010.]

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AN ACT to repeal §18-2F-1, §18-2F-2, §18-2F-3, §18-2F-4, §18-2F-5, §18-2F-6, §18-2F-7, §18-2F-8 and §18-2F-9 of the Code of West Virginia, 1931, as amended; and to repeal §18-7A-5, §18-7A-6, §18-7A-7, §18-7A-8, §18-7A-9 and §18-7A-10 of said code, all relating to repealing outdated and obsolete sections regarding education.

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

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 2F. INCENTIVES AND RESULTS BASED SCHOLARSHIP PROGRAM.**

#### **§1. Repeal of article relating to the “West Virginia Share in Your Future Act.”**

1           That §18-2F-1, §18-2F-2, §18-2F-3, §18-2F-4, §18-2F-5,  
2   §18-2F-6, §18-2F-7, §18-2F-8 and §18-2F-9 of the Code of  
3   West Virginia, 1931, as amended, be repealed.

### **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

#### **§1. Repeal of section relating to membership of Teachers Retirement Board.**

1           That §18-7A-5 of the Code of West Virginia, 1931, as  
2   amended, be repealed.

#### **§2. Repeal of section relating to compensation of Teachers Retirement Board.**

1           That §18-7A-6 of the Code of West Virginia, 1931, as  
2   amended, be repealed.

#### **§3. Repeal of section relating to quorum of Teachers Retirement Board.**

1           That §18-7A-7 of the Code of West Virginia, 1931, as  
2   amended, be repealed.

#### **§4. Repeal of section relating to legal advisor of Teachers Retirement Board.**

1 That §18-7A-8 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**§5. Repeal of section relating to meetings of Teachers Retirement Board.**

1 That §18-7A-9 of the Code of West Virginia, 1931, as  
2 amended, be repealed.

**§6. Repeal of section relating to employment of executive secretary and other employees by Teachers Retirement Board.**

1 That §18-7A-10 of the Code of West Virginia, 1931, as  
2 amended, be repealed.



## CHAPTER 34

**(S. B. 457 - By Senators D. Facemire,  
Foster and Kessler)**

[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2010.]

AN ACT to repeal §61-1-6 of the Code of West Virginia, 1931, as amended; to repeal §61-2-17, §61-2-18, §61-2-19, §61-2-20, §61-2-21, §61-2-22, §61-2-23, §61-2-24 and §61-2-25 of said code; to repeal §61-6-16 of said code; to repeal §61-8-3, §61-8-4 and §61-8-15 of said code; to repeal §61-10-18, §61-10-25, §61-10-26, §61-10-27, §61-10-28 and §61-10-29 of said code; and to amend and reenact §61-1-7 of said code, repealing

outmoded criminal sections of the code relating generally to the display of a red or black flag and the accompanying penalty; keeping doors of vehicles for hire locked while in motion; dueling; wearing hats in theaters; adultery and lewd cohabitation; conducting bucket shops; public swearing and drunkenness; engaging in certain work, labor or business activities on Sunday; and clarifying the penalty provision for unlawful speeches, publications and communications.

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

That §61-1-6 of the Code of West Virginia, 1931, as amended be repealed; that §61-2-17, §61-2-18, §61-2-19, §61-2-20, §61-2-21, §61-2-22, §61-2-23, §61-2-24 and §61-2-25 of said code be repealed; that §61-6-16 of said code be repealed; that §61-8-3, §61-8-4 and §61-8-15 of said code be repealed; that §61-10-18, §61-10-25, §61-10-26, §61-10-27, §61-10-28 and §61-10-29 be repealed; and that §61-1-7 of said code be amended and reenacted to read as follows:

## **ARTICLE 1. CRIMES AGAINST THE GOVERNMENT.**

### **§61-1-7. Penalty for unlawful speeches, publications and communications.**

1       Any person violating any of the provisions of section five  
2       of this article, shall, for the first offense, be guilty of a  
3       misdemeanor, and, upon conviction, shall be fined not less  
4       than \$100 nor more than \$500, or, in the discretion of the  
5       court, be confined in jail not exceeding twelve months, or  
6       both; and, for the second offense, shall be guilty of a felony,  
7       and, upon conviction shall be confined in a state correctional  
8       facility not less than one nor more than five years.

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## CHAPTER 35

**(S. B. 387 - By Senators Minard, Jenkins,  
McCabe, Williams and Plymale)**

[Passed March 9, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §46A-4-102 of the Code of West Virginia, 1931, as amended, relating to regulated consumer lenders; providing that mortgage loan originators employed by regulated consumer lenders in this state must be either licensed or registered with the Nationwide Mortgage Licensing System and Registry; and requiring regulated consumer lenders to provide notice of change of ownership and/or control of such institutions to the West Virginia Division of Banking.

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

That §46A-4-102 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 4. REGULATED CONSUMER LENDERS.**

#### **§46A-4-102. License to make regulated consumer loans.**

- 1       (1) The commissioner shall receive and act on all
- 2       applications for licenses to make regulated consumer loans
- 3       under this chapter. Applications shall be under oath, be filed
- 4       in the manner prescribed by the commissioner and contain
- 5       the information the commissioner requires to make an



6 evaluation of the financial responsibility, experience,  
7 character and fitness of the applicant and the findings  
8 required of him or her before he or she may issue a license.  
9 At the time of the filing of the application, the sum of \$750  
10 shall be paid to the commissioner as an investigation fee.

11 (2) A license may not be issued to a supervised financial  
12 organization other than to one primarily engaged in the  
13 business of making consumer loans through offices located  
14 within this state or to one licensed under the provisions of the  
15 West Virginia Mortgage Loan Act as contained in article  
16 seventeen, chapter thirty-one of this code, or to any banking  
17 institution as defined by the provisions of section two, article  
18 one, chapter thirty-one-a of this code. A license will not be  
19 granted to any office located outside this state: *Provided,*  
20 That the limitation of licensing contained in this subsection  
21 does not prevent any supervised financial organization from  
22 making regulated consumer loans when the applicable state  
23 or federal statute, law, rule or regulation permits. A license  
24 may not be issued to any person unless the commissioner,  
25 upon investigation, finds that the financial responsibility,  
26 experience, character and fitness of the applicant, and of the  
27 members thereof (if the applicant is a copartnership or  
28 association) and of the officers and directors thereof (if the  
29 applicant is a corporation), are such as to command the  
30 confidence of the community and to warrant belief that the  
31 business will be operated honestly, fairly and efficiently,  
32 within the purposes of this chapter, and the applicant has  
33 available for the operation of the business at least \$10,000 in  
34 capital and has, for each specified location of operation,  
35 assets of at least \$2,000.

36 (3) Upon written request, the applicant is entitled to a  
37 hearing on the question of his or her qualifications for a  
38 license if: (a) The commissioner has notified the applicant in  
39 writing that his or her application has been denied; or (b) the

40 commissioner has not issued a license within sixty days after  
41 the application for the license was filed. A request for a  
42 hearing may not be made more than fifteen days after the  
43 commissioner has mailed a writing to the applicant notifying  
44 him or her that the application has been denied and stating in  
45 substance the commissioner's findings supporting denial of  
46 the application.

47 (4) Not more than one place of business shall be  
48 maintained under the same license, but the commissioner  
49 may issue more than one license to the same licensee upon  
50 compliance with all the provisions of this article governing  
51 an original issuance of a license for each such new license.  
52 Each license shall remain in full force and effect until  
53 surrendered, forfeited, suspended or revoked.

54 (5) Upon giving the commissioner at least fifteen days'  
55 prior written notice, a licensee may: (a) Change the location  
56 of any place of business located within a municipality to any  
57 other location within that same municipality; or (b) change  
58 the location of any place of business located outside of a  
59 municipality to a location no more than five miles from the  
60 originally licensed location, but in no case may a licensee  
61 move any place of business located outside a municipality to  
62 a location within a municipality. A licensee may not move  
63 the location of any place of business located within a  
64 municipality to any other location outside of that  
65 municipality.

66 (6) A licensee may conduct the business of making  
67 regulated consumer loans only at or from a place of business  
68 for which he or she holds a license and not under any other  
69 name than that stated in the license.

70 (7) A license issued under the provisions of this section  
71 shall not be transferable or assignable.

72           (8) A licensee must be incorporated under the laws of this  
73 state. The licensee may, however, be a subsidiary of an out-  
74 of-state company or financial institution.

75           (9) All mortgage loan originators, as defined in article  
76 seventeen-a, chapter thirty-one of this code, who are  
77 employed by a licensed regulated consumer lender must be  
78 licensed or registered and issued a unique identifier by the  
79 Nationwide Mortgage Licensing System and Registry  
80 pursuant to the requirements provided in article seventeen-a,  
81 chapter thirty-one of this code.

82           (10) All regulated consumer lenders must file with the  
83 commissioner a bond in favor of the state for the benefit of  
84 consumers or for a claim by the commissioner for an unpaid  
85 civil administrative penalty or an unpaid examination invoice  
86 in the amount of \$100,000 for licensees with West Virginia  
87 mortgage loan originations of \$0 to \$3 million, \$150,000 for  
88 West Virginia mortgage loan originations greater than \$3  
89 million and up to \$10 million, and \$200,000 for West  
90 Virginia mortgage loan originations over \$10 million in a  
91 form and with conditions as the commissioner may prescribe  
92 and executed by a surety company authorized to do business  
93 in this state.

94           (11) All regulated consumer lenders shall notify the  
95 commissioner of any merger or acquisition which may result  
96 in a change of control or a change in principals of the  
97 regulated consumer lender within fifteen days of  
98 announcement or publication of the proposal, or its  
99 occurrence, whichever is earlier. Upon notice of these  
100 circumstances by a corporate licensee, the commissioner may  
101 require all information necessary to determine whether it  
102 results in a transfer or assignment of the license and thus if a  
103 new application is required in order for the company to  
104 continue doing business under this article. A licensee that is  
105 an entity other than a corporation shall in these circumstances  
106 submit a new application for licensure at the time of notice.

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## CHAPTER 36

**(Com. Sub. for S. B. 362 - By Senators  
Jenkins, Stollings, Tomblin (Mr. President),  
Barnes, Edgell, Foster, Laird, Plymale,  
Prezioso and Palumbo)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §60A-4-410 of the Code of West Virginia, 1931, as amended, relating to unlawfully withholding information from a medical practitioner in order to obtain a prescription for a controlled substance; clarifying language; and increasing penalties.

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

That §60A-4-410 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 4. OFFENSES AND PENALTIES.**

**§60A-4-410. Prohibited acts -- Withholding information from practitioner; additional controlled substances; penalties.**

- 1 (a) It is unlawful for a patient, in an attempt to obtain a
- 2 prescription for a controlled substance, to knowingly
- 3 withhold from a practitioner, that the patient has obtained a
- 4 prescription for a controlled substance of the same or similar
- 5 therapeutic use in a concurrent time period from another
- 6 practitioner.

7 (b) Any person who violates this section is guilty of a  
8 misdemeanor and, upon conviction thereof, may be confined  
9 in jail for not more than nine months, or fined not more than  
10 \$2,500, or both fined and confined.

11 (c) The offense established by this section is in addition  
12 to and a separate and distinct offense from any other offense  
13 set forth in this code.

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## CHAPTER 37

**(Com. Sub. for H. B. 4018 - By Delegates  
D. Poling, Swartzmiller and Manypenny)**

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[Passed March 12, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-413, relating to establishing that the manufacture or possession of an extract or compound intended for human consumption containing *Salvia divinorum* is unlawful; and creating criminal penalties.

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

That the Code of West Virginia, 1931, be amended, by adding thereto a new section, designated §60A-4-413, to read as follows:

### **ARTICLE 4. OFFENSES AND PENALTIES.**

**§60A-4-413. Unlawful production, manufacture or possession of *Salvia divinorum*.**

1           (a) For purposes of this section, “*Salvia divinorum*” means  
2 an herb belonging to the Lamiaceae family, genus of *Salvia*,  
3 species of *divinorum*, with common names including, but not  
4 limited to, “*Salvia*,” “*Ska Pastora*,” “*Shepherdess’s Herb*,”  
5 “*Maria Pastora*,” “*yerba de Maria*,” “*Purple Sticky*” and  
6 “*Sally-D*.”

7           (b) It is unlawful for any person to knowingly or  
8 intentionally manufacture or possess an extract, compound,  
9 concentrate, or other processed substance intended for human  
10 consumption which contains *Salvia divinorum*, unless the  
11 substance was obtained directly from, or pursuant to, a valid  
12 prescription or order of a licensed physician or dispensed by  
13 a pharmacist for a recommended or medically necessary  
14 therapeutic use. Any person who violates this subsection is  
15 guilty of a misdemeanor, and disposition may be made under  
16 section four hundred seven of this article, subject to the  
17 limitations specified in said section, or upon conviction, such  
18 person may be confined in jail not more than six months, or  
19 fined not more than \$1,000, or both. Notwithstanding any  
20 other provision of this code to the contrary, any first offense  
21 for possession of *Salvia divinorum* shall be disposed of under  
22 section four hundred seven of this article.

23           (c) The provisions of this section shall not apply to  
24 licensed physicians, pharmacists, and accredited hospitals  
25 and teaching facilities engaged in the research or study of  
26 *Salvia divinorum*, and shall not include any person  
27 participating in clinical trials involving the use of *Salvia*  
28 *divinorum*.

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## CHAPTER 38

**(S. B. 514 - By Senators Jenkins,  
Stollings, Foster, Unger, Laird,  
Plymale, Palumbo and Kessler)**

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[Passed March 5, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 16, 2010.]

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AN ACT to amend and reenact §60A-9-4 of the Code of West Virginia, 1931, as amended, relating to the Controlled Substances Monitoring Act; and modifying and clarifying the controlled substances that are subject to reporting when a prescription is filled or when the controlled substance is dispensed by a medical services provider.

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

That §60A-9-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

#### **§60A-9-4. Required information.**

- 1           (a) Whenever a medical services provider dispenses a
- 2           controlled substance listed in Schedule II, III or IV, as
- 3           established under the provisions of article two of this chapter
- 4           or whenever a prescription for the controlled substance is
- 5           filled by: (i) A pharmacist or pharmacy in this state; (ii) a
- 6           hospital, or other health care facility, for out-patient use; or
- 7           (iii) a pharmacy or pharmacist licensed by the Board of

8 Pharmacy, but situated outside this state for delivery to a  
9 person residing in this state, the medical services provider,  
10 health care facility, pharmacist or pharmacy shall, in a  
11 manner prescribed by rules promulgated by the Board of  
12 Pharmacy under this article, report the following information,  
13 as applicable:

14 (1) The name, address, pharmacy prescription number  
15 and Drug Enforcement Administration controlled substance  
16 registration number of the dispensing pharmacy;

17 (2) The name, address and birth date of the person for  
18 whom the prescription is written;

19 (3) The name, address and Drug Enforcement  
20 Administration controlled substances registration number of  
21 the practitioner writing the prescription;

22 (4) The name and national drug code number of the  
23 Schedule II, III and IV controlled substance dispensed;

24 (5) The quantity and dosage of the Schedule II, III and IV  
25 controlled substance dispensed;

26 (6) The date the prescription was filled; and

27 (7) The number of refills, if any, authorized by the  
28 prescription.

29 (b) The Board of Pharmacy may prescribe by rule  
30 promulgated under this article the form to be used in  
31 prescribing a Schedule II, III and IV substance if, in the  
32 determination of the board, the administration of the  
33 requirements of this section would be facilitated.

34 (c) Products regulated by the provisions of article ten of  
35 this chapter shall be subject to reporting pursuant to the  
36 provisions of this article to the extent set forth in said article.



37           (d) Reporting required by this section is not required for  
38 a drug administered directly to a patient or a drug dispensed  
39 by a practitioner at a facility licensed by the state: *Provided*,  
40 That the quantity dispensed is limited to an amount adequate  
41 to treat the patient for a maximum of seventy-two hours with  
42 no greater than two seventy-two-hour cycles in any fifteen-  
43 day period of time.

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## CHAPTER 39

**(Com. Sub. for S. B. 365 - By Senators  
Jenkins, Stollings, Tomblin (Mr. President),  
Edgell, Foster, Plymale and Prezioso)**

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[Passed March 11, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 22, 2010.]

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AN ACT to amend and reenact §60A-9-5 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Controlled Substances Monitoring Program database; requiring all prescribers or dispensers of Schedule II, III or IV controlled substances to have online access to the West Virginia Controlled Substances Monitoring Program database; authorizing persons or entities with access to the database to delegate access to database to others; limiting liability practitioners for good faith reliance on database; authorizing the Office of the Chief Medical Examiner access to the database; clarifying that practitioners have no duty to access database; authorizing rules for delegation of access; and rulemaking.

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

That §60A-9-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

**§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.**

1           (a) The information required by this article to be kept by  
2 the State Board of Pharmacy is confidential and is open to  
3 inspection only by inspectors and agents of the State Board  
4 of Pharmacy, members of the West Virginia State Police  
5 expressly authorized by the Superintendent of the West  
6 Virginia State Police to have access to the information,  
7 authorized agents of local law-enforcement agencies as a  
8 member of a drug task force, authorized agents of the federal  
9 Drug Enforcement Administration, duly authorized agents of  
10 the Bureau for Medical Services and the Workers'  
11 Compensation Commission, duly authorized agents of the  
12 Office of the Chief Medical Examiner for use in post-mortem  
13 examinations, duly authorized agents of licensing boards of  
14 practitioners in this state and other states authorized to  
15 prescribe Schedules II, III and IV controlled substances,  
16 prescribing practitioners and pharmacists and persons with an  
17 enforceable court order or regulatory agency administrative  
18 subpoena: *Provided*, That all information released by the  
19 State Board of Pharmacy must be related to a specific patient  
20 or a specific individual or entity under investigation by any  
21 of the above parties except that practitioners who prescribe  
22 controlled substances may request specific data related to  
23 their Drug Enforcement Administration controlled substance  
24 registration number or for the purpose of providing treatment  
25 to a patient. The Board shall maintain the information  
26 required by this article for a period of not less than five years.  
27 Notwithstanding any other provisions of this code to the  
28 contrary, data obtained under the provisions of this article

29 may be used for compilation of educational, scholarly or  
30 statistical purposes as long as the identities of persons or  
31 entities remain confidential. No individual or entity required  
32 to report under section four of this article may be subject to  
33 a claim for civil damages or other civil relief for the reporting  
34 of information to the Board of Pharmacy as required under  
35 and in accordance with the provisions of this article;

36 (b) All practitioners, as that term is defined in section one  
37 hundred-one, article two of this chapter who prescribe or  
38 dispense schedule II, III or IV controlled substances shall, on  
39 or before July 1, 2011 have online or other form of electronic  
40 access to the West Virginia Controlled Substances  
41 Monitoring Program database;

42 (c) Persons or entities with access to the West Virginia  
43 Controlled Substances Monitoring Program database  
44 pursuant to this section may, pursuant to rules promulgated  
45 by the Board of Pharmacy, delegate appropriate personnel to  
46 have access to said database;

47 (d) Good faith reliance by a practitioner on information  
48 contained in the West Virginia Controlled Substances  
49 Monitoring Program database in prescribing or dispensing or  
50 refusing or declining to prescribe or dispense a schedule II,  
51 III or IV controlled substance shall constitute an absolute  
52 defense in any civil or criminal action brought due to  
53 prescribing or dispensing or refusing or declining to prescribe  
54 or dispense; and

55 (e) The Board of Pharmacy is hereby authorized to  
56 promulgate an emergency rule under chapter twenty-nine-A  
57 to effectuate the amendments to this section enacted during  
58 the 2010 Regular Session of the Legislature.

59 (f) Nothing in the article shall be construed to require a  
60 practitioner to access the West Virginia Controlled  
61 Substances Monitoring Program database.

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## CHAPTER 40

### (H. B. 2485 - By Delegates Border and Perdue)

[Passed March 12, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 19, 2010.]

AN ACT to amend and reenact §60A-10-3, §60A-10-4, §60A-10-5 and §60A-10-8 of the Code of West Virginia, 1931, as amended, all relating to updating who may sell, possess or otherwise handle pseudoephedrine and other chemical precursors of methamphetamine; defining terms; and updating reporting requirements.

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

That §60A-10-3, §60A-10-4, §60A-10-5 and §60A-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.**

§60A-10-3. Definitions.

§60A-10-4. Purchase, receipt, acquisition and possession of substance to be used as precursor to manufacture of methamphetamine or other controlled substance; offenses; exceptions; penalties.

§60A-10-5. Restrictions on the sale, transfer or delivery of certain drug products; penalties.

§60A-10-8. Reporting requirements; confidentiality.

#### **§60A-10-3. Definitions.**

1 In this article:

2 (a) "Board of Pharmacy" or "board" means the West  
3 Virginia Board of Pharmacy established by the provisions of  
4 article five, chapter thirty of this code.

5 (b) "Designated precursor" means any drug product made  
6 subject to the requirements of this article by the provisions of  
7 section seven of this article.

8 (c) "Distributor" means any person within this state or  
9 another state, other than a manufacturer or wholesaler, who  
10 sells, delivers, transfers or in any manner furnishes a drug  
11 product to any person who is not the ultimate user or  
12 consumer of the product;

13 (d) "Drug product" means a pharmaceutical product that  
14 contains as its single active ingredient ephedrine,  
15 pseudoephedrine or phenylpropanolamine or a substance  
16 identified on the supplemental list provided for in section  
17 seven of this article which may be sold without a prescription  
18 and which is labeled for use by a consumer in accordance  
19 with the requirements of the laws and rules of this state and  
20 the federal government.

21 (e) "Ephedrine " means ephedrine, its salts or optical  
22 isomers or salts of optical isomers.

23 (f) "Manufacturer" means any person within this state  
24 who produces, compounds, packages or in any manner  
25 initially prepares for sale or use any drug product or any such  
26 person in another state if they cause the products to be  
27 compounded, packaged or transported into this state.

28 (g) "Phenylpropanolamine" means phenylpropanolamine,  
29 its salts, optical isomers and salts of optical isomers.

30 (h) "Pseudoephedrine" means pseudoephedrine, its salts,  
31 optical isomers and salts of optical isomers.

32 (i) "Precursor" means any substance which may be used  
33 along with other substances as a component in the production  
34 and distribution of illegal methamphetamine.

35 (j) "Pharmacist" means an individual currently licensed  
36 by this state to engage in the practice of pharmacy and  
37 pharmaceutical care as defined in subsection (t), section one-  
38 b, article fifty, chapter thirty of this code.

39 (k) "Pharmacy intern" has the same meaning as the term  
40 "intern" as set forth in section one-b, article five, chapter  
41 thirty of this code.

42 (l) "Pharmacy" means any drugstore, apothecary or place  
43 within this state where drugs are dispensed and sold at retail  
44 or display for sale at retail and pharmaceutical care is  
45 provided outside of this state where drugs are dispensed and  
46 pharmaceutical care is provided to residents of this state.

47 (m) "Pharmacy counter" means an area in the pharmacy  
48 restricted to the public where controlled substances are stored  
49 and housed and where controlled substances may only be  
50 sold, transferred or dispensed by a pharmacist or pharmacy  
51 technician.

52 (n) "Pharmacy technician" means a registered technician  
53 who meets the requirements for registration as set forth in  
54 article five, chapter thirty of this code.

55 (o) "Retail establishment" means any entity or person  
56 within this state who sells, transfers or distributes goods,  
57 including over-the-counter drug products, to an ultimate  
58 consumer.

59 (p) "Schedule V" means the schedule of controlled  
60 substances set out in section two hundred twelve, section two  
61 of this chapter.

62 (q) "Single active ingredient" means those ingredients  
63 listed on a drug product package as the only active ingredient  
64 in over-the-counter medication or identified on the Schedule  
65 maintained by the Board of Pharmacy as being primarily  
66 used in the illegal production and distribution of  
67 methamphetamine.

68 (r) "Superintendent of the State Police" or  
69 "Superintendent" means the Superintendent of the West  
70 Virginia State Police as set forth in section five, article two,  
71 chapter fifteen of this code.

72 (s) "Wholesaler" means any person within this state or  
73 another state, other than a manufacturer, who sells, transfers  
74 or in any manner furnishes a drug product to any other person  
75 in this state for the purpose of being resold.

**§60A-10-4. Purchase, receipt, acquisition and possession of  
substances to be used as precursor to  
manufacture of methamphetamine or another  
controlled substance; offenses; exceptions;  
penalties.**

1 (a) Any person who within any thirty-day period  
2 knowingly purchases, receives or otherwise possesses more  
3 than three packages of a drug product containing as its single active  
4 ingredient ephedrine, pseudoephedrine or phenylpropanolamine or  
5 more than nine grams of ephedrine, pseudoephedrine or  
6 phenylpropanolamine in any form shall be guilty of a  
7 misdemeanor and, upon conviction, shall be confined in a jail  
8 for not more than one year, fined not more than \$1,000, or  
9 both.

10 (b) Notwithstanding the provisions of subsection (a) of  
11 this section, any person convicted of a second or subsequent  
12 violation of the provisions of said subsection or a statute or  
13 ordinance of the United States or another state which

14 contains the same essential elements shall be guilty of a  
15 felony and, upon conviction, shall be confined in a state  
16 correctional facility for not less than one nor more than five  
17 years, fined not more than \$25,000, or both.

18 (c) The provisions of subsection (a) of this section shall  
19 not apply to:

20 (1) Drug products which are for pediatric use primarily  
21 intended for administration to children under the age of  
22 twelve;

23 (2) Drug products which have been determined by the  
24 Board of Pharmacy to be in a form which is unamenable to  
25 being used for the manufacture of methamphetamine;

26 (3) Persons lawfully possessing drug products in their  
27 capacities as distributors, wholesalers, manufacturers,  
28 pharmacists, pharmacy interns, pharmacy technicians, health  
29 care professionals or persons possessing such drug products  
30 pursuant to a valid prescription.

31 (d) Notwithstanding any provision of this code to the  
32 contrary, any person who knowingly possesses any amount  
33 of ephedrine, pseudoephedrine, phenylpropanolamine or  
34 other designated precursor with the intent to use it in the  
35 manufacture of methamphetamine or who knowingly  
36 possesses a substance containing ephedrine, pseudoephedrine  
37 or phenylpropanolamine or their salts, optical isomers or salts  
38 of optical isomers in a state or form which is, or has been  
39 altered or converted from the state or form in which these  
40 chemicals are, or were, commercially distributed shall be  
41 guilty of a felony and, upon conviction, shall be confined in  
42 a state correctional facility for not less than two nor more  
43 than ten years, fined not more than \$25,000, or both.

44 (e) (1) Any pharmacy, wholesaler, manufacturer or  
45 distributor of drug products containing as their single active



46 ingredient ephedrine, pseudoephedrine, phenylpropanolamine, their  
47 salts or optical isomers or salts of optical isomers or other  
48 designated precursor shall obtain a registration annually from  
49 the State Board of Pharmacy as described in section six of  
50 this article. Any such pharmacy, wholesaler, manufacturer or  
51 distributor shall keep complete records of all sales and  
52 transactions as provided in section eight of this article. The  
53 records shall be gathered and maintained pursuant to  
54 legislative rule promulgated by the Board of Pharmacy.

55 (2) Any drug products possessed without a registration as  
56 provided in this section are subject to forfeiture upon  
57 conviction for a violation of this section.

58 (3) In addition to any administrative penalties provided  
59 by law, any violation of this subsection is a misdemeanor,  
60 punishable upon conviction by a fine in an amount not more  
61 than \$10,000.

**§60A-10-5. Restrictions on the sale, transfer or delivery of  
certain drug products; penalties.**

1 (a) No pharmacy or individual may display, offer for sale  
2 or place a drug product containing as its single active ingredient  
3 ephedrine, pseudoephedrine or phenylpropanolamine or other  
4 designated precursor where the public may freely access the  
5 drug product. All such drug products or designated  
6 precursors shall be placed behind a pharmacy counter where  
7 access is restricted to a pharmacist, a pharmacy intern, a  
8 pharmacy technician or other pharmacy employee.

9 (b) All storage of drug products regulated by the  
10 provisions of this section shall be in a controlled and locked  
11 access location that is not accessible by the general public and  
12 shall maintain strict inventory control standards and complete  
13 records of quantity of the product maintained in bulk form.

14 (c) No pharmacy shall sell, deliver or provide any drug  
15 product regulated by the provisions of this section to any  
16 person who is under the age of eighteen.

17 (d) If a drug product regulated by the provisions of this  
18 section is transferred, sold or delivered, the individual,  
19 pharmacy or retail establishment transferring, selling or  
20 delivering the drug product shall require the person purchasing,  
21 receiving or otherwise acquiring the drug product to:

22 (1) Produce a government-issued photo identification  
23 showing his or her date of birth; and

24 (2) Sign a form containing the information set forth in  
25 subsection (b), section eight of this article and attesting to the  
26 validity of such information. Any person who knowingly  
27 makes a false representation or statement pursuant to the  
28 requirements of this section shall be guilty of a misdemeanor  
29 and, upon conviction, be confined in a jail for not more than  
30 six months, fined not more than \$5,000, or both.

31 (e) This section does not apply to drug products that are  
32 dispensed pursuant to a prescription, are pediatric products  
33 primarily intended for administration, according to label  
34 instructions, to children under twelve years of age.

35 (f) Any violation of this section is a misdemeanor,  
36 punishable upon conviction by a fine in an amount not more  
37 than \$10,000.

#### **§60A-10-8. Reporting requirements; confidentiality.**

1 (a) Whenever there is a sale, retail, transfer or distribution  
2 of any drug product referred to in section seven of this article  
3 or another designated precursor, the pharmacist, pharmacy  
4 intern, or pharmacy technician making the sale, transfer or  
5 distribution shall report the following information for  
6 inclusion in a central repository established and maintained  
7 by the Board of Pharmacy:

8 (1) The date of the transaction;

9 (2) The name, address and driver's license or state-issued  
10 identification number of the person; and

11 (3) The name, quantity of packages and total gram weight  
12 of the product or products purchased, received or otherwise  
13 acquired.

14 (b) The information required to be reported by this  
15 section shall be reported by paper log maintained at the point  
16 of sale: *Provided*, That, beginning on January 1, 2007,  
17 reporting shall be by electronic transmission to the Board of  
18 Pharmacy no more frequently than once a week.

19 (c) The information required by this section shall be the  
20 property of the state and a pharmacy shall have no duty to  
21 retain a copy of the information in any format once the  
22 information has been reported to the Board of Pharmacy as  
23 required by this section.



## CHAPTER 41

**(S. B. 436 - By Senators Williams and White)**

\_\_\_\_\_  
[Passed March 8, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 18, 2010.]  
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AN ACT to amend and reenact §31-14-2 of the Code of West Virginia, 1931, as amended, relating to the process of incorporation; and clarifying the requirements of that process.

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

That §31-14-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 14. WEST VIRGINIA BUSINESS DEVELOPMENT CORPORATIONS.**

**§31-14-2. Incorporators; purposes; agreement of incorporation.**

1 Any number of persons, not fewer than ten, a majority of  
2 whom shall be bona fide residents of this state, may associate  
3 to create a business development corporation under the  
4 provisions of this article for the purpose of promoting,  
5 developing and advancing business and industrial  
6 development within the state and, to that end, may exercise  
7 the powers, rights and privileges hereinafter provided. The  
8 persons desiring to form the corporation shall sign,  
9 acknowledge and file with the Secretary of State an  
10 agreement in the general form prescribed by the Secretary of  
11 State, in which shall be set forth:

12 (1) The name of the corporation, which shall contain the  
13 words "Business Development Corporation," together with  
14 a designation of the area or locality within the state in which  
15 the corporation is intended to operate.

16 (2) The post-office address of its principal office or place  
17 of business.

18 (3) The object or objects for which the corporation is  
19 formed, which shall include the following:

20 To promote, develop and advance the business prosperity  
21 and economic welfare of the State of West Virginia and its  
22 citizens; to encourage and assist through loans, investments  
23 or other business transactions in the locating of new business  
24 and industry within the state and to rehabilitate and assist  
25 existing businesses and industries; to stimulate and promote

26 the expansion of all kinds of business and industrial activity  
27 which will tend to advance business and industrial  
28 development and maintain the economic stability of the state,  
29 provide maximum opportunities for employment, encourage  
30 thrift, and improve the standard of living of the citizens of the  
31 state; to cooperate and act in conjunction with the  
32 Department of Commerce and with other organizations,  
33 federal, state or local, in the promotion and advancement of  
34 industrial, commercial, agricultural and recreational  
35 developments within the state; and to furnish money and  
36 credit, land and industrial sites, technical assistance and such  
37 other aid as may be deemed requisite to approved and  
38 deserving applicants for the promotion, development and  
39 conduct of all kinds of business activity within the state.

40 (4) The names and post-office addresses of the  
41 incorporators, and the number of shares of stock subscribed  
42 by each.

43 (5) Whether or not the corporation is to have perpetual  
44 existence; if not, the time when its existence is to commence  
45 and the time when its existence is to cease.

46 (6) Any provision in which the incorporators may choose  
47 to insert for the management of the business and for the  
48 conduct of the affairs of the corporation, and any provisions  
49 creating, defining, limiting and regulating the powers of the  
50 corporation, the directors and the stockholders and members  
51 thereof: *Provided*, That such provisions are not contrary to  
52 the provisions of this article.

53 (7) The agreement may also contain the following  
54 provision in these words verbatim:

55 “Whenever a compromise or arrangement is proposed  
56 between this corporation and its creditors or any class of  
57 them and/or between this corporation and its stockholders or

58 any class of them, any court of equitable jurisdiction within  
59 the State of West Virginia may, on the application in a  
60 summary way of this corporation or of any creditor or  
61 stockholder thereof, or on the application of trustees in  
62 dissolution or of any receiver or receivers appointed for this  
63 corporation under the laws of the State of West Virginia,  
64 order a meeting of the creditors or class of creditors, and/or  
65 of the stockholders or class of stockholders of this  
66 corporation, as the case may be, to be summoned in such  
67 manner as the court directs. If a majority in number  
68 representing three fourths in value of the creditors or class of  
69 creditors, and/or of the stockholders of this corporation, as  
70 the case may be, agree to any compromise or arrangement  
71 and to any reorganization of this corporation as consequence  
72 of such compromise or arrangement, such compromise or  
73 arrangement and such reorganization shall, if sanctioned by  
74 the court to which such application has been made, be  
75 binding on all the creditors or class of creditors, and/or on all  
76 the stockholders or class of stockholders of this corporation,  
77 as the case may be, and also on this corporation.”



## CHAPTER 42

**(Com. Sub. for S. B. 624 - By Senators  
White, Williams and Jenkins)**

[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §31B-2-203 and §31B-2-211 of the Code of West Virginia, 1931, as amended; to amend and reenact §31B-10-1002 of said code; to amend and reenact §31D-2-202 of said code; to amend and reenact §31D-15-1503

of said code; to amend and reenact §31E-2-202 of said code; to amend and reenact §31E-14-1403 of said code; and to amend and reenact §47-9A-2 and §47-9A-3 of said code, all relating to business organizations and associations generally; providing consistency of filing deadlines for all organizations filing annual reports with the Secretary of State; and requiring e-mail addresses for informational notices.

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

That §31B-2-203 and §31B-2-211 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31B-10-1002 of said code be amended and reenacted; that §31D-2-202 of said code be amended and reenacted; that §31D-15-1503 of said code be amended and reenacted; that §31E-2-202 of said code be amended and reenacted; that §31E-14-1403 of said code be amended and reenacted; and that §47-9A-2 and §47-9A-3 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.
- 47. Regulation of Trade.

**CHAPTER 31B. UNIFORM LIMITED LIABILITY  
COMPANY ACT.**

**Article**

- 2. Organization.
- 10. Foreign Limited Liability Companies.

**ARTICLE 2. ORGANIZATION.**

§31B-2-203. Articles of organization.  
§31B-2-211. Annual report for Secretary of State.

**§31B-2-203. Articles of organization.**

- 1 (a) Articles of organization of a limited liability company
- 2 must set forth:

- 3           (1) The name of the company;
- 4           (2) The address of the initial designated office in West  
5 Virginia, if any, and the mailing address of the principal  
6 office;
- 7           (3) The name and address of the initial agent for service  
8 of process, if any;
- 9           (4) The name and address of each organizer and of each  
10 member having authority to execute instruments on behalf of  
11 the limited liability company;
- 12           (5) Whether the company is to be a term company and, if  
13 so, the term specified;
- 14           (6) Whether the company is to be manager-managed and,  
15 if so, the name and address of each initial manager;
- 16           (7) Whether one or more of the members of the company  
17 are to be liable for its debts and obligations under section 3-  
18 303(c);
- 19           (8) The purpose or purposes for which the limited  
20 liability company is organized; and
- 21           (9) An e-mail address where informational notices and  
22 reminders of annual filings may be sent, unless there is a  
23 technical inability to comply.
- 24           (b) Articles of organization of a limited liability company  
25 may set forth:
- 26           (1) Provisions permitted to be set forth in an operating  
27 agreement; or
- 28           (2) Other matters not inconsistent with law.



29 (c) Articles of organization of a limited liability company  
30 may not vary the nonwaivable provisions of section 1-103(b).  
31 As to all other matters, if any provision of an operating  
32 agreement is inconsistent with the articles of organization:

33 (1) The operating agreement controls as to managers,  
34 members and members' transferees; and

35 (2) The articles of organization control as to persons  
36 other than managers, members and their transferees who  
37 reasonably rely on the articles to their detriment.

**§31B-2-211. Annual report for Secretary of State.**

1 (a) A limited liability company, and a foreign limited  
2 liability company authorized to transact business in this state,  
3 shall deliver to the Secretary of State for filing an annual  
4 report that sets forth:

5 (1) The name of the company and the state or country  
6 under whose law it is organized;

7 (2) The address of its designated office, if any and the  
8 name and address of its agent for service of process in this  
9 state, if any;

10 (3) The address of its principal office;

11 (4) The names and business addresses of any managers  
12 and the name and address of each member having authority  
13 to execute instruments on behalf of the limited liability  
14 company; and

15 (5) An e-mail address where informational notices and  
16 reminders of annual filings may be sent, unless there is a  
17 technical inability to comply.

18 (b) Information in an annual report must be current as of  
19 the date the annual report is signed on behalf of the limited  
20 liability company.

21 (c) The first annual report must be delivered to the  
22 Secretary of State between January 1 and July 1 of the year  
23 following the calendar year in which a limited liability  
24 company was organized or a foreign company was authorized  
25 to transact business. Subsequent annual reports must be  
26 delivered to the Secretary of State between January 1 and  
27 July 1 of the ensuing calendar years.

28 (d) If an annual report does not contain the information  
29 required in subsection (a) of this section, the Secretary of  
30 State shall promptly notify the reporting limited liability  
31 company or foreign limited liability company and return the  
32 report to it for correction. If the report is corrected to contain  
33 the information required in subsection (a) of this section and  
34 delivered to the Secretary of State within thirty days after the  
35 effective date of the notice, it is timely filed.

## **ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.**

### **§31B-10-1002. Application for certificate of authority.**

1 (a) A foreign limited liability company may apply for a  
2 certificate of authority to transact business in this state by  
3 delivering an application to the Secretary of State for filing,  
4 together with the fee prescribed by section two, article one,  
5 chapter fifty-nine of this code.

6 The application shall set forth:

7 (1) The name of the foreign company or, if its name is  
8 unavailable for use in this state, a name that satisfies the  
9 requirements of section 10-1005 of this article;

10           (2) The name of the state or country under whose law it  
11 is organized;

12           (3) The mailing address of its principal office;

13           (4) The name and address of each member having  
14 authority to execute instruments on behalf of the limited  
15 liability company;

16           (5) The address of its initial designated office in this  
17 state, if any;

18           (6) The name and address of its initial agent for service  
19 of process in this state, if any;

20           (7) Whether the duration of the company is for a  
21 specified term and, if so, the period specified;

22           (8) Whether the company is manager-managed and, if so,  
23 the name and address of each initial manager;

24           (9) Whether the members of the company are to be liable  
25 for its debts and obligations under a provision similar to  
26 section 3-303( c);

27           (10) The purpose or purposes for which the limited  
28 liability company is organized; and

29           (11) An e-mail address where informational notices and  
30 reminders of annual filings may be sent, unless there is a  
31 technical inability to comply.

32           (b) A foreign limited liability company shall deliver with  
33 the completed application a certificate of existence or a  
34 record of similar import authenticated by the Secretary of  
35 State or other official having custody of company records in  
36 the state or country under whose law it is organized.

**CHAPTER 31D. WEST VIRGINIA BUSINESS  
CORPORATION ACT.**

**Article**

- 2. Incorporation.**
- 15. Foreign Corporations.**

**ARTICLE 2. INCORPORATION.**

**§31D-2-202. Articles of incorporation.**

1           (a) The articles of incorporation must set forth:

2           (1) A corporate name for the corporation that satisfies the  
3 requirements of section four hundred one, article four of this  
4 chapter;

5           (2) The number of shares the corporation is authorized to  
6 issue, the par value of each of the shares or a statement that  
7 all shares are without par value;

8           (3) The street address of the corporation's initial  
9 registered office, if any, and the name of its initial registered  
10 agent at that office, if any;

11          (4) The name and address of each incorporator;

12          (5) The purpose or purposes for which the corporation is  
13 organized;

14          (6) The mailing address of the corporation's principal  
15 office; and

16          (7) An e-mail address where informational notices and  
17 reminders of annual filings may be sent, unless there is a  
18 technical inability to comply.

19          (b) The articles of incorporation may set forth:

- 20           (1) The names and addresses of the individuals who are  
21   to serve as the initial directors;
- 22           (2) Provisions not inconsistent with law regarding:
- 23           (A) Managing the business and regulating the affairs of  
24   the corporation;
- 25           (B) Defining, limiting and regulating the powers of the  
26   corporation, its board of directors and shareholders; or
- 27           (C) The imposition of personal liability on shareholders  
28   for the debts of the corporation to a specified extent and upon  
29   specified conditions;
- 30           (3) Any provision that, under this chapter, is required or  
31   permitted to be set forth in the bylaws;
- 32           (4) A provision eliminating or limiting the personal  
33   liability of a director to the corporation or its stockholders for  
34   monetary damages for breach of fiduciary duty as a director:  
35   *Provided*, That a provision may not eliminate or limit the  
36   liability of a director: (A) For any breach of the director's  
37   duty of loyalty to the corporation or its stockholders; (B) for  
38   acts or omissions not in good faith or which involve  
39   intentional misconduct or a knowing violation of law; (C)  
40   under section eight hundred thirty-three, article eight of this  
41   chapter for unlawful distributions; or (D) for any transaction  
42   from which the director derived an improper personal benefit.  
43   No provision may eliminate or limit the liability of a director  
44   for any act or omission occurring prior to the date when that  
45   provision becomes effective; and
- 46           (5) A provision permitting or making obligatory  
47   indemnification of a director for liability as that term is  
48   defined in section eight hundred fifty, article eight of this  
49   chapter to any person for any action taken, or any failure to

50 take any action, as a director except liability for: (A) Receipt  
51 of a financial benefit to which he or she is not entitled; (B) an  
52 intentional infliction of harm on the corporation or its  
53 shareholders; (C) a violation of section eight hundred thirty-  
54 three, article eight of this chapter for unlawful distributions;  
55 or (D) an intentional violation of criminal law.

56 (c) The articles of incorporation need not set forth any of  
57 the corporate powers enumerated in this chapter.

## **ARTICLE 15. FOREIGN CORPORATIONS.**

### **§31D-15-1503. Application for certificate of authority.**

1 (a) A foreign corporation may apply for a certificate of  
2 authority to transact business in this state by delivering an  
3 application to the Secretary of State for filing. The  
4 application must set forth:

5 (1) The name of the foreign corporation or, if its name is  
6 unavailable for use in this state, a corporate name that  
7 satisfies the requirements of section one thousand five  
8 hundred six of this article;

9 (2) The name of the state or country under whose law it  
10 is incorporated;

11 (3) Its date of incorporation and period of duration;

12 (4) The mailing address of its principal office;

13 (5) The address of its registered office in this state, if any,  
14 and the name of its registered agent at that office, if any;

15 (6) The names and usual business addresses of its current  
16 directors and officers;

17 (7) Purpose or purposes for transaction of business in  
18 West Virginia; and

19 (8) An e-mail address where informational notices and  
20 reminders of annual filings may be sent, unless there is a  
21 technical inability to comply.

22 (b) The foreign corporation shall deliver with the  
23 completed application a certificate of existence, or a  
24 document of similar import, duly authenticated by the  
25 Secretary of State or other official having custody of  
26 corporate records in the state or country under whose law it  
27 is incorporated.

**CHAPTER 31E. WEST VIRGINIA NONPROFIT  
CORPORATION ACT.**

**Article**

- 2. **Incorporation.**
- 14. **Foreign Corporations.**

**ARTICLE 2. INCORPORATION.**

**§31E-2-202. Articles of incorporation.**

1 (a) The articles of incorporation must set forth:

2 (1) A corporate name for the corporation that satisfies the  
3 requirements of section four hundred one, article four of this  
4 chapter;

5 (2) A statement that the corporation is nonprofit and that  
6 the corporation may not have or issue shares of stock or make  
7 distributions;

8 (3) Whether the corporation is to have members and, if it  
9 is to have members, the provisions required by section six  
10 hundred one, article six of this chapter to be set forth in the  
11 certificate of incorporation;

12           (4) The mailing address of the corporation's initial  
13 registered office, if any, and the name of its initial registered  
14 agent at that office, if any;

15           (5) The name and address of each incorporator;

16           (6) The mailing address of the corporation's principal  
17 office; and

18           (7) An e-mail address where informational notices and  
19 reminders of annual filings may be sent, unless there is a  
20 technical inability to comply.

21           (b) The articles of incorporation may set forth:

22           (1) The names and addresses of the individuals who are  
23 to serve as the initial directors;

24           (2) Provisions not inconsistent with law regarding:

25           (A) Managing and regulating the affairs of the  
26 corporation; or

27           (B) Defining, limiting and regulating the powers of the  
28 corporation, its board of directors and members or any class  
29 of members;

30           (3) Any provision that under this chapter is required or  
31 permitted to be set forth in the bylaws;

32           (4) A provision eliminating or limiting the personal  
33 liability of a director to the corporation or its members for  
34 monetary damages for any action taken, or any failure to take  
35 any action, as a director or member, except liability for: (A)  
36 The amount of a financial benefit received by a director or  
37 member to which he or she is not entitled; (B) an intentional  
38 infliction of harm on the corporation or the members; (C) a  
39 violation of section eight hundred thirty-three, article eight of



40 this chapter regarding unlawful distributions; or (D) an  
41 intentional violation of criminal law; and

42 (5) A provision permitting or making obligatory  
43 indemnification of a director for liability as that term is  
44 defined in section eight hundred fifty, article eight of this  
45 chapter to any person for any action taken, or any failure to  
46 take any action, as a director, except liability for: (A) Receipt  
47 of a financial benefit to which he or she is not entitled; (B) an  
48 intentional infliction of harm on the corporation or its  
49 members; (C) a violation of section eight hundred thirty-  
50 three, article eight of this chapter for unlawful distributions;  
51 or (D) an intentional violation of criminal law.

52 (c) The articles of incorporation need not set forth any of  
53 the corporate powers enumerated in this chapter.

#### **ARTICLE 14. FOREIGN CORPORATIONS.**

##### **§31E-14-1403. Application for certificate of authority.**

1 (a) A foreign corporation may apply for a certificate of  
2 authority to conduct affairs in this state by delivering an  
3 application to the Secretary of State for filing. The  
4 application must set forth:

5 (1) The name of the foreign corporation or, if its name is  
6 unavailable for use in this state, a corporate name that  
7 satisfies the requirements of section one thousand four  
8 hundred six of this article;

9 (2) The name of the state or country under whose law it  
10 is incorporated;

11 (3) Its date of incorporation and period of duration;

12 (4) The mailing address of its principal office;

13           (5) The address of its registered office in this state, if any,  
14 and the name of its registered agent at that office, if any;

15           (6) The names and usual addresses of its current directors  
16 and officers;

17           (7) The purpose or purposes of the corporation which it  
18 proposes to pursue in conducting its affairs or doing or  
19 transacting its business in this state; and

20           (8) An e-mail address where informational notices and  
21 reminders of annual filings may be sent, unless there is a  
22 technical inability to comply.

23           (b) The foreign corporation shall deliver with the  
24 completed application a certificate of existence, or a  
25 document of similar import, duly authenticated by the  
26 Secretary of State or other official having custody of  
27 corporate records in the state or country under whose law it  
28 is incorporated.

## CHAPTER 47. REGULATION OF TRADE.

### ARTICLE 9A. VOLUNTARY ASSOCIATIONS AND BUSINESS TRUSTS.

§47-9A-2. Application for registration of business trust; issuance of certificate of business trust.

§47-9A-3. Filing of voluntary association; issuance of certificate of voluntary association.

#### §47-9A-2. Application for registration of business trust; issuance of certificate of business trust.

1           (a) For the purposes of this article, a “business trust” is  
2 any trust organized for the purpose of conducting business  
3 and commonly designated as a Massachusetts trust.

4           (b) Any business trust organized in this state shall file  
5 with the Secretary of State: (1) One executed original copy of

6 an application for registration; and (2) one executed original  
7 copy of the declaration, articles or agreement of trust creating  
8 the business trust.

9 (c) Any business trust organized outside this state and  
10 operating within this state shall file with the Secretary of  
11 State: (1) One executed original copy of an application for  
12 registration; (2) one executed original copy of the  
13 declaration, articles or agreement of trust creating the  
14 business trust as recorded in the state or country of origin of  
15 the business trust; and (3) a statement or certificate from the  
16 proper officer of the state or country of origin that the  
17 business trust is in good standing.

18 (d) An application for registration shall set forth:

19 (1) The name of the business trust;

20 (2) If organized within the state, a statement that it is a  
21 West Virginia business trust, or if organized outside the state,  
22 the state in which it was organized and the formation date of  
23 the business trust;

24 (3) The purpose or purposes for which the business trust  
25 is organized;

26 (4) The address of its principal office;

27 (5) The name and address of the person to whom notice  
28 of process may be sent, if any;

29 (6) The names and addresses of all trustees having  
30 authority to act on behalf of the business trust;

31 (7) A statement reflecting the business trust's consent to  
32 and recognition of the application to the business trust of the  
33 law of this state with respect to corporations; and

34 (8) An e-mail address where informational notices and  
35 reminders of annual filings may be sent, unless there is a  
36 technical inability to comply.

37 (e) An application for registration may contain the  
38 notarized signature of a trustee of the business trust.

39 (f) If the Secretary of State determines that an application  
40 for registration has been properly filed in complete form and  
41 that the fee prescribed in section two, article one, chapter  
42 fifty-nine of this code has been paid, he or she shall file it and  
43 deliver to the business trust or its representative a receipt for  
44 the record and the fees.

**§47-9A-3. Filing of voluntary association; issuance of certificate  
of voluntary association.**

1 (a) For purposes of this article, a “voluntary association”  
2 is any association organized for the purpose of conducting  
3 business in this state, but does not include an organization  
4 formed as an unincorporated nonprofit association under the  
5 provisions of article eleven, chapter thirty-six of this code.

6 (b) Any voluntary association organized in this state shall  
7 file with the Secretary of State: (1) One executed original  
8 copy of an application for registration; and (2) one executed  
9 original copy of the agreement of association creating the  
10 voluntary association (if such an agreement exists apart from  
11 the application for registration itself).

12 (c) Any voluntary association organized outside this state  
13 and operating within this state shall file with the Secretary of  
14 State: (1) One executed original copy of an application for  
15 registration; (2) one executed original copy of the agreement  
16 of association creating the voluntary association; and (3) a  
17 statement or certificate from the proper officer of the state or  
18 country of origin that the voluntary association is in good  
19 standing.

- 20           (d) An application for registration shall set forth:
- 21           (1) The name of the voluntary association;
- 22           (2) The principal office address of the voluntary  
23 association;
- 24           (3) The mailing address of the voluntary association, if  
25 different from the principal office address;
- 26           (4) The name and address of the person to whom notice  
27 of process may be sent, if any;
- 28           (5) Whether the voluntary association is organized for  
29 profit or as a nonprofit voluntary association;
- 30           (6) The purpose or purposes for which the voluntary  
31 association is formed;
- 32           (7) The full names and addresses of one or more of the  
33 organizers of the voluntary association;
- 34           (8) The full names and addresses of no fewer than two  
35 officers, owners or members of the voluntary association who  
36 have signatory authority for the association;
- 37           (9) Any additional statements as may be required for the  
38 type of business to be conducted;
- 39           (10) A statement reflecting the voluntary association's  
40 consent to and recognition of the application of the law of  
41 this state with respect to corporations to the voluntary  
42 association; and
- 43           (11) An e-mail address where informational notices and  
44 reminders of annual filings may be sent, unless there is a  
45 technical inability to comply.

46 (e) An application for registration may contain the  
47 notarized signature of at least one organizer or member of the  
48 voluntary association.

49 (f) If the Secretary of State determines that an application  
50 for registration has been properly filed in complete form and  
51 that the fee prescribed in section two, article one, chapter  
52 fifty-nine of this code has been paid, he or she shall file it and  
53 deliver to the voluntary association or its representative a  
54 receipt for the record and the fees.



## CHAPTER 43

**(H. B. 4171 - By Delegates Miley,  
Wooton, Barker, Moore, Shook, Ferro,  
Ellem, Schoen and Sobonya)**

[Passed March 9, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §25-1-15 of the Code of West Virginia, 1931, as amended, relating to the Division of Corrections; and allowing Division of Corrections to utilize criminogenic risk and need instruments.

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

That §25-1-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **CHAPTER 25. DIVISION OF CORRECTIONS.**

**ARTICLE 1. ORGANIZATION AND INSTITUTIONS AND  
CORRECTIONS MANAGEMENT.****§25-1-15. Diagnostic and classification divisions.**

1 (a) The Commissioner of Corrections may establish  
2 diagnostic and classification divisions.

3 (b) Notwithstanding any provision of the code to the  
4 contrary, all persons committed to the custody of the  
5 Commissioner of the Division of Corrections for presentence  
6 diagnosis and classification and all persons sentenced to the  
7 custody of the Division of Corrections shall, upon transfer to  
8 the Division of Corrections, undergo diagnosis and  
9 classification, which may include assessments of a person's  
10 criminogenic risk and need factors that are reliable, validated  
11 and normed for a specific population and responsive to  
12 cultural and gender-specific needs as well as individual  
13 learning styles and temperament.

**CHAPTER 44**

**(S. B. 385 - By Senators Minard, Jenkins,  
McCabe, Oliverio and Plymale)**

[Passed March 11, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §7-6-2 of the Code of West Virginia, 1931, as amended, relating to bond requirements for county depositories; requiring that a county depository execute a bond only for the amount of the public money deposited that exceeds the amount of the deposit insured by an agency of the federal government.

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

That §7-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 6. COUNTY DEPOSITORIES.**

### **§7-6-2. BOND OF DEPOSITORIES.**

1       No designation is binding on any county, nor shall any  
2 public money be deposited thereunder in excess of the  
3 amount insured by an agency of the federal government, until  
4 the banking institution designated executes a bond with good  
5 and sufficient sureties, to be accepted and approved by the  
6 county commission, payable to the State of West Virginia, in  
7 a sum as the county commission shall direct, and which may  
8 not be less than the amount of the deposit that exceeds the  
9 amount insured by an agency of the federal government in  
10 the depository at any one time. The bond shall be executed  
11 by at least four resident freeholders as sureties owning in the  
12 aggregate unencumbered real estate having an assessed  
13 valuation thereon equal to the penalty of the bond, or by a  
14 fidelity or indemnity company authorized to do business  
15 within the state, satisfactory to, and acceptable by the county  
16 commission, and having not less than \$600,000 capital; and  
17 the bond shall be conditioned for the receipt, safekeeping and  
18 payment over of all money which may be deposited in or  
19 come under the custody of the banking institution designated  
20 a county depository under the provisions hereof, together  
21 with the interest thereon at the rate specified by this article;  
22 and the bond shall be further conditioned for the faithful  
23 performance, by the banking institution so designated, of all  
24 the duties imposed by this article upon a depository of public  
25 moneys: *Provided*, That the clerk of the county commission  
26 shall keep a record of each surety on all personal bonds given  
27 as hereinbefore provided and the clerk shall notify the county



28 commission of every recorded conveyance of real estate  
29 made by any surety on said personal bond.

30 An action shall lie on the bond at the instance of the  
31 county commission, or the sheriff, for the recovery of any  
32 money deposited in the depository, upon failure or default of  
33 the depository to fully and faithfully account for and pay over  
34 any and all public moneys deposited by the sheriff and of all  
35 interests earned and accrued thereon as required by this  
36 article. A bond may not be accepted by the county  
37 commission until it has been submitted to the prosecuting  
38 attorney, and certified by him or her to be in due and legal  
39 form, and conformable to the provisions of this article, which  
40 certificate shall be endorsed thereon: *Provided*, That the  
41 county commission may, in lieu of the bond provided  
42 hereinbefore, accept as security for money deposited as  
43 aforesaid, interest-bearing securities of the United States, or  
44 of a state, county, district or municipal corporation, or of the  
45 federal land banks, or endorsed county and district warrants  
46 of the county in which the depository is located, or letters of  
47 credit of the federal land banks, or federal home loan banks,  
48 or any other letters of credit approved by the treasurer; the  
49 face value of which securities may not be less than the sum  
50 hereinbefore specified as the amount to be named in the bond  
51 in lieu of which the securities are accepted; or the county  
52 commission may accept the securities as partial security to  
53 the extent of their face value for the money so deposited, and  
54 require bond for the remainder of the full amount  
55 hereinbefore specified, to be named in the bond, and in the  
56 bond so required, the acceptance of securities as partial  
57 security, and the extent thereof, shall be set forth: *Provided*,  
58 *however*, That a banking institution is not required to provide  
59 a bond or security in lieu of bond if the deposits accepted are  
60 placed in certificates of deposit meeting the following  
61 requirements: (1) The funds are invested through a  
62 designated state depository selected by the county; (2) the  
63 selected depository arranges for the deposit of the funds in

64 certificates of deposit in one or more banks or savings and  
65 loan associations wherever located in the United States, for  
66 the account of the county; (3) the full amount of principal and  
67 accrued interest of each certificate of deposit is insured by the  
68 Federal Deposit Insurance Corporation; (4) the selected  
69 depository acts as custodian for the county with respect to  
70 such certificates of deposit issued for the county's account;  
71 and (5) at the same time that the county's funds are deposited  
72 and the certificates of deposit are issued, the selected  
73 depository receives an amount of deposits from customers of  
74 other financial institutions wherever located in the United  
75 States equal to or greater than the amount of the funds  
76 invested by the county through the selected depository. The  
77 hypothecation of the securities shall be by proper legal  
78 transfer as collateral security to protect and indemnify by  
79 trust any and all loss in case of any default on the part of the  
80 banking institution in its capacity as depository as aforesaid.  
81 All the securities shall be delivered to or deposited for the  
82 account of the county commission, and withdrawal or  
83 substitution thereof may be permitted from time to time upon  
84 approval by the county commission by order of record, but  
85 the collateral security shall be released only by order of  
86 record of the county commission when satisfied that full and  
87 faithful accounting and payment of all the moneys has been  
88 made under the provisions hereof. In the event actual  
89 possession of the hypothecated securities are delivered to the  
90 county commission, it shall make ample provision for the  
91 safekeeping thereof and the interest thereon when paid shall  
92 be turned over to the banking institution, so long as it is not  
93 in default as aforesaid. The county commission may permit  
94 the deposit under proper receipt of the securities with one or  
95 more banking institutions within or without the State of West  
96 Virginia and may contract with any institution for  
97 safekeeping and exchange of any hypothecated securities,  
98 and may prescribe the rules for handling and protecting the  
99 same.

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**CHAPTER 45**

**(Com. Sub. for H. B. 4352 - By Delegates  
Miley, Fleischauer, Brown, Frazier,  
Hunt, Manchin, Michael, Moore,  
Wooton, Hamilton and Ellem)**

[Passed March 11, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 19, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-2-15, relating to the establishment of a Business Court Division within West Virginia's circuit court districts by the West Virginia Supreme Court of Appeals; legislative findings; authorizing the designation of Business Court Divisions within certain circuit court districts; providing for the promulgation of appropriate rules of the Court.

*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 §51-2-15, to read as follows:

**ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.**

**§51-2-15. Business Court Division.**

- 1 (a) The West Virginia Legislature finds that, due to the
- 2 complex nature of litigation involving highly technical
- 3 commercial issues, there is a need for a separate and

4 specialized court docket to be maintained in West Virginia's  
5 most populated circuit court districts with specific  
6 jurisdiction over actions involving such commercial issues  
7 and disputes between businesses.

8 (b) The West Virginia Supreme Court of Appeals is  
9 authorized to designate a business court division within the  
10 circuit court of any judicial district with a population in  
11 excess of sixty thousand according to the 2000 Federal  
12 Decennial Census.

13 (c) Upon the determination to designate business court  
14 divisions, the West Virginia Supreme Court of Appeals shall  
15 promulgate rules for the establishment and jurisdiction of the  
16 business court divisions within its circuit court system.



## CHAPTER 46

**(Com. Sub. for S. B. 215 - By Senators  
Tomblin (Mr. President) and Caruth)  
[By Request of the Executive]**

[Passed March 9, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to expanding certain crimes against governmental representatives and health care providers to include emergency service personnel; and defining certain terms.

*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 assault on governmental representatives, health care providers, and emergency medical service personnel; definitions; penalties.**

1 (a) For purposes of this section:

2 (1) "Government representative" means any officer or  
3 employee of the state or a political subdivision thereof, or a  
4 person under contract with a state agency or political  
5 subdivision thereof.

6 (2) "Health care worker" means any nurse, nurse  
7 practitioner, physician, physician assistant or technician  
8 practicing at, and all persons employed by or under contract  
9 to a hospital, county or district health department, long-term  
10 care facility, physician's office, clinic or outpatient treatment  
11 facility.

12 (3) "Emergency service personnel" means any paid or  
13 volunteer firefighter, emergency medical technician,  
14 paramedic, or other emergency services personnel employed  
15 by or under contract with an emergency medical service  
16 provider or a state agency or political subdivision thereof.

17 (b) *Malicious assault.* -- Any person who maliciously  
18 shoots, stabs, cuts or wounds or by any means causes bodily  
19 injury with intent to maim, disfigure, disable or kill a  
20 government representative, health care worker or emergency  
21 service personnel acting in his or her official capacity, and  
22 the person committing the malicious assault knows or has  
23 reason to know that the victim is acting in his or her official  
24 capacity is guilty of a felony and, upon conviction thereof,

25 shall be confined in a correctional facility for not less than  
26 three nor more than fifteen years.

27 (c) *Unlawful assault.* -- Any person who unlawfully but  
28 not maliciously shoots, stabs, cuts or wounds or by any  
29 means causes a government representative, health care  
30 worker or emergency service personnel acting in his or her  
31 official capacity bodily injury with intent to maim, disfigure,  
32 disable or kill him or her and the person committing the  
33 unlawful assault knows or has reason to know that the victim  
34 is acting in his or her official capacity is guilty of a felony  
35 and, upon conviction thereof, shall be confined in a  
36 correctional facility for not less than two nor more than five  
37 years.

38 (d) *Battery.* -- Any person who unlawfully, knowingly  
39 and intentionally makes physical contact of an insulting or  
40 provoking nature with a government representative, health  
41 care worker or emergency service personnel acting in his or  
42 her official capacity, or unlawfully and intentionally causes  
43 physical harm to that person acting in such capacity, is guilty  
44 of a misdemeanor and, upon conviction thereof, shall be  
45 fined not more than \$500 or confined in jail not less than one  
46 month nor more than twelve months or both fined and  
47 confined. If any person commits a second such offense, he  
48 or she is guilty of a felony and, upon conviction thereof, shall  
49 be fined not more than \$1,000 or imprisoned in a state  
50 correctional facility not less than one year nor more than  
51 three years, or both fined and imprisoned. Any person who  
52 commits a third violation of this subsection is guilty of a  
53 felony and, upon conviction thereof, shall be fined not more  
54 than \$2,000 or imprisoned in a state correctional facility not  
55 less than two years nor more than five years, or both fined  
56 and imprisoned.

57 (e) *Assault.* -- Any person who unlawfully attempts to  
58 commit a violent injury to the person of a government

59 representative, health care worker or emergency service  
60 personnel acting in his or her official capacity, or unlawfully  
61 commits an act which places that person acting in his or her  
62 official capacity in reasonable apprehension of immediately  
63 receiving a violent injury, is guilty of a misdemeanor and,  
64 upon conviction thereof, shall be confined in jail for not less  
65 than twenty-four hours nor more than six months, fined not  
66 more than \$200, or both fined and confined.

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## CHAPTER 47

**(Com. Sub. for H. B. 4604 - By Delegates  
Armstead, Miley, Iaquina, Walters,  
Fragale, Skaff, Cann and Lane)**

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[Amended and again passed March 20, 2010, as a result of the  
objections of the Governor; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

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AN ACT to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended, relating to increasing the criminal penalties for crimes against law enforcement, probation and parole officers; establishing crime for disarming or attempting to disarm probation and parole officers; establishing new crime for reckless fleeing from law-enforcement officers and parole and probation officers; increasing penalties for fleeing or attempting to flee in a vehicle causing property damage; increasing penalties for fleeing or attempting to flee in a vehicle causing injury; increasing penalties for fleeing or attempting to flee in a vehicle causing death; and designating this act as the “Jerry Alan Jones Act.”

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

That §61-5-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

**§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; penalties; definitions.**

1 (a) Any person who by threats, menaces, acts or otherwise,  
2 forcibly or illegally hinders or obstructs, or attempts to hinder or  
3 obstruct, any law-enforcement officer, probation officer or  
4 parole officer acting in his or her official capacity is guilty of a  
5 misdemeanor and, upon conviction thereof, shall be fined not  
6 less than \$50 nor more than \$500 or confined in jail not more  
7 than one year, or both fined and confined.

8 (b) Any person who intentionally disarms or attempts to  
9 disarm any law-enforcement officer, probation officer or parole  
10 officer, acting in his or her official capacity, is guilty of a felony  
11 and, upon conviction thereof, shall be imprisoned in a state  
12 correctional facility not less than one nor more than five years.

13 (c) Any person who, with intent to impede or obstruct a  
14 law-enforcement officer in the conduct of an investigation of  
15 a felony offense, knowingly and willfully makes a materially  
16 false statement, is guilty of a misdemeanor and, upon  
17 conviction thereof, shall be fined not less than \$25 and not  
18 more than \$200, or confined in jail for five days, or both fined  
19 or confined. However, the provisions of this section do not  
20 apply to statements made by a spouse, parent, stepparent,  
21 grandparent, sibling, half-sibling, child, stepchild or grandchild,  
22 whether related by blood or marriage, of the person under  
23 investigation. Statements made by the person under  
24 investigation may not be used as the basis for prosecution  
25 under this subsection. For the purposes of this subsection,  
26 "law-enforcement officer" does not include a watchman, a  
27 member of the West Virginia State Police or college security  
28 personnel who is not a certified law-enforcement officer.



29           (d) Any person who intentionally flees or attempts to flee  
30 by any means other than the use of a vehicle from any law-  
31 enforcement officer, probation officer or parole officer acting  
32 in his or her official capacity who is attempting to make a  
33 lawful arrest of the person, and who knows or reasonably  
34 believes that the officer is attempting to arrest him or her, is  
35 guilty of a misdemeanor and, upon conviction thereof, shall  
36 be fined not less than \$50 nor more than \$500 or confined in  
37 jail not more than one year, or both.

38           (e) Any person who intentionally flees or attempts to flee  
39 in a vehicle from any law-enforcement officer, probation  
40 officer or parole officer acting in his or her official capacity,  
41 after the officer has given a clear visual or audible signal  
42 directing the person to stop, is guilty of a misdemeanor and,  
43 upon conviction thereof, shall be fined not less than \$500 nor  
44 more than \$1,000 and shall be confined in a regional jail not  
45 more than one year.

46           (f) Any person who intentionally flees or attempts to flee  
47 in a vehicle from any law-enforcement officer, probation  
48 officer or parole officer acting in his or her official capacity,  
49 after the officer has given a clear visual or audible signal  
50 directing the person to stop, and who operates the vehicle in  
51 a manner showing a reckless indifference to the safety of  
52 others, is guilty of a felony and, upon conviction thereof,  
53 shall be fined not less than \$1,000 nor more than \$2,000, and  
54 shall be imprisoned in a state correctional facility not less  
55 than one nor more than five years.

56           (g) Any person who intentionally flees or attempts to flee in  
57 a vehicle from any law-enforcement officer, probation officer or  
58 parole officer acting in his or her official capacity, after the  
59 officer has given a clear visual or audible signal directing the  
60 person to stop, and who causes damage to the real or personal  
61 property of any person during or resulting from his or her flight,  
62 is guilty of a misdemeanor and, upon conviction thereof, shall be  
63 fined not less than \$1,000 nor more than \$3,000 and shall be

64 confined in the county or regional jail for not less than six  
65 months nor more than one year.

66 (h) Any person who intentionally flees or attempts to flee  
67 in a vehicle from any law-enforcement officer, probation  
68 officer or parole officer acting in his or her official capacity,  
69 after the officer has given a clear visual or audible signal  
70 directing the person to stop, and who causes bodily injury to  
71 any person during or resulting from his or her flight, is guilty  
72 of a felony and, upon conviction thereof, shall be imprisoned  
73 in a state correctional facility not less than three nor more  
74 than ten years.

75 (i) Any person who intentionally flees or attempts to flee  
76 in a vehicle from any law-enforcement officer, probation  
77 officer or parole officer acting in his or her official capacity,  
78 after the officer has given a clear visual or audible signal  
79 directing the person to stop, and who causes death to any  
80 person during or resulting from his or her flight, is guilty of  
81 a felony and, upon conviction thereof, shall be punished by  
82 a definite term of imprisonment in a state correctional facility  
83 which is not less than five nor more than fifteen years. A  
84 person imprisoned pursuant to the provisions of this  
85 subsection is not eligible for parole prior to having served a  
86 minimum of three years of his or her sentence or the  
87 minimum period required by the provisions of section  
88 thirteen, article twelve, chapter sixty-two of this code,  
89 whichever is greater.

90 (j) Any person who intentionally flees or attempts to flee  
91 in a vehicle from any law-enforcement officer, probation  
92 officer or parole officer acting in his or her official capacity,  
93 after the officer has given a clear visual or audible signal  
94 directing the person to stop, and who is under the influence  
95 of alcohol, controlled substances or drugs at the time, is  
96 guilty of a felony and, upon conviction thereof, shall be  
97 imprisoned in a state correctional facility not less than three  
98 nor more than ten years.

99 (k) For purposes of this section, the term “vehicle”  
100 includes any motor vehicle, motorcycle, motorboat, all-  
101 terrain vehicle or snowmobile, as those terms are defined in  
102 section one, article one, chapter seventeen-a of this code,  
103 whether or not it is being operated on a public highway at the  
104 time and whether or not it is licensed by the state.

105 (l) For purposes of this section, the terms “flee,”  
106 “fleeing” and “flight” do not include any person’s reasonable  
107 attempt to travel to a safe place, allowing the pursuing law-  
108 enforcement officer to maintain appropriate surveillance, for  
109 the purpose of complying with the officer’s direction to stop.

110 (m) The revisions to subsections (e), (f), (g) and (h) of  
111 this article enacted during the Regular Session of the 2010  
112 Regular Legislative Session shall be known as the “Jerry  
113 Alan Jones Act.”

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## CHAPTER 48

**(S. B. 533 - By Senators Kessler, Unger,  
Minard, Chafin and Plymale)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §61-8D-5 of the Code of West Virginia, 1931, as amended, relating to sex crimes involving a child; making it unlawful for a parent, guardian, custodian or other person in a position of trust in relation to a child to knowingly procure, authorize, or induce another person to engage in or attempt to engage in prohibited sexual conduct.

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

That §61-8D-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8D. CHILD ABUSE.**

**§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.**

1       (a) In addition to any other offenses set forth in this code,  
2 the Legislature hereby declares a separate and distinct offense  
3 under this subsection, as follows: If any parent, guardian or  
4 custodian of or other person in a position of trust in relation  
5 to a child under his or her care, custody or control, shall  
6 engage in or attempt to engage in sexual exploitation of, or in  
7 sexual intercourse, sexual intrusion or sexual contact with, a  
8 child under his or her care, custody or control,  
9 notwithstanding the fact that the child may have willingly  
10 participated in such conduct, or the fact that the child may  
11 have consented to such conduct or the fact that the child may  
12 have suffered no apparent physical injury or mental or  
13 emotional injury as a result of such conduct, then such parent,  
14 guardian, custodian or person in a position of trust shall be  
15 guilty of a felony and, upon conviction thereof, shall be  
16 imprisoned in a correctional facility not less than ten nor  
17 more than twenty years, or fined not less than \$500 nor more  
18 than \$5,000 and imprisoned in a correctional facility not less  
19 than ten years nor more than twenty years.

20       (b) Any parent, guardian, custodian or other person in a  
21 position of trust in relation to the child who knowingly  
22 procures, authorizes, or induces another person to engage in  
23 or attempt to engage in sexual exploitation of, or sexual

24 intercourse, sexual intrusion or sexual contact with, a child  
25 under the care, custody or control of such parent, guardian,  
26 custodian or person in a position of trust when such child is  
27 less than sixteen years of age, notwithstanding the fact that  
28 the child may have willingly participated in such conduct or  
29 the fact that the child may have suffered no apparent physical  
30 injury or mental or emotional injury as a result of such  
31 conduct, such parent, guardian, custodian or person in a  
32 position of trust shall be guilty of a felony and, upon  
33 conviction thereof, shall be imprisoned in a correctional  
34 facility not less than five years nor more than fifteen years, or  
35 fined not less than \$1,000 nor more than \$10,000 and  
36 imprisoned in a correctional facility not less than five years  
37 nor more than fifteen years.

38 (c) Any parent, guardian, custodian or other person in a  
39 position of trust in relation to the child who knowingly  
40 procures, authorizes, or induces another person to engage in  
41 or attempt to engage in sexual exploitation of, or sexual  
42 intercourse, sexual intrusion or sexual contact with, a child  
43 under the care, custody or control of such parent, guardian,  
44 custodian or person in a position of trust when such child is  
45 sixteen years of age or older, notwithstanding the fact that the  
46 child may have consented to such conduct or the fact that the  
47 child may have suffered no apparent physical injury or  
48 mental or emotional injury as a result of such conduct, then  
49 such parent, guardian, custodian or person in a position of  
50 trust shall be guilty of a felony and, upon conviction thereof,  
51 shall be imprisoned in a correctional facility not less than one  
52 year nor more than five years.

53 (d) The provisions of this section shall not apply to a  
54 custodian or person in a position of trust whose age exceeds  
55 the age of the child by less than four years.

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**CHAPTER 49**

**(Com. Sub. for H. B. 4541 - By Delegates  
Shott and Frazier)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2010.]

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AN ACT to amend and reenact §31-20-9, §31-20-10 and §31-20-32 of the Code of West Virginia, 1931, as amended, all relating to authorizing circuit court judges and magistrates to utilize county or municipal jails to detain persons charged with a crime up to ninety-six hours, or, to confine persons convicted of a crime for not more than fourteen days; eliminating any restrictions for county or municipal jails to be used only as holding facilities; and distributing certain processing fees to municipalities or counties.

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

That §31-20-9, §31-20-10 and §31-20-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND  
CORRECTIONAL FACILITY AUTHORITY.**

- §31-20-9. Jail facilities standards commission; purpose, powers and duties.  
§31-20-10. Regional jail and correctional facility authority funds.  
§31-20-32. Jail processing fee.

**§31-20-9. Jail facilities standards commission: purpose, powers  
and duties.**

1           (a) The purpose of the jail facilities standards commission  
2 is to assure that proper minimum standards and procedures  
3 are developed for jail facility operation, maintenance and  
4 management of inmates for regional jails and local jail  
5 facilities. In order to accomplish this purpose, the commission  
6 shall:

7           (1) Prescribe standards for the maintenance and operation  
8 of county and regional jails. The standards shall include, but  
9 not be limited to, requirements assuring adequate space,  
10 lighting and ventilation; fire protection equipment and  
11 procedures; provision of specific personal hygiene articles;  
12 bedding, furnishings and clothing; food services; appropriate  
13 staffing and training; sanitation, safety and hygiene;  
14 isolation and suicide prevention; appropriate medical, dental  
15 and other health services; indoor and outdoor exercise;  
16 appropriate vocational and educational opportunities;  
17 classification; inmate rules and discipline; inmate money and  
18 property; religious services; inmate work programs; library  
19 services; visitation, mail and telephone privileges; and other  
20 standards necessary to assure proper operation: *Provided*,  
21 That the standards developed for the construction, operation  
22 and maintenance of jails apply only to jail facilities  
23 completed after April 5, 1988, and that the standards serve  
24 only as guidelines for any jail facility in operation prior to  
25 that date: *Provided, however*, That the commission shall  
26 establish standards and procedures permitting and implementing  
27 in those facilities the double bunking of inmates in all  
28 appropriate cases to the extent that this practice does not  
29 violate federal law;

30           (2) Propose legislative rules for promulgation pursuant to  
31 the provisions of article three, chapter twenty-nine-a of this  
32 code that are necessary to implement the provisions of this  
33 article relating to jail facilities, including, without limitation,  
34 minimum jail and work farm standards which shall be  
35 proposed for promulgation on or before July 1, 1999:

36 *Provided*, That rules filed by the jail and correctional  
37 facilities standards commission and authorized by the  
38 Legislature to be promulgated before the amendment to this  
39 section enacted in the regular session of the Legislature in the  
40 year 1998 remain in force except that such previously  
41 promulgated rules no longer apply to: (i) Correctional  
42 facilities; and (ii) jail facilities that were originally  
43 constructed for use as a jail which were completed and placed  
44 in operation before April 5, 1998: *Provided, however*, That  
45 such previously promulgated rules shall serve as guidelines  
46 for those facilities that fall within the specifications of (ii)  
47 herein;

48 (3) Develop a process for reviewing and updating the jail  
49 and work farm standards pursuant to the provisions of article  
50 three, chapter twenty-nine-a of this code as necessary to  
51 assure that they conform to current law; and

52 (4) Report periodically to the regional jail and  
53 correctional facility authority and the appropriate county and  
54 municipal authorities to advise, recommend, and direct  
55 actions to be taken by the authority, the county or the  
56 municipality to implement proper minimum jail and work  
57 farm standards.

58 (b) Notwithstanding any other provision of this code to  
59 the contrary, any county commission providing and  
60 maintaining a jail on the effective date of this article may not  
61 be required to provide and maintain a jail after a regional jail  
62 becomes available pursuant to the provisions of article  
63 twenty, chapter thirty-one of this code, unless the county  
64 commission determines that a facility is necessary: *Provided*,  
65 That the county commission may provide and maintain a  
66 facility which complies with the standards set forth for  
67 holding facilities in legislative rules promulgated by the jail  
68 facilities standards commission or its predecessor, the jail and  
69 correctional facilities standards commission.



**§31-20-10. Regional jail and correctional facility authority funds.**

1           (a) The Regional Jail and Correctional Facility Authority  
2           may create special funds in the State Treasury to identify  
3           various revenue sources and payment of specific obligations.  
4           These funds may be used for purposes that include, but are  
5           not limited to, the construction, renovation or repair of  
6           specific facilities, cash control, facility maintenance and the  
7           individual operations accounts of facilities operated by the  
8           authority. The authority may create other separate accounts  
9           within these funds that it determines are necessary for the  
10          efficient operation of the authority.

11          (b) Revenues deposited into these funds shall be used to  
12          make payments of interest and shall be pledged as security  
13          for bonds, security interests or notes issued or lease-purchase  
14          obligations entered into with another state entity by the  
15          authority pursuant to this article.

16          (c) Whenever the authority determines that the balance in  
17          these funds is in excess of the immediate requirements of this  
18          article, it may request that the excess be invested until  
19          needed. In this case, the excess shall be invested in a manner  
20          consistent with the investment of temporary state funds.  
21          Interest earned on any money invested pursuant to this  
22          section shall be credited to these funds.

23          (d) If the authority determines that moneys held in these  
24          funds are in excess of the amount needed to carry out the  
25          purposes of this article, it shall take any action that is  
26          necessary to release the excess and transfer it to the General  
27          Revenue Fund of the State Treasury.

28          (e) These funds consist of the following:

29               (1) Amounts raised by the authority by the sale of bonds  
30               or other borrowing authorized by this article;

31 (2) Moneys collected and deposited in the State Treasury  
32 which are specifically designated by Acts of the Legislature  
33 for inclusion in these funds;

34 (3) Contributions, grants and gifts from any source, both  
35 public and private, which may be used by the authority for  
36 any project or projects;

37 (4) All sums paid by the counties pursuant to subsection  
38 (h) of this section; and

39 (5) All interest earned on investments made by the state  
40 from moneys deposited in these funds.

41 (f) The amounts deposited in these funds shall be  
42 accounted for and expended in the following manner:

43 (1) Amounts raised by the sale of bonds or other  
44 borrowing authorized by this article shall be deposited in a  
45 separate account within these funds and expended for the  
46 purpose of construction, renovation and repair of correctional  
47 facilities, regional jails and juvenile detention and  
48 correctional facilities for which need has been determined by  
49 the authority;

50 (2) Amounts deposited from all other sources shall be  
51 pledged first to the debt service on any bonded indebtedness,  
52 including lease-purchase obligations entered into by the  
53 authority with another state entity or other obligation incurred  
54 by borrowing of the authority;

55 (3) After any requirements of debt service have been  
56 satisfied, the authority shall requisition from these funds the  
57 amounts that are necessary to provide for payment of the  
58 administrative expenses of this article;

59 (4) The authority shall requisition from these funds, after  
60 any requirements of debt service have been satisfied, the

61 amounts that are necessary for the maintenance and operation  
62 of regional jails that are constructed pursuant to the  
63 provisions of this article and shall expend those amounts for  
64 that purpose. These funds shall make an accounting of all  
65 amounts received from each county by virtue of any filing  
66 fees, court costs or fines required by law to be deposited in  
67 these funds and amounts from the jail improvement funds of  
68 the various counties. After the expenses of administration  
69 have been deducted, the amounts expended in the respective  
70 regions from those sources shall be in proportion to the  
71 percentage the amount contributed to these funds by the  
72 counties in each region bears to the total amount received by  
73 these funds from those sources;

74 (5) Notwithstanding any other provisions of this article,  
75 sums paid into these funds by each county pursuant to  
76 subsection (h) of this section for each inmate shall be placed  
77 in a separate account and shall be requisitioned from these  
78 funds to pay for costs incurred at the regional jail facility at  
79 which each inmate was incarcerated; and

80 (6) Any amounts deposited in these funds from other  
81 sources permitted by this article shall be expended in the  
82 respective regions based on particular needs to be determined  
83 by the authority.

84 (g) (1) After a regional jail facility becomes available  
85 pursuant to this article for the incarceration of inmates, each  
86 county within the region shall incarcerate all persons whom  
87 the county would have incarcerated in any jail prior to the  
88 availability of the regional jail facility in the regional jail  
89 facility except those whose incarceration in a local jail  
90 facility used as a local holding facility is specified as  
91 appropriate under the standards and procedures developed  
92 pursuant to section nine of this article and who the sheriff or  
93 the circuit court elects to incarcerate therein.

94           (2) Notwithstanding the provisions of subdivision (1) of  
95 this subsection, circuit and magistrate courts are authorized  
96 to:

97           (A) Detain persons who have been arrested or charged  
98 with a crime, in a county or municipal jail, specified as  
99 appropriate under the standards and procedures developed  
100 pursuant to section nine of this article, for a period not to  
101 exceed ninety-six hours; or

102           (B) Commit persons convicted of a crime in a county or  
103 municipal jail, specified as appropriate under the standards  
104 and procedures developed pursuant to section nine of this  
105 article, for a period not to exceed fourteen days.

106           (h) When inmates are placed in a regional jail facility  
107 pursuant to subsection (g) of this section, the county shall pay  
108 into the Regional Jail and Correctional Facility Authority  
109 Fund a cost per day for each incarcerated inmate to be  
110 determined by the Regional Jail and Correctional Facility  
111 Authority according to criteria and by procedures established  
112 by legislative rules proposed for promulgation pursuant to  
113 article three, chapter twenty-nine-a of this code and as  
114 established in section ten-a of this article to cover the costs of  
115 operating the regional jail facilities of this state to maintain  
116 each inmate. The per diem costs for incarcerating inmates  
117 may not include the cost of construction, acquisition or  
118 renovation of the regional jail facilities: *Provided*, That each  
119 regional jail facility operating in this state shall keep a record  
120 of the date and time that an inmate is incarcerated and a  
121 county may not be charged for a second day of incarceration  
122 for an individual inmate until that inmate has remained  
123 incarcerated for more than twenty-four hours. After that, in  
124 cases of continuous incarceration, subsequent per diem  
125 charges shall be made upon a county only as subsequent  
126 intervals of twenty-four hours pass from the original time of  
127 incarceration.

**§31-20-32. Jail processing fee.**

1           (a) A person committed to be housed in jail by order of  
2 magistrate, circuit judge or by temporary commitment order  
3 shall, at the time of booking into the jail, pay a processing fee  
4 of thirty dollars. If the person is unable to pay at the time of  
5 booking, the fee shall be deducted, at a rate of fifty percent,  
6 from any new deposits made into the person's jail trust  
7 account until the jail processing fee is paid in full. The fee  
8 shall be credited to:

9           (1) The Regional Jail and Correctional Facility  
10 Authority's operating budget if the person is committed to  
11 and housed in a regional jail;

12           (2) To the county commission if the person is committed  
13 to and housed in a county jail; or

14           (3) To the municipality if the person is committed to and  
15 housed in a municipal jail. The fee should be paid prior to  
16 the offender being released.

17           (b) A refund of a fee collected under this section shall be  
18 made to a person who has paid the fee if the person is not  
19 convicted of the offense for which the person was booked  
20 and the person provides documentation from the court  
21 showing that all charges for which the person was booked  
22 were dismissed, accurate current name and address and a  
23 valid photographic identification. In the case of multiple  
24 offenses, if the person is convicted of any of the offenses the  
25 fee may not be refunded. If the person is convicted of a  
26 lesser included offense or a related offense, no refund may be  
27 made.

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## CHAPTER 50

**(Com. Sub. for S. B. 218 - By Senators  
Tomblin (Mr. President) and Caruth)  
[By Request of the Executive]**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2010.]

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AN ACT to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to powers and duties of the board of parole; eligibility for parole; changing when an inmate's written parole release plan may be prepared and considered; procedures for granting parole; accelerated parole eligibility for certain inmates who complete a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment; authorizing the Division of Corrections to promulgate policies and procedures related to accelerated parole eligibility; creating a rebuttable presumption for parole in certain circumstances; authorizing board of parole to contingently grant parole allowing board of parole to consider inmates for parole who have certain detainers pending against them; reducing the period for parole reconsideration; making technical corrections; and creating an internal effective date for certain amendments to the section.

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

That §62-12-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.**

1 (a) The board of parole, whenever it is of the opinion that  
2 the best interests of the state and of the inmate will be served,  
3 and subject to the limitations hereinafter provided, shall  
4 release any inmate on parole for terms and upon conditions  
5 as are provided by this article.

6 (b) Any inmate of a state correctional center is eligible  
7 for parole if he or she:

8 (1) (A) Has served the minimum term of his or her  
9 indeterminate sentence or has served one fourth of his or her  
10 definite term sentence, as the case may be, or

11 (B) He or she:

12 (i) Has applied for and been accepted by the Commissioner  
13 of Corrections into an accelerated parole program;

14 (ii) Does not have a prior criminal conviction for a felony  
15 crime of violence against the person, a felony offense  
16 involving the use of a firearm, or a felony offense where the  
17 victim was a minor child;

18 (iii) Has no record of institutional disciplinary rule  
19 violations for a period of 120 days prior to parole  
20 consideration unless the requirement is waived by the  
21 commissioner;

22 (iv) Is not serving a sentence for a crime of violence  
23 against the person, or more than one felony for a controlled  
24 substance offense for which the inmate is serving a  
25 consecutive sentence, a felony offense involving the use of a  
26 firearm, or a felony offense where the victim was a minor  
27 child; and

28 (v) Has successfully completed a rehabilitation treatment  
29 program created with the assistance of a standardized risk  
30 and needs assessment;

31 (I) As used in this paragraph “felony crime of violence  
32 against the person” means felony offenses set forth in articles  
33 two, three-e, eight-b or eight-d of chapter sixty-one of this  
34 code; and

35 (II) as used in this paragraph “felony offense where the  
36 victim was a minor child” means any felony crime of  
37 violence against the person and any felony violation set forth  
38 in article eight, eight-a, eight-c or eight-d of chapter sixty-one  
39 of this code.

40 (C) Notwithstanding any provision of this code to the  
41 contrary, any person who committed, or attempted to commit  
42 a felony with the use, presentment or brandishing of a  
43 firearm, is not eligible for parole prior to serving a minimum  
44 of three years of his or her sentence or the maximum  
45 sentence imposed by the court, whichever is less: *Provided,*  
46 That any person who committed, or attempted to commit, any  
47 violation of section twelve, article two, chapter sixty-one of  
48 this code, with the use, presentment or brandishing of a  
49 firearm, is not eligible for parole prior to serving a minimum  
50 of five years of his or her sentence or one third of his or her  
51 definite term sentence, whichever is greater. Nothing in this  
52 section applies to an accessory before the fact or a principal  
53 in the second degree who has been convicted as if he or she  
54 were a principal in the first degree if, in the commission of or  
55 in the attempted commission of the felony, only the principal  
56 in the first degree used, presented or brandished a firearm. A  
57 person is not ineligible for parole under the provisions of this  
58 subdivision because of the commission or attempted  
59 commission of a felony with the use, presentment or  
60 brandishing of a firearm unless that fact is clearly stated and



61 included in the indictment or presentment by which the  
62 person was charged and was either: (I) Found by the court at  
63 the time of trial upon a plea of guilty or nolo contendere; or  
64 (ii) found by the jury, upon submitting to the jury a special  
65 interrogatory for such purpose if the matter was tried before  
66 a jury; or (iii) found by the court, if the matter was tried by  
67 the court without a jury.

68 For the purpose of this section, the term “firearm” means  
69 any instrument which will, or is designed to, or may readily  
70 be converted to, expel a projectile by the action of an  
71 explosive, gunpowder or any other similar means.

72 (D) The amendments to this subsection adopted in the  
73 year 1981:

74 (i) Apply to all applicable offenses occurring on or after  
75 August 1 of that year;

76 (ii) Apply with respect to the contents of any indictment  
77 or presentment returned on or after August 1 of that year  
78 irrespective of when the offense occurred;

79 (iii) Apply with respect to the submission of a special  
80 interrogatory to the jury and the finding to be made thereon  
81 in any case submitted to the jury on or after August 1 of that  
82 year or to the requisite findings of the court upon a plea of  
83 guilty or in any case tried without a jury: *Provided*, That the  
84 state gives notice in writing of its intent to seek such finding  
85 by the jury or court, as the case may be, which notice shall  
86 state with particularity the grounds upon which the finding  
87 will be sought as fully as such grounds are otherwise required  
88 to be stated in an indictment, unless the grounds therefor are  
89 alleged in the indictment or presentment upon which the  
90 matter is being tried; and

91 (iv) Does not apply with respect to cases not affected by  
92 the amendments and in such cases the prior provisions of this  
93 section apply and are construed without reference to the  
94 amendments.

95 Insofar as the amendments relate to mandatory sentences  
96 restricting the eligibility for parole, all matters requiring a  
97 mandatory sentence shall be proved beyond a reasonable  
98 doubt in all cases tried by the jury or the court.

99 (2) Is not in punitive segregation or administrative  
100 segregation as a result of disciplinary action;

101 (3) Has maintained a record of good conduct in prison for  
102 a period of at least three months immediately preceding the  
103 date of his or her release on parole;

104 (4) Has prepared and submitted to the board a written  
105 parole release plan setting forth proposed plans for his or her  
106 place of residence, employment and, if appropriate, his or her  
107 plans regarding education and post-release counseling and  
108 treatment. The Commissioner of Corrections or his or her  
109 designee shall review the plan to be reviewed and  
110 investigated and provide recommendations to the board as to  
111 the suitability of the plan: *Provided*, That in cases in which  
112 there is a mandatory thirty day notification period required  
113 prior to the release of the inmate, pursuant to section twenty-  
114 three of this article, the board may conduct an initial  
115 interview and deny parole without requiring the development  
116 of a plan. In the event the board does not believe parole  
117 should be denied, it may defer a final decision pending  
118 completion of an investigation and receipt of  
119 recommendations. Upon receipt of the plan together with the  
120 investigation and recommendation, the board, through a  
121 panel, shall make a final decision regarding the granting or  
122 denial of parole; and

123           (5) Has satisfied the board that if released on parole he or  
124 she will not constitute a danger to the community.

125           (c) Except in the case of a person serving a life sentence,  
126 no person who has been previously twice convicted of a  
127 felony may be released on parole until he or she has served  
128 the minimum term provided by law for the crime for which  
129 he or she was convicted. A person sentenced for life may not  
130 be paroled until he or she has served ten years, and a person  
131 sentenced for life who has been previously twice convicted  
132 of a felony may not be paroled until he or she has served  
133 fifteen years: *Provided*, That a person convicted of first  
134 degree murder for an offense committed on or after June 10,  
135 1994, is not eligible for parole until he or she has served  
136 fifteen years.

137           (d) In the case of a person sentenced to any state  
138 correctional center, it is the duty of the board, as soon as a  
139 person becomes eligible, to consider the advisability of his or  
140 her release on parole.

141           (e) If, upon consideration, parole is denied, the board  
142 shall promptly notify the inmate of the denial. The board  
143 shall, at the time of denial, notify the person of the month and  
144 year he or she may apply for reconsideration and review.  
145 The board shall at least once a year reconsider and review the  
146 case of every inmate who was denied parole and is still  
147 eligible.

148           (f) Any person serving a sentence on a felony conviction  
149 who becomes eligible for parole consideration prior to being  
150 transferred to a state correctional center may make written  
151 application for parole. The terms and conditions for parole  
152 consideration established by this article apply to such  
153 inmates.

154           (g) The board shall, with the approval of the Governor,  
155 adopt rules governing the procedure in the granting of parole.

156 No provision of this article and none of the rules adopted  
157 hereunder are intended or may be construed to contravene,  
158 limit or otherwise interfere with or affect the authority of the  
159 Governor to grant pardons and reprieves, commute sentences,  
160 remit fines or otherwise exercise his or her constitutional  
161 powers of executive clemency.

162 (h) The Division of Corrections shall promulgate policies  
163 and procedures for developing a rehabilitation treatment plan  
164 created with the assistance of a standardized risk and needs  
165 assessment. The policies and procedures shall include, but  
166 not be limited to, policy and procedures for screening and  
167 selecting inmates for rehabilitation treatment and  
168 development and use of standardized risk and needs  
169 assessment tools. An inmate shall not be paroled solely due  
170 to having successfully completed a rehabilitation treatment  
171 plan but completion of all the requirements of a rehabilitation  
172 parole plan along with compliance with the requirements of  
173 subsection (b) of this section shall create a rebuttable  
174 presumption that parole is appropriate. The presumption  
175 created by this subsection may be rebutted by a parole board  
176 finding that at the time parole release is sought the inmate  
177 still constitutes a reasonable risk to the safety or property of  
178 other persons if released. Nothing in subsection (b) of this  
179 section or in this subsection may be construed to create a  
180 right to parole.

181 (i) Notwithstanding the provisions of subsection (b) of  
182 this section, the parole board may, in its discretion, grant or  
183 deny parole to an inmate against whom a detainer is lodged  
184 by a jurisdiction other than West Virginia for service of a  
185 sentence of incarceration, upon a written request for parole  
186 from the inmate. A denial of parole under this subsection  
187 shall preclude consideration for a period of one year or until  
188 the provisions of subsection (b) of this section are applicable.

189 (j) Where an inmate is otherwise eligible for parole  
190 pursuant to subsection (b) of this section but the parole board

191 determines that the inmate should participate in an additional  
192 program or complete an assigned task or tasks prior to actual  
193 release on parole, the board may grant parole contingently,  
194 effective upon successful completion of the program or  
195 assigned task or tasks, without the need for a further hearing.  
196 The Commissioner of Corrections shall provide notice to the  
197 parole board of the imminent release of a contingently  
198 paroled inmate to effectuate appropriate supervision.

199 (k) The Division of Corrections is charged with the duty  
200 of supervising all probationers and parolees whose  
201 supervision may have been undertaken by this state by reason  
202 of any interstate compact entered into pursuant to the uniform  
203 act for out-of-state parolee supervision.

204 (l)(1) When considering an inmate of a state correctional  
205 center for release on parole, the parole board panel  
206 considering the parole is to have before it an authentic copy  
207 of or report on the inmate's current criminal record as  
208 provided through the West Virginia State Police, the United  
209 States Department of Justice or other reliable criminal  
210 information sources and written reports of the warden or  
211 superintendent of the state correctional center to which the  
212 inmate is sentenced:

213 (A) On the inmate's conduct record while in custody,  
214 including a detailed statement showing any and all infractions  
215 of disciplinary rules by the inmate and the nature and extent  
216 of discipline administered therefor;

217 (B) On improvement or other changes noted in the  
218 inmate's mental and moral condition while in custody,  
219 including a statement expressive of the inmate's current  
220 attitude toward society in general, toward the judge who  
221 sentenced him or her, toward the prosecuting attorney who  
222 prosecuted him or her, toward the policeman or other officer  
223 who arrested the inmate and toward the crime for which he or  
224 she is under sentence and his or her previous criminal record;

225 (C) On the inmate's industrial record while in custody  
226 which shall include: The nature of his or her work,  
227 occupation or education, the average number of hours per day  
228 he or she has been employed or in class while in custody and  
229 a recommendation as to the nature and kinds of employment  
230 which he or she is best fitted to perform and in which the  
231 inmate is most likely to succeed when he or she leaves  
232 prison;

233 (D) On physical, mental and psychiatric examinations of  
234 the inmate conducted, insofar as practicable, within the two  
235 months next preceding parole consideration by the board.

236 (2) The board panel considering the parole may waive the  
237 requirement of any report when not available or not  
238 applicable as to any inmate considered for parole but, in  
239 every such case, shall enter in the record thereof its reason for  
240 the waiver: *Provided*, That in the case of an inmate who is  
241 incarcerated because the inmate has been found guilty of, or  
242 has pleaded guilty to a felony under the provisions of section  
243 twelve, article eight, chapter sixty-one of this code or under  
244 the provisions of article eight-b or eight-c of said chapter, the  
245 board panel may not waive the report required by this  
246 subsection and the report is to include a study and diagnosis  
247 including an on-going treatment plan requiring active  
248 participation in sexual abuse counseling at an approved  
249 mental health facility or through some other approved  
250 program: *Provided, however*, That nothing disclosed by the  
251 person during the study or diagnosis may be made available  
252 to any law-enforcement agency, or other party without that  
253 person's consent, or admissible in any court of this state,  
254 unless the information disclosed indicates the intention or  
255 plans of the parolee to do harm to any person, animal,  
256 institution or to property. Progress reports of outpatient  
257 treatment are to be made at least every six months to the  
258 parole officer supervising the person. In addition, in such  
259 cases, the parole board shall inform the prosecuting attorney  
260 of the county in which the person was convicted of the parole

261 hearing and shall request that the prosecuting attorney inform  
262 the parole board of the circumstances surrounding a  
263 conviction or plea of guilty, plea bargaining and other  
264 background information that might be useful in its  
265 deliberations.

266 (m) Before releasing any inmate on parole, the board of  
267 parole shall arrange for the inmate to appear in person before  
268 a parole board panel and the panel may examine and  
269 interrogate him or her on any matters pertaining to his or her  
270 parole, including reports before the board made pursuant to  
271 the provisions hereof: *Provided*, That an inmate may appear  
272 by video teleconference if the members of the panel  
273 conducting the examination are able to contemporaneously  
274 see the inmate and hear all of his or her remarks and if the  
275 inmate is able to contemporaneously see each of the members  
276 of the panel conducting the examination and hear all of the  
277 members' remarks. The panel shall reach its own written  
278 conclusions as to the desirability of releasing the inmate on  
279 parole and the majority of the panel considering the release  
280 shall concur in the decision. The warden or superintendent  
281 shall furnish all necessary assistance and cooperate to the  
282 fullest extent with the parole board. All information, records  
283 and reports received by the board are to be kept on permanent  
284 file.

285 (n) The board and its designated agents are at all times to  
286 have access to inmates imprisoned in any state correctional  
287 center or in any jail in this state and may obtain any  
288 information or aid necessary to the performance of its duties  
289 from other departments and agencies of the state or from any  
290 political subdivision thereof.

291 (o) The board shall, if so requested by the Governor,  
292 investigate and consider all applications for pardon, reprieve  
293 or commutation and shall make recommendation thereon to  
294 the Governor.

295 (p) Prior to making a recommendation for pardon,  
296 reprieve or commutation and prior to releasing any inmate on  
297 parole, the board shall notify the sentencing judge and  
298 prosecuting attorney at least ten days before the  
299 recommendation or parole.

300 (q) Any person released on parole shall participate as a  
301 condition of parole in the litter control program of the county  
302 to the extent directed by the board, unless the board  
303 specifically finds that this alternative service would be  
304 inappropriate.

305 (r) Except for the amendments to this section contained  
306 in subdivision (4), subsection (b) and subsection (i) of this  
307 section the amendments to this section enacted during the  
308 2010 regular session of the legislature shall become effective  
309 on January 1, 2011.



## CHAPTER 51

**(S. B. 633 - By Senators Fanning and Chafin)**

[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-6-2a; to amend and reenact §8-13-22a of said code; to amend and reenact §12-1-4 of said code; and to amend and reenact §18-9-6 of said code, all relating to enabling counties, municipalities, the state and county boards of education to deposit public funds into deposit accounts that are swept periodically into multiple federally fully insured deposit accounts through a deposit placement program



with full federal insurance in lieu of a bond or other collateral required of the depository institution.

*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 §7-6-2a; that §8-13-22a of said code be amended and reenacted; that §12-1-4 of said code be amended and reenacted; and that §18-9-6 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 7. **County Commissions and Officers.**
- 8. **Municipal Corporations.**
- 12. **Public Moneys and Securities.**
- 18. **Education.**

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 6. COUNTY DEPOSITORIES.**

**§7-6-2a. Further exception to bond requirement; fully insured cash sweep accounts.**

1           A banking institution is not required to provide a bond or  
2 security in lieu of bond pursuant to section two of this article  
3 if the deposit is placed in a designated state depository that is  
4 selected and authorized by the county to arrange for the  
5 redeposit of the funds through a deposit placement program  
6 that meets the following conditions:

7           (a) On or after the date that the county funds are received  
8 the selected depository: (i) Arranges for the redeposit of the  
9 funds into deposit accounts in one or more federally insured  
10 banks or savings and loan associations that are located in the  
11 United States; and (ii) serves as custodian for the county with  
12 respect to the funds redeposited into such accounts.

13 (b) County funds deposited in a selected depository in  
14 accordance with this section and held at the close of business  
15 in the selected depository in excess of the amount insured by  
16 the Federal Deposit Insurance Corporation shall be secured  
17 in accordance with section two of this article.

18 (c) The full amount of the funds of the county  
19 redeposited by the selected depository into deposit accounts  
20 in banks or savings and loan associations pursuant to this  
21 section (plus accrued interest, if any) shall be insured by the  
22 Federal Deposit Insurance Corporation.

23 (d) On the same date that the funds of the county are  
24 redeposited pursuant to this section, the selected depository  
25 receives an amount of deposits from customers of other  
26 financial institutions through the deposit placement program  
27 that are equal to the amount of the county money redeposited  
28 by the selected depository.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.**

#### **§8-13-22a. Investment of municipal funds.**

1 All municipal funds, the investment of which is not  
2 governed by other provisions of this code and not required  
3 for the payment of current obligations and not otherwise  
4 prohibited, may be invested and reinvested in:

5 (1) Any direct obligation of, or obligation guaranteed as  
6 to the payment of both principal and interest by, the United  
7 States of America;

8 (2) Any evidence of indebtedness issued by any United  
9 States government agency guaranteed as to the payment of

10 both principal and interest, directly or indirectly, by the  
11 United States of America including, but not limited to, the  
12 following: Government National Mortgage Association,  
13 federal land banks, federal home loan banks, federal  
14 intermediate credit banks, banks for cooperatives, Tennessee  
15 Valley Authority, United States postal service, farmers home  
16 administration, export-import bank, federal financing bank,  
17 federal home loan mortgage corporation, student loan  
18 marketing association and federal farm credit banks;

19 (3) Any evidence of indebtedness issued by the Federal  
20 National Mortgage Association to the extent such  
21 indebtedness is guaranteed by the government National  
22 Mortgage Association;

23 (4) Any evidence of indebtedness that is secured by a  
24 first lien deed of trust or mortgage upon real property situate  
25 within this state, if the payment thereof is substantially  
26 insured or guaranteed by the United States of America or any  
27 agency thereof;

28 (5) Direct and general obligations of this state;

29 (6) Any undivided interest in a trust, the corpus of which  
30 is restricted to mortgages on real property and, unless all of  
31 such property is situate within the state and insured, the trust  
32 at the time of the acquisition of the undivided interest, is  
33 rated in one of the three highest rating grades by an agency  
34 which is nationally known in the field of rating pooled  
35 mortgage trusts;

36 (7) Any bond, note, debenture, commercial paper or other  
37 evidence of indebtedness of any private corporation or  
38 association: *Provided*, That any such security is, at the time  
39 of its acquisition, rated in one of the three highest rating  
40 grades by an agency which is nationally known in the field of  
41 rating corporate securities: *Provided, however*, That if any  
42 commercial paper or any such security will mature within

43 one year from the date of its issuance, it shall, at the time of  
44 its acquisition, be rated in one of the two highest rating  
45 grades by any such nationally known agency and commercial  
46 paper or other evidence of indebtedness of any private  
47 corporation or association shall be purchased only upon the  
48 written recommendation from an investment advisor that has  
49 over \$300 million in other funds under its management;

50 (8) Negotiable certificates of deposit issued by any bank,  
51 trust company, national banking association or savings  
52 institution which mature in less than one year and are fully  
53 collateralized;

54 (9) Interest earning deposits including certificates of  
55 deposit, with any duly designated state depository, which  
56 deposits are fully secured by a collaterally secured bond as  
57 provided in section four, article one, chapter twelve of this  
58 code: *Provided*, That a banking institution is not required to  
59 provide this collaterally secured bond, or other security in  
60 lieu of bond, if the deposits accepted are placed in certificates  
61 of deposit meeting the following requirements: (A) The funds  
62 are invested through a designated state depository selected by  
63 the municipality; (B) the selected depository arranges for the  
64 deposit of the funds in certificates of deposit in one or more  
65 banks or savings and loan associations wherever located in  
66 the United States, for the account of the municipality; (C) the  
67 full amount of principal and accrued interest of each  
68 certificate of deposit is insured by the Federal Deposit  
69 Insurance Corporation; (D) the selected depository acts as  
70 custodian for the municipality with respect to such  
71 certificates of deposit issued for the municipality's account;  
72 and (E) at the same time that the municipality's funds are  
73 deposited and the certificates of deposit are issued, the  
74 selected depository receives an amount of deposits from  
75 customers of other financial institutions wherever located in  
76 the United States equal to or greater than the amount of the  
77 funds invested by the municipality through the selected  
78 depository;

79 (10) Mutual funds registered with the Securities and  
80 Exchange Commission which have assets in excess of \$300  
81 million; and

82 (11) Deposits with any duly designated state depository  
83 that is selected and authorized by the municipality to arrange  
84 for the redeposit of the funds through a deposit placement  
85 program that meets the following conditions:

86 (a) On or after the date that the municipal funds are  
87 received the selected depository: (i) Arranges for the  
88 redeposit of the funds into deposit accounts in one or more  
89 federally insured banks or savings and loan associations that  
90 are located in the United States; and (ii) serves as custodian  
91 for the municipality with respect to the funds deposited into  
92 such accounts.

93 (b) Municipal funds deposited in a selected depository in  
94 accordance with this section and held at the close of business  
95 in the selected depository in excess of the amount insured by  
96 the Federal Deposit Insurance Corporation shall be secured  
97 in accordance with section four, article one, chapter twelve of  
98 this code.

99 (c) The full amount of the funds of the municipality  
100 redeposited by the selected depository into deposit accounts  
101 in banks or savings and loan associations pursuant to this  
102 subsection (plus accrued interest, if any) shall be insured by  
103 the Federal Deposit Insurance Corporation.

104 (d) On the same date that the funds of the municipality  
105 are redeposited pursuant to this subsection, the selected  
106 depository receives an amount of deposits from customers of  
107 other financial institutions through the direct placement  
108 program that are equal to the amount of the municipality's  
109 funds redeposited by the selected depository.

## CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

**ARTICLE 1. STATE DEPOSITORIES.****§12-1-4. Bonds to be given by depositories.**

1           (a) Before allowing any money to be deposited with any  
2 eligible depository in excess of the amount insured by an  
3 agency of the federal government or insured by a deposit  
4 guaranty bond issued by a valid bankers surety company  
5 acceptable to the treasurer, the State Treasurer shall require  
6 the depository to give a collaterally secured bond, in the  
7 amount of not less than \$10,000, payable to the State of West  
8 Virginia, conditioned upon the prompt payment, whenever  
9 lawfully required, of any state money, or part thereof, that  
10 may be deposited with that depository, or of any accrued  
11 interest on deposits. The bond shall be a continuous bond but  
12 may be increased or decreased in amount or replaced by a  
13 new bond with the approval of the State Treasurer. The  
14 collateral security for the bond shall consist of bonds of the  
15 United States, or bonds or letters of credit of the federal land  
16 banks, of the federal home loan banks, or bonds of the State  
17 of West Virginia or of any county, district or municipality of  
18 this state, or other bonds, letters of credit, or securities  
19 approved by the treasurer. All bonds so secured are here  
20 designated as collaterally secured bonds. Withdrawal or  
21 substitution of any collateral pledged as security for the  
22 performance of the conditions of the bond may be permitted  
23 with the approval in writing of the treasurer. All depository  
24 bonds shall be recorded by the treasurer in a book kept in his  
25 or her office for the purpose, and a copy of the record,  
26 certified by the treasurer, shall be prima facie evidence of the  
27 execution and contents of the bond in any suit or legal  
28 proceeding. All collateral securities shall be delivered to or  
29 deposited for the account of the treasurer of the State of West  
30 Virginia and in the event said securities are delivered to the  
31 treasurer, he or she shall furnish a receipt therefor to the  
32 owner thereof. The treasurer and his or her bondsmen shall  
33 be liable to any person for any loss by reason of the

34 embezzlement or misapplication of the securities by the  
35 treasurer or any of his or her employees, and for the loss  
36 thereof due to his or her negligence or the negligence of his  
37 or her employees; and the securities shall be delivered to the  
38 owner thereof when liability under the bond which they are  
39 pledged to secure has terminated. The treasurer may permit  
40 the deposit under proper receipt of the securities with one or  
41 more banking institutions within or outside the State of West  
42 Virginia and may contract with any institution for  
43 safekeeping and exchange of any collateral securities and  
44 may prescribe the rules for handling and protecting the  
45 collateral securities.

46 (b) A banking institution is not required to provide a  
47 bond or security in lieu of bond if the deposits accepted are  
48 placed in certificates of deposit meeting the following  
49 requirements: (1) The funds are invested through a  
50 designated state depository selected by the treasurer; (2) the  
51 selected depository arranges for the deposit of the funds in  
52 certificates of deposit in one or more banks or savings and  
53 loan associations wherever located in the United States, for  
54 the account of the state; (3) the full amount of principal and  
55 accrued interest of each certificate of deposit is insured by the  
56 Federal Deposit Insurance Corporation; (4) the selected  
57 depository acts as custodian for the state with respect to such  
58 certificates of deposit issued for the state's account; and (5)  
59 at the same time that the state's funds are deposited and the  
60 certificates of deposit are issued, the selected depository  
61 receives an amount of deposits from customers of other  
62 financial institutions wherever located in the United States  
63 equal to or greater than the amount of the funds invested by  
64 the state through the selected depository.

65 (c) A banking institution is not required to provide a bond  
66 or security in lieu of bond pursuant to this section if the  
67 deposits accepted are placed in a designated state depository  
68 that is selected and authorized by the state to arrange for the

69 redeposit of the funds through a deposit placement program  
70 that meets the following conditions:

71 (1) On or after the date that the funds are received the  
72 selected depository: (i) Arranges for the redeposit of the  
73 funds into deposit accounts in one or more federally insured  
74 banks or savings and loan associations that are located in the  
75 United States; and (ii) serves as custodian for the state with  
76 respect to the funds redeposited into such accounts.

77 (2) State funds deposited in a selected depository in  
78 accordance with this section and held at the close of business  
79 in the selected depository in excess of the amount insured by  
80 the Federal Deposit Insurance Corporation shall be secured  
81 in accordance with section two, article six, chapter seven of  
82 this code.

83 (3) The full amount of the funds of the state redeposited  
84 by the selected depository into deposit accounts in banks or  
85 savings and loan associations pursuant to this section (plus  
86 accrued interest, if any) shall be insured by the Federal  
87 Deposit Insurance Corporation.

88 (4) On the same date that the funds of the state are  
89 redeposited pursuant to this section, the selected depository  
90 receives an amount of deposits from customers of other  
91 financial institutions through the deposit placement program  
92 that are equal to the amount of the state funds redeposited by  
93 the selected depository.

## CHAPTER 18. EDUCATION.

### ARTICLE 9. SCHOOL FINANCES.

**§18-9-6. Transfer of moneys; appointment of treasurer;  
bonding of treasurer; approval of bank accounts;  
authority to invest; security for funds invested.**



1       The sheriff of each county shall remit to the board of  
2 education all moneys in his or her possession held on behalf  
3 of the county board of education, whether or not deposited in  
4 a bank or depository, unless the sheriff has been designated  
5 treasurer of the board of education as provided in this section.  
6 The transfer of funds shall be made as of the balances on  
7 hand on June 30 of the year in which the board of education  
8 appoints a treasurer other than the sheriff, and shall be  
9 completed no later than August 1 of that year. The transfer  
10 shall be adjudged complete and final upon the approval of the  
11 sheriff's official settlement for the fiscal year ending on June  
12 30 of the year in which the board of education appoints a  
13 treasurer other than the sheriff, and any minor adjustment  
14 made necessary by the actually known figures shall also be  
15 made at that time. All balances in all county school funds at  
16 the end of each month after June 30 of the year in which the  
17 board of Education appoints a treasurer other than the sheriff  
18 shall be transferred by the sheriff to the county board of  
19 education not later than the tenth day of the following month.

20       On or before the first Monday in May each county board  
21 of education shall upon recommendation of the county  
22 superintendent appoint a treasurer for the board. The  
23 treasurer is the fiscal officer of the board, or an employee  
24 commonly designated as the person in charge of the financial  
25 affairs of the county board, or the county sheriff: *Provided,*  
26 That once a board of education has appointed a treasurer  
27 other than the sheriff, the sheriff may not be named treasurer  
28 of the board in a subsequent year. Upon appointment this  
29 person shall be titled and referred to as treasurer of the board  
30 of education. For the faithful performance of this duty, the  
31 treasurer shall execute a bond, to be approved by the board of  
32 education, in the penalty to be fixed by the board of  
33 education, not to exceed the amount of school funds which it  
34 is estimated the treasurer will handle within any period of  
35 two months. The premium on the bond shall be paid by the  
36 board of education.

37           The board of education may open a bank account, or  
38 accounts, as required to adequately and properly transact the  
39 business of the district in a depository, or banks, within the  
40 county. The depositories, or banks, shall provide bond to  
41 cover the maximum amount to be deposited at any one time.  
42 However, the county board of education may, in lieu of such  
43 bond, accept as security for money deposited letters of credit  
44 from a federal home loan bank, securities of the United  
45 States, or of a state, county, district or municipal corporation,  
46 or federal agency securities: *Provided*, That a banking  
47 institution is not required to provide a bond or security in lieu  
48 of bond if the deposits accepted are placed in certificates of  
49 deposit meeting the following requirements: (1) The funds  
50 are invested through a designated state depository selected by  
51 the county board of education; (2) the selected depository  
52 arranges for the deposit of the funds in certificates of deposit  
53 in one or more banks or savings and loan associations  
54 wherever located in the United States, for the account of the  
55 county board of education; (3) the full amount of principal  
56 and accrued interest of each certificate of deposit is insured  
57 by the Federal Deposit Insurance Corporation; (4) the  
58 selected depository acts as custodian for the county board of  
59 education with respect to such certificates of deposit issued  
60 for the county's account; and (5) at the same time that the  
61 county board of education's funds are deposited and the  
62 certificates of deposit are issued, the selected depository  
63 receives an amount of deposits from customers of other  
64 financial institutions wherever located in the United States  
65 equal to or greater than the amount of the funds invested by  
66 the county board of education through the selected  
67 depository: *Provided, however*, That a banking institution is  
68 not required to provide a bond or security in lieu of bond if  
69 the deposits accepted are placed in a designated state  
70 depository that is selected and authorized by the county board  
71 of education to arrange for the redeposit of the funds through  
72 a deposit placement program that meets the following  
73 conditions: (1) On or after the date that the county board of

74 education funds are received the selected depository: (i)  
75 Arranges for the redeposit of the funds into deposit accounts  
76 in one or more federally insured banks or savings and loan  
77 associations that are located in the United States; and (ii)  
78 serves as custodian for the county with respect to the money  
79 redeposited into such accounts. (2) County board of  
80 education funds deposited in a selected depository in  
81 accordance with this section and held at the close of business  
82 in the selected depository in excess of the amount insured by  
83 the Federal Deposit Insurance Corporation shall be secured  
84 in accordance with the second and third sentences of this  
85 paragraph. (3) The full amount of the funds of the county  
86 board of education redeposited by the selected depository  
87 into deposit accounts in banks or savings and loan  
88 associations pursuant to this section (plus accrued interest, if  
89 any) shall be insured by the Federal Deposit Insurance  
90 Corporation. (4) On the same date that the funds of the  
91 county board of education are redeposited pursuant to this  
92 section, the selected depository receives an amount of  
93 deposits from customers of other financial institutions  
94 through the deposit placement program that are equal to the  
95 amount of the county board of education funds redeposited  
96 by the selected depository.

97 One hundred ten percent of the face or par value of the  
98 securities may not be less than the sum hereinbefore specified  
99 as the amount to be named in the bond in lieu of which the  
100 securities are accepted, or the county board of education may  
101 accept the securities as partial security to the extent of their  
102 face value for the money so deposited and require bond for  
103 the remainder of the full amount hereinbefore specified, to be  
104 named in the bond, and, in the bond so required, the  
105 acceptance of securities as partial security and the extent  
106 thereof shall be set forth. The hypothecation of the securities  
107 shall be by proper legal transfer as collateral security to  
108 protect and indemnify by trust any and all loss in case of any  
109 default on the part of the banking institution in its capacity as

110 depository as aforesaid. All such securities shall be delivered  
111 to or deposited for the account of the county board of  
112 education, and withdrawal or substitution thereof may be  
113 permitted from time to time upon approval by the county  
114 board of education by order of record, but the collateral  
115 security shall be released only by order of record of the  
116 county board of education when satisfied that full and faithful  
117 accounting and payment of all the moneys has been made  
118 under the provisions hereof. If actual possession of the  
119 hypothecated securities is delivered to the county board of  
120 education, it shall make ample provision for the safekeeping  
121 thereof, and the interest thereon when paid shall be turned  
122 over to the banking institution, so long as it is not in default  
123 as aforesaid. The county board of education may permit the  
124 deposit under proper receipt of such securities with one or  
125 more banking institutions within the State of West Virginia  
126 and may contract with any such institution for safekeeping  
127 and exchange of any such hypothecated securities, and may  
128 prescribe the rules for handling and protecting the same.

129       On and after July 1, 1973, all levies and any other school  
130 moneys received by the sheriff and paid to the treasurer of  
131 the county board of education shall be deposited in these  
132 accounts, and all proper payments from such funds shall be  
133 made by the designated depository or bank upon order or  
134 draft presented for payment and signed by the duly  
135 authorized signatories of the Board of Education: *Provided,*  
136 That in determining the depository for Board of Education  
137 funds a board member who has a pecuniary interest in a bank  
138 within the county shall not participate in the determination of  
139 the depository for such funds.

140       If it is considered that sufficient funds are on hand in any  
141 account at any one time which may be more than are  
142 normally required for the payment of incurred expenses, the  
143 funds in the amount so considered available may be invested  
144 by the treasurer of the county board with the West Virginia  
145 Municipal Bond Commission, or in guaranteed certificates of

146 deposit issued by the depository or bank, or other guaranteed  
147 investments such as treasury bills, treasury notes or  
148 certificates of deposit issued by either the United States  
149 government or a banking institution in which federal or state  
150 guarantees are applicable. Interest earned in such investments  
151 is to be credited to the fund from which the moneys were  
152 originally available.

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## CHAPTER 52

**(H. B. 4361 - By Delegates Miley, Barker,  
Susman, Ellem, Schadler, Ferro, Brown,  
Longstreth, Moore and Ross)**

[Passed March 9, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 16, 2010.]

AN ACT to repeal §48-27-803 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-27-206 of said code, all relating generally to the prevention and treatment of domestic violence; removing provisions prohibiting the sharing of information with other governments and law-enforcement agencies; and broadening the definition of “law-enforcement agency” for the purpose of sharing information with the federal government and its agencies.

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

That §48-27-803 of the Code of West Virginia, 1931, as amended, be repealed; and that §48-27-206 of said code, be amended and reenacted to read as follows:

**ARTICLE 27. PREVENTION AND TREATMENT OF  
DOMESTIC VIOLENCE.**

**§48-27-206. Law-enforcement agency defined.**

1 (a) “Law-enforcement agency” means and is limited to:

2 (1) The state police and its members;

3 (2) A county sheriff and his or her law-enforcement  
4 deputies; and

5 (3) A police department in any municipality as defined in  
6 section two, article one, chapter eight of this code;

7 (4) Any federal agency whose purpose includes  
8 enforcement, maintenance and gathering of information of  
9 both criminal and civil records relating to domestic violence  
10 under federal law.

11 (b) The term “law-enforcement agency” includes, but is  
12 not limited to, the Department of Health and Human  
13 Resources in those instances of child abuse reported to the  
14 department that are not otherwise reported to any other law-  
15 enforcement agency.



## CHAPTER 53

**(Com. Sub. for H. B. 4354 - By Delegates  
Miley, Susman, Longstreth, Ferro,  
Brown, Ross and Moore)**

[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §48-27-1002 of the Code of West Virginia, 1931, as amended, relating to conditions and arrests in

domestic violence matters; including certain injunctive relief and protective orders the violation of which allow law-enforcement officers to seize weapons in possession of domestic violence respondents.

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

That §48-27-1002 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

**§48-27-1002. Arrest in domestic violence matters; conditions.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, if a person is alleged to have committed a violation of  
3 the provisions of subsection (a) or (b), section twenty-eight,  
4 article two, chapter sixty-one of this code against a family or  
5 household member, in addition to any other authority to arrest  
6 granted by this code, a law-enforcement officer has authority to  
7 arrest that person without first obtaining a warrant if:

8 (1) The law-enforcement officer has observed credible  
9 corroborative evidence that an offense has occurred; and either:

10 (2) The law-enforcement officer has received, from the  
11 victim or a witness, an oral or written allegation of facts  
12 constituting a violation of section twenty-eight, article two,  
13 chapter sixty-one of this code; or

14 (3) The law-enforcement officer has observed credible  
15 evidence that the accused committed the offense.

16 (b) For purposes of this section, credible corroborative  
17 evidence means evidence that is worthy of belief and  
18 corresponds to the allegations of one or more elements of the  
19 offense and may include, but is not limited to, the following:

20           (1) *Condition of the alleged victim.* -- One or more  
21     contusions, scratches, cuts, abrasions, or swellings; missing hair;  
22     torn clothing or clothing in disarray consistent with a struggle;  
23     observable difficulty in breathing or breathlessness consistent  
24     with the effects of choking or a body blow; observable difficulty  
25     in movement consistent with the effects of a body blow or other  
26     unlawful physical contact.

27           (2) *Condition of the accused.* -- Physical injury or other  
28     conditions similar to those set out for the condition of the victim  
29     which are consistent with the alleged offense or alleged acts of  
30     self-defense by the victim.

31           (3) *Condition of the scene.* -- Damaged premises or  
32     furnishings; disarray or misplaced objects consistent with the  
33     effects of a struggle.

34           (4) *Other conditions.* -- Statements by the accused admitting  
35     one or more elements of the offense; threats made by the  
36     accused in the presence of an officer; audible evidence of a  
37     disturbance heard by the dispatcher or other agent receiving the  
38     request for police assistance; written statements by witnesses.

39           (c) Whenever any person is arrested pursuant to subsection  
40     (a) of this section, the arrested person shall be taken before a  
41     magistrate within the county in which the offense charged is  
42     alleged to have been committed in a manner consistent with the  
43     provisions of Rule 1 of the Administrative Rules for the  
44     Magistrate Courts of West Virginia.

45           (d) If an arrest for a violation of subsection (c), section  
46     twenty-eight, article two, chapter sixty-one of this code is  
47     authorized pursuant to this section, that fact constitutes prima  
48     facie evidence that the accused constitutes a threat or danger to  
49     the victim or other family or household members for the purpose  
50     of setting conditions of bail pursuant to section seventeen-c,  
51     article one-c, chapter sixty-two of this code.



52 (e) Whenever any person is arrested pursuant to the  
53 provisions of this article or for a violation of an order issued  
54 pursuant to section five hundred nine or subsections (b) and (c),  
55 of section six hundred eight, article five of this chapter the  
56 arresting officer, subject to the requirements of the Constitutions  
57 of this state and of the United States:

58 (1) Shall seize all weapons that are alleged to have been  
59 involved or threatened to be used in the commission of domestic  
60 violence;

61 (2) May seize a weapon that is in plain view of the officer or  
62 was discovered pursuant to a consensual search, as necessary for  
63 the protection of the officer or other persons; and

64 (3) May seize all weapons that are possessed in violation of  
65 a valid protective order.

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## CHAPTER 54

**(Com. Sub. for S. B. 490 - By Senators  
Kessler, Laird, Palumbo, Barnes, Foster  
Unger, Oliverio, White, Wells and Plymale)**

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[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2010.]

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AN ACT to amend and reenact §48-27-202, §48-27-503, §48-27-505, §48-27-901 and §48-27-903 of the Code of West Virginia, 1931, as amended, all relating to prevention and treatment of domestic violence; authorizing family court judges to issue protective orders that contain certain provisions related to animals; providing that family court judges may make protective orders with a one year duration upon a finding of aggravating

circumstances; authorizing family court judges to extend protective orders with a one year duration; establishing criteria for granting lengthier periods of protection; requiring secured bonds to prevent future domestic violence; amending current penalties for violations of protective orders; and creating a new misdemeanor offense of third and subsequent offenses for violations of a protective order.

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

That §48-27-202, §48-27-503, §48-27-505, §48-27-901 and §48-27-903 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

### **PART 2. DEFINITIONS.**

- §48-27-202. Domestic violence defined.
- §48-27-503. Permissive provisions in protective order.
- §48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.
- §48-27-901. Civil contempt; violation of protective orders; order to show cause.
- §48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.

#### **§48-27-202. Domestic violence defined.**

1           “Domestic violence” or “abuse” means the occurrence of  
2 one or more of the following acts between family or  
3 household members, as that term is defined in section two  
4 hundred four of this article:

5           (1) Attempting to cause or intentionally, knowingly or  
6 recklessly causing physical harm to another with or without  
7 dangerous or deadly weapons;

8           (2) Placing another in reasonable apprehension of  
9 physical harm;

10       (3) Creating fear of physical harm by harassment,  
11       stalking, psychological abuse or threatening acts;

12       (4) Committing either sexual assault or sexual abuse as  
13       those terms are defined in articles eight-b and eight-d, chapter  
14       sixty-one of this code; and

15       (5) Holding, confining, detaining or abducting another  
16       person against that person's will.

**§48-27-503. Permissive provisions in protective order.**

1       The terms of a protective order may include:

2       (1) Granting possession to the petitioner of the residence  
3       or household jointly resided in at the time the abuse occurred;

4       (2) Ordering the respondent to refrain from entering or  
5       being present in the immediate environs of the residence of  
6       the petitioner;

7       (3) Awarding temporary custody of or establishing  
8       temporary visitation rights with regard to minor children  
9       named in the order;

10       (4) Establishing terms of temporary visitation with regard  
11       to the minor children named in the order including, but not  
12       limited to, requiring third party supervision of visitations if  
13       necessary to protect the petitioner and/or the minor children;

14       (5) Ordering the noncustodial parent to pay to the  
15       caretaker parent a sum for temporary support and  
16       maintenance of the petitioner and children, if any;

17       (6) Ordering the respondent to pay to the petitioner a sum  
18       for temporary support and maintenance of the petitioner,  
19       where appropriate;

20           (7) Ordering the respondent to refrain from entering the  
21 school, business or place of employment of the petitioner or  
22 household or family members for the purpose of violating the  
23 protective order;

24           (8) Ordering the respondent to participate in an  
25 intervention program for perpetrators;

26           (9) Ordering the respondent to refrain from contacting,  
27 telephoning, communicating, harassing or verbally abusing  
28 the petitioner;

29           (10) Providing for either party to obtain personal property  
30 or other items from a location, including granting temporary  
31 possession of motor vehicles owned by either or both of the  
32 parties, and providing for the safety of the parties while this  
33 occurs, including ordering a law-enforcement officer to  
34 accompany one or both of the parties;

35           (11) Ordering the respondent to reimburse the petitioner  
36 or other person for any expenses incurred as a result of the  
37 domestic violence, including, but not limited to, medical  
38 expenses, transportation and shelter;

39           (12) Ordering the petitioner and respondent to refrain  
40 from transferring, conveying, alienating, encumbering or  
41 otherwise dealing with property which could otherwise be  
42 subject to the jurisdiction of the court or another court in an  
43 action for divorce or support, partition or in any other action  
44 affecting their interests in property;

45           (13) Awarding the petitioner the exclusive care,  
46 possession, or control of any animal owned, possessed,  
47 leased, kept or held by either the petitioner or the respondent  
48 or a minor child residing in the residence or household of  
49 either the petitioner or the respondent and prohibiting the  
50 respondent from taking, concealing, molesting, physically

51 injuring, killing or otherwise disposing of the animal and  
52 limiting or precluding contact by the respondent with the  
53 animal; and

54 (14) Ordering any other relief the court deems necessary  
55 to protect the physical safety of petitioner or those persons  
56 for whom a petition may be filed as provided in subdivision  
57 (2), section three hundred five of this article.

**§48-27-505. Time period a protective order is in effect;  
extension of order; notice of order or extension.**

1 (a) Except as otherwise provided in subsection (d),  
2 section four hundred one of this article, a protective order,  
3 entered by the family court pursuant to this article, is  
4 effective for either ninety days or one hundred eighty days,  
5 in the discretion of the court. Upon receipt of a written  
6 request for renewal from the petitioner prior to the  
7 expiration of the original order, the family court shall extend  
8 its order for an additional ninety-day period.

9 (b) Notwithstanding the provisions of subsection (a), the  
10 court may enter a protective order for a period of one year  
11 if the court finds by a preponderance of the evidence, after  
12 a hearing that any of the following aggravating factors are  
13 present:

14 (1) That there has been a material violation of a  
15 previously entered protective order;

16 (2) That two or more protective orders have been entered  
17 against the respondent within the previous five years;

18 (3) That respondent has one or more prior convictions for  
19 domestic battery or assault or a felony crime of violence  
20 where the victim was a family or household member;

21           (4) That the respondent has committed a violation of the  
22 provisions of section nine-a, article two, chapter sixty-one  
23 of this code against a person protected by an existing order  
24 of protection; or

25           (5) That the totality of the circumstances presented to the  
26 court require a one year period in order to protect the  
27 physical safety of the petitioner or those persons for whom  
28 a petition may be filed as provided in subdivision (2),  
29 section three hundred five of this article.

30           (c) The court may extend a protective order entered  
31 pursuant to subsection (b) of this section for whatever period  
32 the court considers necessary to protect the physical safety  
33 of the petitioner or those persons for whom a petition may  
34 be filed as provided in subdivision (2), section three hundred  
35 five of this article, if the court finds by a preponderance of  
36 evidence, after a hearing of which respondent has been  
37 given notice, that:

38           (1) A material violation of the existing protective order  
39 has occurred; or

40           (2) Respondent has committed a material violation of a  
41 provision of a final order entered pursuant to subsection (c),  
42 section six hundred eight, article five of this chapter has  
43 occurred.

44           (d) To be effective, a written request to renew a ninety or  
45 one hundred eighty-day order must be submitted to the court  
46 prior to the expiration of the original order period. A notice  
47 of the extension shall be sent by the clerk of the court to the  
48 respondent by first-class mail, addressed to the last known  
49 address of the respondent as indicated by the court file. The  
50 extension of time is effective upon mailing of the notice.

51           (e) Certified copies of any order entered or extension  
52 notice made under the provisions of this section shall be

53 served upon the respondent by first class mail, addressed to  
54 the last known address of the respondent as indicated by the  
55 court file, and delivered to the petitioner and any law-  
56 enforcement agency having jurisdiction to enforce the order,  
57 including the city police, the county sheriff's office or local  
58 office of the West Virginia State Police within twenty-four  
59 hours of the entry of the order. The protective order shall be  
60 in full force and effect in every county of this state.

61 (f) The family court may modify the terms of a protective  
62 order upon motion of either party.

63 (g) The clerk of the circuit court shall cause a copy of any  
64 protective order entered by the family court pursuant to the  
65 provisions of this article or pursuant to the provisions of  
66 chapter forty-eight of this code to be forwarded to the  
67 magistrate or magistrate court clerk and the magistrate or  
68 magistrate court clerk shall forward a copy of the protective  
69 order to the appropriate state and federal agencies for  
70 registration of domestic violence offenders as required by  
71 state and federal law.

#### PART 9. SANCTIONS.

#### **§48-27-901. Civil contempt; violation of protective orders; order to show cause.**

1 (a) Any party to a protective order or a legal guardian or  
2 guardian ad litem may file a petition for civil contempt  
3 alleging a violation of an order issued pursuant to the  
4 provisions of this article. The petition shall be filed in the  
5 family court, if a family court entered an order or in the  
6 circuit court, if a circuit court entered the order, in the county  
7 in which the violation occurred or the county in which the  
8 order was issued.

9 (b) When a petition for an order to show cause is filed, a  
10 hearing on the petition shall be held within five days from the

11 filing of the petition. Any order to show cause which is  
12 issued shall be served upon the alleged violator.

13 (c) Upon a finding of contempt, the court may order the  
14 violator to comply with specific provisions of the protective  
15 order and post a bond as surety for faithful compliance with  
16 the order. The bond may not be a personal recognizance  
17 bond and shall be in an amount that does not exceed the  
18 ability of the violator to post. The bond may not be waived  
19 by a fee waiver pursuant to the provisions of section one,  
20 article two, chapter fifty-nine of this code.

**§48-27-903. Misdemeanor offenses for violation of protective  
order, repeat offenses, penalties.**

1 (a) Any person who knowingly and willfully violates:

2 (1) A provision of an emergency or final protective order  
3 entered pursuant to:

4 (A) Subsection (a) or (b) of section five hundred two of  
5 this article;

6 (B) If the court has ordered such relief; subsection (2), (7),  
7 (9), or (14) of section five hundred three of this article;

8 (C) Subsection (b) or (c) of section five hundred nine,  
9 article five of this chapter; or (D) subsection (b) or (c) of  
10 section six hundred eight, article five of this chapter; or

11 (2) A condition of bail, probation or parole which has the  
12 express intent or effect of protecting the personal safety of a  
13 particular person or persons; is guilty of a misdemeanor and,  
14 upon conviction thereof, shall be confined in jail for a period  
15 of not less than one day nor more than one year, which jail  
16 term shall include actual confinement of not less than twenty-  
17 four hours, and shall be fined not less than \$250 nor more  
18 than \$2,000.



19 (b) Any person who is convicted of a second offense  
20 under subsection (a) of this section is guilty of a  
21 misdemeanor and, upon conviction thereof, shall be confined  
22 in jail for not less than three months nor more than one year,  
23 which jail term shall include actual confinement of not less  
24 than thirty days, and fined not less than \$500 nor more than  
25 \$3,000, or both.

26 (c) A respondent who is convicted of a third or subsequent  
27 offense under subsection (a) which the violation occurs  
28 within ten years of a prior conviction of this offense is guilty  
29 of a misdemeanor, and upon conviction thereof, shall be  
30 confined in jail not less than six months nor more than one  
31 year, which jail term shall include actual confinement of not  
32 less than six months, and fined not less than \$500 nor more  
33 than \$4,000.

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## CHAPTER 55

**(Com. Sub. for S. B. 396 - By Senators  
Unger, Kessler and Chafin)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §17B-2-1a, §17B-2-4 and §17B-2-5a of the Code of West Virginia, 1931, as amended; and to amend and reenact §17E-1-3, §17E-1-4, §17E-1-6, §17E-1-7, §17E-1-12, §17E-1-13 and §17E-1-25 of said code, all relating to the issuance, suspension and revocation of driver's licenses; conducting background checks for employees involved in the issuance of driver's licenses; surrendering driver's licenses; suspending commercial driver's licenses; adding definitions;

clarifying requirements for school bus drivers; clarifying certain endorsements or restrictions; requiring the completion of skills test before obtaining a commercial driver's license to operate vehicles equipped with air brakes; updating the criteria for issuance, renewal, disqualification, surrender, reinstatement and maintenance of a commercial driver's license; updating and increasing fines and penalties for certain offenses; and criminal penalties.

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

That §17B-2-1a, §17B-2-4 and §17B-2-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17E-1-3, §17E-1-4, §17E-1-6, §17E-1-7, §17E-1-12, §17E-1-13 and §17E-1-25 of said code be amended and reenacted, all to read as follows:

**Chapter**

**17B. Motor Vehicle Driver's Licenses.**

**17E. Uniform Commercial Driver's License Act.**

**CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.**

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

§17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.

§17B-2-4. Persons prohibited from driving school buses or transporting persons or property for compensation.

§17B-2-5a. Training, certification and monitoring of license examiners.

**§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 may 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 subject to a reciprocal agreement governing the licensing of

5 drivers operating commercial motor vehicles or party to a  
6 reciprocal driver's license exchange agreement with this state  
7 unless or until the applicant surrenders to the division the  
8 foreign license, or the person has signed and submitted to the  
9 division an affidavit to the effect that the person has  
10 surrendered all valid licenses issued to him or her by other  
11 states or jurisdictions. Any surrendered license issued by any  
12 other state or jurisdiction shall be destroyed or at the  
13 discretion of the division retained by the division and the  
14 division shall notify the original state of licensure that the  
15 person who surrendered the license has been licensed in this  
16 state. It is unlawful for a person to possess more than one  
17 valid driver's license at any time.

18 (b) Every driver shall, within thirty days after taking up  
19 residence in this state, apply to the division for a driver's  
20 license as prescribed in this article. For the purposes of this  
21 chapter the presumption that a natural person is a resident of  
22 this state is based on the provisions of section one-a, article  
23 three, chapter seventeen-a of this code. The division may  
24 assign the driver's license class, type, endorsements or  
25 restrictions based on the applicant's prior licensing status,  
26 age and the type of licensing system used by the state of prior  
27 licensing.

28 (c) All other applicable provisions of this article relating  
29 to issuance, fees, expiration and renewal of licenses, and  
30 driver examination of applicants apply to this section.

**§17B-2-4. Persons prohibited from driving school buses or  
transporting persons or property for  
compensation.**

1 No person may drive any school bus transporting school  
2 children or any motor vehicle when in use for the  
3 transportation of persons or property for compensation nor in  
4 either event until the person has been licensed as a Class A,  
5 B, C or D driver for either purpose and the license so

6 indicates and until he or she is in compliance with the  
7 provisions of chapter seventeen-e of this code and rules  
8 promulgated by the State Board of Education, if applicable.

**§17B-2-5a. Training, certification and monitoring of license examiners.**

1 (a) The commissioner shall train, certify and monitor  
2 those employees of the Division of Motor Vehicles  
3 designated by the commissioner as license examiners  
4 regarding the administration of licensing application and  
5 testing procedures for the purpose of ensuring compliance  
6 with statutory and regulatory requirements.

7 (b) In order to determine an applicant's suitability for  
8 employment, the commissioner shall require every applicant  
9 or employee who is or may be in a position involved in the  
10 examination, processing or issuance of a driver's license or  
11 identification card, or who would have access to affect any  
12 document or record related to an applicant or holder of a  
13 driver's license or identification to furnish a full set of  
14 fingerprints to facilitate a criminal background check of the  
15 applicant. The commissioner shall submit the fingerprints to  
16 the state Criminal Identification Bureau along with the  
17 applicant's identifying information. Prior to hiring a  
18 prospective applicant the commissioner shall request that the  
19 State Police submit the fingerprints and identifying  
20 information to the Federal Bureau of Investigation for a  
21 national criminal history record check and that the  
22 commissioner may not hire the prospective applicant until the  
23 results of the national background check are available for  
24 evaluation.

**CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S  
LICENSE ACT.**

**ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.**

- §17E-1-3. Definitions.
- §17E-1-4. Limitation on number of driver's licenses.
- §17E-1-6. Employer responsibilities.
- §17E-1-7. Commercial driver's license required; disqualification for driving without valid license.
- §17E-1-12. Classifications, endorsements and restrictions.
- §17E-1-13. Disqualification.
- §17E-1-25. Penalties.

### §17E-1-3. Definitions.

1 Notwithstanding any other provision of this code, the  
2 following definitions apply to this article:

3 (1) "Alcohol" means:

4 (A) Any substance containing any form of alcohol,  
5 including, but not limited to, ethanol, methanol, propenyl and  
6 isopropanol;

7 (B) Beer, ale, port or stout and other similar fermented  
8 beverages (including sake or similar products) of any name  
9 or description containing one half of one percent or more of  
10 alcohol by volume, brewed or produced from malt, wholly or  
11 in part, or from any substitute for malt;

12 (C) Distilled spirits or that substance known as ethyl  
13 alcohol, ethanol or spirits of wine in any form (including all  
14 dilutions and mixtures thereof from whatever source or by  
15 whatever process produced); or

16 (D) Wine of not less than one half of one percent of  
17 alcohol by volume.

18 (2) "Alcohol concentration" means:

19 (A) The number of grams of alcohol per one hundred  
20 milliliters of blood;

21 (B) The number of grams of alcohol per two hundred ten  
22 liters of breath; or

23 (C) The number of grams of alcohol per sixty-seven  
24 milliliters of urine.

25 (D) The number of grams of alcohol per eighty-six  
26 milliliters of serum.

27 (3) "At fault traffic accident" means for the purposes of  
28 waiving the road test, a determination, by the official filing  
29 the accident report, of fault as evidenced by an indication of  
30 contributing circumstances in the accident report.

31 (4) "Commercial driver's license" means a license issued  
32 in accordance with the requirements of this article to an  
33 individual which authorizes the individual to drive a class of  
34 commercial motor vehicle.

35 (5) "Commercial driver's license information system" is  
36 the information system established pursuant to the Federal  
37 Commercial Motor Vehicle Safety Act to serve as a  
38 clearinghouse for locating information related to the licensing  
39 and identification of commercial motor vehicle drivers.

40 (6) "Commercial driver instruction permit" means a  
41 permit issued pursuant to subsection (d), section nine of this  
42 article.

43 (7) "Commercial motor vehicle" means a motor vehicle  
44 designed or used to transport passengers or property:

45 (A) If the vehicle has a gross combination vehicle weight  
46 rating of twenty-six thousand one pounds or more inclusive  
47 of a towed unit(s) with a gross vehicle weight rating of more  
48 than ten thousand pounds;

49 (B) If the vehicle has a gross vehicle weight rating of  
50 more than twenty-six thousand one pounds or more;

51 (C) If the vehicle is designed to transport sixteen or more  
52 passengers, including the driver; or

53 (D) If the vehicle is of any size transporting hazardous  
54 materials as defined in this section.

55 (8) "Commissioner" means the Commissioner of Motor  
56 Vehicles of this state.

57 (9) "Controlled substance" means any substance  
58 classified under the provisions of chapter sixty-a of this code  
59 (Uniform Controlled Substances Act) and includes all  
60 substances listed on Schedules I through V, inclusive, article  
61 two of said chapter sixty-a, as they are revised. The term  
62 "controlled substance" also has the meaning such term has  
63 under 21 U.S.C. §802.6 and includes all substances listed on  
64 Schedules I through V of 21 C.F.R. §1308 as they may be  
65 amended by the United States Department of Justice.

66 (10) "Conviction" means an unvacated adjudication of  
67 guilt; a determination that a person has violated or failed to  
68 comply with the law in a court of original jurisdiction or by  
69 an authorized administrative tribunal or proceeding; an  
70 unvacated forfeiture of bail or collateral deposited to secure  
71 the persons appearance in court; a plea of guilty or nolo  
72 contendere accepted by the court or the payment of a fine or  
73 court cost, or violation of a condition of release without bail  
74 regardless of whether or not the penalty is rebated,  
75 suspended, or probated.

76 (11) "Division" means the Division of Motor Vehicles.

77 (12) "Disqualification" means any of the following three  
78 actions:

79 (A) The suspension, revocation, or cancellation of a  
80 driver's license by the state or jurisdiction of issuance.

81 (B) Any withdrawal of a person's privilege to drive a  
82 commercial motor vehicle by a state or other jurisdiction as  
83 the result of a violation of state or local law relating to motor  
84 vehicle traffic control other than parking or vehicle weight  
85 except as to violations committed by a special permittee on  
86 the coal resource transportation system or vehicle defect  
87 violations.

88 (C) A determination by the Federal Motor Carrier Safety  
89 Administration that a person is not qualified to operate a  
90 commercial motor vehicle under 49 C.F.R. Part §391 (2004).

91 (13) "Drive" means to drive, operate or be in physical  
92 control of a motor vehicle in any place open to the general  
93 public for purposes of vehicular traffic. For the purposes of  
94 sections twelve, thirteen and fourteen of this article, "drive"  
95 includes operation or physical control of a motor vehicle  
96 anywhere in this state.

97 (14) "Driver" means any person who drives, operates or  
98 is in physical control of a commercial motor vehicle, in any  
99 place open to the general public for purposes of vehicular  
100 traffic, or who is required to hold a commercial driver's  
101 license.

102 (15) "Driver's license" means a license issued by a state  
103 to an individual which authorizes the individual to drive a  
104 motor vehicle of a specific class.

105 (16) "Employee" means any operator of a commercial  
106 motor vehicle, including full time, regularly employed  
107 drivers; casual, intermittent or occasional drivers; leased  
108 drivers and independent, owner-operator contractors (while  
109 in the course of operating a commercial motor vehicle) who  
110 are either directly employed by or under lease to drive a  
111 commercial motor vehicle for an employer.



112           (17) "Employer" means any person, including the United  
113 States, a state or a political subdivision of a state, who owns  
114 or leases a commercial motor vehicle or assigns a person to  
115 drive a commercial motor vehicle.

116           (18) "Endorsement" means an authorization to a person  
117 to operate certain types of commercial motor vehicles.

118           (19) "Farm vehicle" includes a motor vehicle or  
119 combination vehicle registered to the farm owner or entity  
120 operating the farm and used exclusively in the transportation  
121 of agricultural or horticultural products, livestock, poultry  
122 and dairy products from the farm or orchard on which they  
123 are raised or produced to markets, processing plants, packing  
124 houses, canneries, railway shipping points and cold storage  
125 plants and in the transportation of agricultural or horticultural  
126 supplies and machinery to the farms or orchards to be used  
127 on the farms or orchards.

128           (20) "Farmer" includes an owner, tenant, lessee, occupant  
129 or person in control of the premises used substantially for  
130 agricultural or horticultural pursuits who is at least eighteen  
131 years of age with two years' licensed driving experience.

132           (21) "Farmer vehicle driver" means the person employed  
133 and designated by the "farmer" to drive a "farm vehicle" as  
134 long as driving is not his or her sole or principal function on  
135 the farm who is at least eighteen years of age with two years'  
136 licensed driving experience.

137           (22) "Felony" means an offense under state or federal law  
138 that is punishable by death or imprisonment for a term  
139 exceeding one year.

140           (23) "Gross combination weight rating (GCWR)" means  
141 the value specified by the manufacturer as the loaded weight  
142 of a combination (articulated) vehicle. In the absence of a

143 value specified by the manufacturer, GCWR will be  
144 determined by adding the GVWR of the power unit and the  
145 total weight of the towed unit and any load thereon.

146 (24) "Gross vehicle weight rating (GVWR)" means the  
147 value specified by the manufacturer as the loaded weight of  
148 a single vehicle. In the absence of a value specified by the  
149 manufacturer the GVWR will be determined by the total  
150 weight of the vehicle and any load thereon.

151 (25) "Hazardous materials" means any material that has  
152 been designated as hazardous under 49 U.S.C. §5103 and is  
153 required to be placarded under subpart F of 49 C.F.R. Part  
154 §172 or any quantity of a material listed as a select agent or  
155 toxin in 42 C.F.R. Part §73.

156 (26) "Imminent Hazard" means existence of a condition  
157 that presents a substantial likelihood that death, serious  
158 illness, severe personal injury or a substantial endangerment  
159 to health, property or the environment may occur before the  
160 reasonably foreseeable completion date of a formal  
161 proceeding begun to lessen the risk of that death, illness,  
162 injury or endangerment.

163 (27) "Issuance of a license" means the completion of a  
164 transaction signifying that the applicant has met all the  
165 requirements incumbent in qualifying for, including, but not  
166 limited to: the initial issuance of a driver's license, the  
167 renewal of a driver's license, the issuance of a duplicate  
168 license as a replacement to a lost or stolen driver's license,  
169 the transfer of any level of driving privileges including the  
170 privilege of operating a commercial motor vehicle from  
171 another state or jurisdiction, the changing of driver's license  
172 class, restrictions or endorsements or the change of any other  
173 information pertaining to an applicant either appearing on the  
174 face of a driver's license or within the driver record of the  
175 licensee maintained by the division.

176       (28) "Motor vehicle" means every vehicle which is self-  
177 propelled and every vehicle which is propelled by electric  
178 power obtained from overhead trolley wires but not operated  
179 upon rails.

180       (29) "Noncommercial motor vehicle" means a motor  
181 vehicle or combination of motor vehicles not defined by the  
182 term "commercial motor vehicle".

183       (30) "Out-of-service order" means a temporary  
184 prohibition against driving a commercial motor vehicle as a  
185 result of a determination by a law-enforcement officer, an  
186 authorized enforcement officer of a federal, state, Canadian,  
187 Mexican, county or local jurisdiction including any special  
188 agent of the Federal Motor Carrier Safety Administration  
189 pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or  
190 compatible laws or the North American uniform out-of-  
191 service criteria that an imminent hazard exists.

192       (31) "Violation of an out-of-service order" means:

193       (A) The operation of a commercial motor vehicle during  
194 the period the driver was placed out-of-service; or

195       (B) The operation of a commercial motor vehicle by a  
196 driver after the vehicle was placed out of service and before  
197 the required repairs are made.

198       (32) "School bus" means a commercial motor vehicle  
199 used to transport preprimary, primary or secondary school  
200 students from home-to-school, from school-to-home, or to  
201 and from school sponsored events. School bus does not  
202 include a bus used as a common carrier.

203       (33) "Serious traffic violation" means conviction for any  
204 of the following offenses when operating a commercial motor  
205 vehicle:

206 (A) Excessive speeding involving any single offense for  
207 any speed of fifteen miles per hour or more above the posted  
208 limits;

209 (B) Reckless driving as defined in section three, article  
210 five, chapter seventeen-c of this code and careless or  
211 negligent driving, including, but not limited to, the offenses  
212 of driving a commercial motor vehicle in willful or wanton  
213 disregard for the safety of persons or property;

214 (C) Erratic or improper traffic lane changes including, but  
215 not limited to, passing a school bus when prohibited,  
216 improper lane changes and other passing violations;

217 (D) Following the vehicle ahead too closely;

218 (E) Driving a commercial motor vehicle without  
219 obtaining a commercial driver's license;

220 (F) Driving a commercial motor vehicle without a  
221 commercial driver's license in the driver's possession.  
222 However, any person who provides proof to the law-  
223 enforcement agency that issued the citation, by the date the  
224 person must appear in court or pay any fine for such  
225 violation, that the person held a valid commercial driver's  
226 license on the date the citation was issued, shall not be guilty  
227 of this offense;

228 (G) Driving a commercial motor vehicle without the  
229 proper class of commercial driver's license and/or  
230 endorsements for the specific vehicle group being operated  
231 or for the passengers or type of cargo being transported;

232 (H) A violation of state or local law relating to motor  
233 vehicle traffic control, other than a parking violation, arising  
234 in connection with a fatal traffic accident; or

235 (I) Any other serious violations determined by the United  
236 States Secretary of Transportation.

237 (J) Vehicle defects are excluded as serious traffic  
238 violations, except as to violations committed by a special  
239 permittee on the coal resource transportation road system.

240 (34) "State" means a state of the United States and the  
241 District of Columbia or a province or territory of Canada or  
242 a state of the United Mexican States.

243 (35) "State of Domicile" means the state where a person  
244 has his or her true, fixed and permanent home and principle  
245 residence and to which he or she has the intention of  
246 returning whenever absent in accordance with chapter  
247 seventeen-a, article three, section one-a.

248 (36) "Suspension, revocation or cancellation" of a  
249 driver's license, or a commercial driver's license means the  
250 privilege to operate any type of motor vehicle on the roads  
251 and highways of this state is withdrawn.

252 (37) "Tank vehicle" means any commercial motor  
253 vehicle that is designed to transport any liquid or gaseous  
254 materials within a tank that is either permanently or  
255 temporarily attached to the vehicle or the chassis. These  
256 vehicles include, but are not limited to, cargo tanks and  
257 portable tanks, as defined in 49 C. F. R. Part 171 (1998).  
258 However, this definition does not include portable tanks  
259 having a rated capacity under one thousand gallons.

260 (38) "Transportation Security Administration" means the  
261 United States Department of Homeland Security  
262 Transportation Security Administration.

263 (39) "United States" means the fifty states and the  
264 District of Columbia.

265 (40) "Vehicle Group" means a class or type of vehicle  
266 with certain operating characteristics.

**§17E-1-4. Limitation on number of driver's licenses.**

1 No person who drives a commercial motor vehicle may  
2 have more than one driver's license at one time. The division  
3 shall require the surrender of any previously issued driver's  
4 license before issuing a renewed or duplicate driver's license  
5 with updated information.

**§17E-1-6. Employer responsibilities.**

1 (a) Each employer shall require the applicant to provide  
2 the information specified in section five of this article.

3 (b) No employer may knowingly allow, permit, require  
4 or authorize a driver to drive a commercial motor vehicle  
5 during any period in which the driver:

6 (1) Has a driver's license suspended, revoked or canceled  
7 by a state; has lost the privilege to drive a commercial motor  
8 vehicle in a state, or has been disqualified from driving a  
9 commercial motor vehicle;

10 (2) Has more than one driver's license at one time;

11 (3) Or the commercial motor vehicle he or she is driving  
12 or the motor carrier operation is subject to an out-of-service  
13 order;

14 (4) Is in violation of federal, state or local law or  
15 regulation pertaining to railroad highway grade crossings; or

16 (5) Is in violation of any provision of 49 C.F.R., Part  
17 §382 related to controlled substances and alcohol use and  
18 testing.

19 (c) The division shall impose a civil penalty, in addition  
20 to any penalty required under the provisions of section  
21 twenty-five of this article, on any employer who knowingly  
22 allows, permits, requires or authorizes a driver to drive a  
23 commercial motor vehicle in violation of subdivision three or  
24 four of subsection (b) of this section.

25 (1) If the conviction is for a violation of subdivision three  
26 of subsection (b) of this section, the penalty is \$2,750.

27 (2) If the conviction is for a violation of subdivision four  
28 of subsection (b) of this section, the penalty shall be no more  
29 than \$25,000.

**§17E-1-7. Commercial driver's license required;  
disqualification for driving without valid  
license.**

1 (a) On or after the first day of April, one thousand nine  
2 hundred ninety-two, except when driving under a commercial  
3 driver's instruction permit accompanied by the holder of a  
4 commercial driver's license valid for the vehicle being  
5 driven, no person may drive a commercial motor vehicle  
6 unless the person holds a commercial driver's license and  
7 applicable endorsements valid for the vehicle they are  
8 driving.

9 (b) No person may drive a commercial motor vehicle  
10 while their driving privilege is suspended, revoked, canceled,  
11 expired, subject to a disqualification or in violation of an  
12 out-of-service order.

13 (c) Drivers of a commercial motor vehicle shall have a  
14 commercial driver's license in their possession at all times  
15 while driving.

16 (d) The Commissioner shall suspend for a period of sixty  
17 days the driving privileges of any person who is convicted of  
18 operating a commercial motor vehicle:

19 (1) Without holding a valid commercial driver's license  
20 and the applicable endorsements valid for the vehicle he or  
21 she is driving in accordance with subsection (a) of this  
22 section, or

23 (2) For any conviction for operating a commercial motor  
24 vehicle while his or her privilege to operate a motor vehicle  
25 were suspended, revoked, canceled or while disqualified  
26 from operating a commercial motor vehicle in accordance  
27 with subsection (b) of this section.

28 (e) Any person not holding a commercial driver's license  
29 who is convicted of an offense that requires disqualification  
30 from operating a commercial motor vehicle shall also be  
31 disqualified from eligibility for a commercial driver's license  
32 for the same time periods as prescribed in federal law or rule  
33 or section thirteen of this article for commercial driver's  
34 license holders.

35 (f) The Commissioner shall suspend the driver's license  
36 or the privilege to drive in this state of any holder of a  
37 commercial driver's license or operator of a commercial  
38 motor vehicle upon receiving notice from another state or  
39 jurisdiction of failure to pay fines, costs, forfeitures or  
40 penalties imposed or failure to appear or failure to respond  
41 for any violation of a state or local law relating to motor  
42 vehicle traffic control in accordance with 49 C.F.R.  
43 §384.225 (2009). A suspension under this section will  
44 continue until the person provides proof of compliance from  
45 the court and pays the reinstatement fee provided in section  
46 nine, article three, chapter seventeen-b of this Code.

**17E-1-12. Classifications, endorsements and restrictions.**



1 (a) Commercial driver's licenses may be issued with the  
2 following classifications:

3 (1) *Class A combination vehicle.* -- Any combination of  
4 vehicles with a gross combined vehicle weight rating of  
5 twenty-six thousand one pounds or more, provided the gross  
6 vehicle weight rating of the vehicle being towed is in excess  
7 of ten thousand pounds.

8 (2) *Class B heavy straight vehicle.* -- Any single vehicle  
9 with a gross vehicle weight rating of twenty-six thousand one  
10 pounds or more and any vehicle towing a vehicle not in  
11 excess of ten thousand pounds.

12 (3) *Class C small vehicle.* -- Any single vehicle or  
13 combination vehicle that does not fall under either Class A or  
14 Class B but are:

15 (A) Vehicles designed to transport sixteen or more  
16 passengers, including the driver; and

17 (B) Vehicles used in the transportation of hazardous  
18 materials which requires the vehicle to be placarded under 49  
19 C.F.R. Part §172, Subpart F (2004).

20 (4) Each applicant who desires to operate a vehicle in a  
21 classification different from the class in which the applicant  
22 is authorized is required to retake and pass all related tests  
23 except the following:

24 (A) A driver who has passed the knowledge and skills  
25 test for a combination vehicle in Class A may operate a  
26 heavy straight vehicle in Class B or a small vehicle in Class  
27 C provided he or she possesses the required endorsements;  
28 and

29 (B) A driver who has passed the knowledge and skills  
30 test for a vehicle in Class B may operate any small vehicle in

31 Class C provided he or she possesses the required  
32 endorsements.

33 (b) *Endorsements and restrictions.* -- The Commissioner  
34 upon issuing a commercial driver's license may impose  
35 endorsements and or restrictions determined by the  
36 Commissioner to be appropriate to assure the safe operation  
37 of a specific class, type or category of motor vehicle or a  
38 specifically equipped motor vehicle and to comply with 49  
39 U.S.C., et seq., and 49 C.F.R. §383.93 (2004) including, but  
40 not limited to endorsements or restrictions to operate:

41 (1) Double or triple trailers which requires successful  
42 completion of a knowledge test;

43 (2) Passenger vehicles which requires successful  
44 completion of a knowledge and skills test;

45 (3) Tank vehicles which requires successful completion  
46 of a knowledge test;

47 (4) Vehicles used for the transportation of hazardous  
48 materials as defined in section three of this article which  
49 requires the completion of a knowledge test and a  
50 background security risk check in accordance with 49 C.F.R.  
51 §1572.5 (2004);

52 (5) School buses which requires successful completion of  
53 a knowledge and skills test unless the applicant meets the  
54 criteria for waiver of the skills test in accordance with 49  
55 C.F.R. §383.123(b) (2004); or

56 (6) Vehicles equipped with air brakes which requires the  
57 completion of a skills test.

58 (c) *Applicant record check.* -- Before issuing a  
59 commercial driver's license, the Commissioner shall obtain

60 driving record information through the commercial driver's  
61 license information system, the national driver register and  
62 from each state in which the person has been licensed.

63 (d) *Notification of license issuance.* -- Within ten days  
64 after issuing a commercial driver's license, the Commissioner  
65 shall notify the commercial driver's license information  
66 system of that fact, providing all information required to  
67 ensure identification of the person.

68 (e) *Expiration of license.* --

69 (1) Every commercial driver's license issued to persons  
70 who have attained their twenty-first birthday expires on the  
71 applicant's birthday in those years in which the applicant's  
72 age is evenly divisible by five. Except as provided in  
73 subdivision two of this subsection, no commercial driver's  
74 license may be issued for less than three years nor more than  
75 seven years and the commercial driver's license shall be  
76 renewed by the applicant's birthday and is valid for a period  
77 of five years, expiring on the applicant's birthday and in a  
78 year in which the applicant's age is evenly divisible by five.  
79 No commercial driver's license with a hazardous materials  
80 endorsement may be issued for more than five years.

81 (2) Every commercial driver's license issued to persons  
82 who have not attained their twenty-first birthday expires  
83 thirty days after the applicant's birthday in the year in which  
84 the applicant attains the age of twenty-one years.

85 (3) Commercial driver's licenses held by any person in  
86 the Armed Forces which expire while that person is on active  
87 duty remains valid for thirty days from the date on which that  
88 person reestablishes residence in West Virginia.

89 (4) Any person applying to renew a commercial driver's  
90 license which has been expired for six months or more shall

91 follow the procedures for an initial issuance of a commercial  
92 driver's license, including the testing provisions.

93 (f) When applying for renewal of a commercial driver's  
94 license, the applicant shall complete the application form and  
95 provide updated information and required certifications.

96 (g) If the applicant wishes to obtain or retain a hazardous  
97 materials endorsement, the applicant shall comply with a  
98 background check in accordance with 49 U.S.C. §5103a and  
99 49 C.F.R. Part §1572 (2004) and subject to the following:

100 (1) The applicant is a citizen of the United States or a  
101 lawful permanent resident of the United States;

102 (2) The applicant completes the application prescribed by  
103 the division and submits fingerprints in a form and manner  
104 prescribed by the division and the United States Department  
105 of Homeland Security-Transportation Security  
106 Administration at the time of application or at any other time  
107 in accordance with 49 C.F.R. §1572.5 (2004);

108 (3) The applicant pays all fees prescribed by the  
109 Transportation Security Administration or its agent and the  
110 division;

111 (4) The applicant has not been adjudicated as a mental  
112 defective or committed to a mental institution as prescribed  
113 in 49 C.F.R. §1572.109 (2004);

114 (5) The applicant has not committed a disqualifying  
115 criminal offense as described in 49 C.F.R. §1572.103  
116 (2004);

117 (6) The applicant has passed the Transportation Security  
118 Administration security threat assessment and the Division  
119 has received a final notification of threat assessment or

120 notification of no security threat from the Transportation  
121 Security Administration: *Provided*, That any appeal of any  
122 decision, determination or ruling of the Federal Bureau of  
123 Investigation or the Transportation Security Agency shall be  
124 directed to that agency; and

125 (7) The applicant has successfully passed the written test  
126 for the issuance or renewal of a hazardous material  
127 endorsement.

### §17E-1-13. Disqualification.

1 (a) A person may not operate a commercial motor vehicle  
2 if his or her privilege to operate a commercial motor vehicle  
3 is disqualified under the provisions of the Federal Motor  
4 Carrier Safety Improvement Act of 1999 (public law 106-159  
5 §1748), 49 C.F.R. Part §383, Subpart D (2004) or in  
6 accordance with the provisions of this section.

7 (1) For the purposes of determining first and subsequent  
8 violations of the offenses listed in this section, each  
9 conviction for any offense listed in this section resulting from  
10 a separate incident includes convictions for offenses  
11 committed in a commercial motor vehicle or a  
12 noncommercial motor vehicle.

13 (2) Any person disqualified from operating a commercial  
14 motor vehicle for life under the provisions of this chapter for  
15 offenses described in subsection (b) subdivisions (4) and (6)  
16 of this section is eligible for reinstatement of privileges to  
17 operate a commercial motor vehicle after ten years and after  
18 completion of the safety and treatment program or other  
19 appropriate program prescribed by the division. Any person  
20 whose lifetime disqualification has been amended under the  
21 provisions of this subdivision and who is subsequently  
22 convicted of a disqualifying offense described in subsection  
23 (b), subdivisions (1) through (8) of this section is not eligible  
24 for reinstatement.

25           (3) Any disqualification imposed by this section is in  
26 addition to any action to suspend, revoke or cancel the  
27 driver's license or driving privileges if suspension,  
28 revocation or cancellation is required under another provision  
29 of this code.

30           (4) The provisions of this section apply to any person  
31 operating a commercial motor vehicle and to any person  
32 holding a commercial driver's license.

33           (b) Any person is disqualified from driving a commercial  
34 motor vehicle for the following offenses and time periods if  
35 convicted of:

36           (1) Driving a motor vehicle under the influence of  
37 alcohol or a controlled substance;

38           (A) For a first conviction or for refusal to submit to any  
39 designated secondary chemical test while operating a  
40 commercial motor vehicle, a driver is disqualified from  
41 operating a commercial motor vehicle for a period of one  
42 year.

43           (B) For a first conviction or for refusal to submit to any  
44 designated secondary chemical test while operating a  
45 noncommercial motor vehicle, a commercial driver's license  
46 holder is disqualified from operating a commercial motor  
47 vehicle for a period of one year.

48           (C) For a first conviction or for refusal to submit to any  
49 designated secondary chemical test while operating a  
50 commercial motor vehicle transporting hazardous materials  
51 required to be placarded under 49 C.F.R. Part §172, Subpart  
52 F, a driver is disqualified from operating a commercial motor  
53 vehicle for a period of three years.

54           (D) For a second conviction or for refusal to submit to  
55 any designated secondary chemical test in a separate incident

56 of any combination of offenses in this subsection while  
57 operating a commercial motor vehicle, a driver is disqualified  
58 from operating a commercial motor vehicle for life.

59 (E) For a second conviction or refusal to submit to any  
60 designated secondary chemical test in a separate incident of  
61 any combination of offenses in this subsection while  
62 operating a noncommercial motor vehicle, a commercial  
63 motor vehicle license holder is disqualified from operating a  
64 commercial motor vehicle for life.

65 (2) Driving a commercial motor vehicle while the  
66 person's alcohol concentration of the person's blood, breath  
67 or urine is four hundredths of one percent or more, by  
68 weight;

69 (A) For a first conviction or for refusal to submit to any  
70 designated secondary chemical test while operating a  
71 commercial motor vehicle, a driver is disqualified from  
72 operating a commercial motor vehicle for one year.

73 (B) For a first conviction or for refusal to submit to any  
74 designated secondary chemical test while operating a  
75 commercial motor vehicle transporting hazardous materials  
76 required to be placarded under 49 C.F.R. Part §172, Subpart  
77 F, a driver is disqualified from operating a commercial motor  
78 vehicle for three years.

79 (C) For a second conviction or refusal to submit to any  
80 designated secondary chemical test in a separate incident of  
81 any combination of offenses in this subsection while  
82 operating a commercial motor vehicle, a driver is disqualified  
83 from operating a commercial motor vehicle for life.

84 (3) Refusing to submit to any designated secondary  
85 chemical test required by the provisions of this code or the  
86 provisions of 49 C.F.R. §383.72 (2004);

87           (A) For the first conviction or refusal to submit to any  
88 designated secondary chemical test while operating a  
89 commercial motor vehicle, a driver is disqualified from  
90 operating a commercial motor vehicle for one year.

91           (B) For the first conviction or refusal to submit to any  
92 designated secondary chemical test while operating a  
93 noncommercial motor vehicle, a commercial driver's license  
94 holder is disqualified from operating a commercial motor  
95 vehicle for one year.

96           (C) For the first conviction or for refusal to submit to any  
97 designated secondary chemical test while operating a  
98 commercial motor vehicle transporting hazardous materials  
99 required to be placarded under 49 C.F.R. Part §172, Subpart  
100 F (2004), a driver is disqualified from operating a  
101 commercial motor vehicle for a period of three years.

102           (D) For a second conviction or refusal to submit to any  
103 designated secondary chemical test in a separate incident of  
104 any combination of offenses in this subsection while  
105 operating a commercial motor vehicle, a driver is disqualified  
106 from operating a commercial motor vehicle for life.

107           (E) For a second conviction or refusal to submit to any  
108 designated secondary chemical test in a separate incident of  
109 any combination of offenses in this subsection while  
110 operating a noncommercial motor vehicle, a commercial  
111 driver's license holder is disqualified from operating a  
112 commercial motor vehicle for life.

113           (4) Leaving the scene of an accident;

114           (A) For the first conviction while operating a commercial  
115 motor vehicle, a driver is disqualified from operating a  
116 commercial motor vehicle for one year.



117 (B) For the first conviction while operating a  
118 noncommercial motor vehicle, a commercial driver's license  
119 holder is disqualified for one year.

120 (C) For the first conviction while operating a commercial  
121 motor vehicle transporting hazardous materials required to be  
122 placarded under 49 C.F.R. Part §172, Subpart F (2004), a  
123 driver is disqualified from operating a commercial motor  
124 vehicle for a period of three years.

125 (D) For a second conviction in a separate incident of any  
126 combination of offenses in this subsection while operating a  
127 commercial motor vehicle, a driver is disqualified from  
128 operating a commercial motor vehicle for life.

129 (E) For a second conviction in a separate incident of any  
130 combination of offenses in this subsection while operating a  
131 noncommercial motor vehicle, a commercial driver's license  
132 holder is disqualified from operating a commercial motor  
133 vehicle for life.

134 (5) Using a motor vehicle in the commission of any  
135 felony as defined in section three, article one of this chapter:  
136 *Provided*, That the commission of any felony involving the  
137 manufacture, distribution or dispensing of a controlled  
138 substance, or possession with intent to manufacture,  
139 distribute or dispense a controlled substance falls under the  
140 provisions of subdivision eight of this subsection;

141 (A) For the first conviction while operating a commercial  
142 motor vehicle, a driver is disqualified from operating a  
143 commercial motor vehicle for one year.

144 (B) For the first conviction while operating a  
145 noncommercial motor vehicle, a commercial driver's license  
146 holder is disqualified from operating a commercial motor  
147 vehicle for one year.

148 (C) For the first conviction while operating a commercial  
149 motor vehicle transporting hazardous materials required to be  
150 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a  
151 driver is disqualified from operating a commercial motor  
152 vehicle for a period of three years.

153 (D) For a second conviction in a separate incident of any  
154 combination of offenses in this subsection while operating a  
155 commercial motor vehicle, a driver is disqualified from  
156 operating a commercial motor vehicle for life.

157 (E) For a second conviction in a separate incident of any  
158 combination of offenses in this subsection while operating a  
159 noncommercial motor vehicle, a commercial motor vehicle  
160 license holder is disqualified from operating a commercial  
161 motor vehicle for life.

162 (6) Operating a commercial motor vehicle when, as a  
163 result of prior violations committed operating a commercial  
164 motor vehicle, the driver's privilege to operate a motor  
165 vehicle has been suspended, revoked or canceled, or the  
166 driver's privilege to operate a commercial motor vehicle has  
167 been disqualified.

168 (A) For the first conviction while operating a commercial  
169 motor vehicle, a driver is disqualified from operating a  
170 commercial motor vehicle for one year.

171 (B) For the first conviction while operating a commercial  
172 motor vehicle transporting hazardous materials required to be  
173 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a  
174 driver is disqualified from operating a commercial motor  
175 vehicle for a period of three years.

176 (C) For a second conviction in a separate incident of any  
177 combination of offenses in this subsection while operating a  
178 commercial motor vehicle, a driver is disqualified from  
179 operating a commercial motor vehicle for life.

180           (7) Causing a fatality through the negligent operation of  
181 a commercial motor vehicle, including, but not limited to, the  
182 crimes of motor vehicle manslaughter, homicide and  
183 negligent homicide as defined in section five, article three,  
184 chapter seventeen-b, and section one, article five, chapter  
185 seventeen-c of this code;

186           (A) For the first conviction while operating a commercial  
187 motor vehicle, a driver is disqualified from operating a  
188 commercial motor vehicle for one year.

189           (B) For the first conviction while operating a commercial  
190 motor vehicle transporting hazardous materials required to be  
191 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a  
192 driver is disqualified from operating a commercial motor  
193 vehicle for a period of three years.

194           (C) For a second conviction in a separate incident of any  
195 combination of offenses in this subsection while operating a  
196 commercial motor vehicle, a driver is disqualified from  
197 operating a commercial motor vehicle for life.

198           (8) Using a motor vehicle in the commission of any  
199 felony involving the manufacture, distribution or dispensing  
200 of a controlled substance, or possession with intent to  
201 manufacture, distribute or dispense a controlled substance, a  
202 driver is disqualified from operating a commercial motor  
203 vehicle for life and shall not be eligible for reinstatement.

204           (c) Any person is disqualified from driving a commercial  
205 motor vehicle if convicted of;

206           (1) Speeding excessively involving any speed of fifteen  
207 miles per hour or more above the posted speed limit;

208           (A) For a second conviction of any combination of  
209 offenses in this subsection in a separate incident within a

210 three-year period while operating a commercial motor  
211 vehicle, a driver is disqualified from operating a commercial  
212 motor vehicle for a period of sixty days.

213 (B) For a second conviction of any combination of  
214 offenses in this section in a separate incident within a three-  
215 year period while operating a noncommercial motor vehicle,  
216 if the conviction results in the suspension, revocation or  
217 cancellation of the commercial driver's license holder's  
218 privilege to operate any motor vehicle, a commercial driver's  
219 license holder is disqualified from operating a commercial  
220 motor vehicle for a period of sixty days.

221 (C) For a third or subsequent conviction of any  
222 combination of the offenses in this subsection in a separate  
223 incident in a three-year period while operating a commercial  
224 motor vehicle, a driver is disqualified from operating a  
225 commercial motor vehicle for a period of one hundred twenty  
226 days.

227 (D) For a third or subsequent conviction of any  
228 combination of offenses in this subsection in a separate  
229 incident within a three-year period while operating a  
230 noncommercial motor vehicle, if the conviction results in the  
231 suspension, revocation or cancellation of the commercial  
232 driver's license holder's privilege to operate any motor  
233 vehicle, a commercial driver's license holder shall be  
234 disqualified from operating a commercial motor vehicle for  
235 a period of one hundred twenty days.

236 (2) Reckless driving as defined in section three, article  
237 five, chapter seventeen-c of this code, careless, or negligent  
238 driving including, but not limited to, the offenses of driving  
239 a motor vehicle in willful or wanton disregard for the safety  
240 of persons or property;

241 (A) For a second conviction of any combination of  
242 offenses in this subsection in a separate incident within a

243 three-year period while operating a commercial motor  
244 vehicle, a driver is disqualified from operating a commercial  
245 motor vehicle for a period of sixty days.

246 (B) For a second conviction of any combination of  
247 offenses in this section in a separate incident within a three-  
248 year period while operating a noncommercial motor vehicle,  
249 if the conviction results in the suspension, revocation, or  
250 cancellation of the commercial driver's license holder's  
251 privilege to operate any motor vehicle, a commercial driver's  
252 license holder is disqualified from operating a commercial  
253 motor vehicle for a period of sixty days.

254 (C) For a third or subsequent conviction of any  
255 combination of the offenses in this subsection in a separate  
256 incident in a three-year period while operating a commercial  
257 motor vehicle, a driver is disqualified from operating a  
258 commercial motor vehicle for a period of one hundred twenty  
259 days.

260 (D) For a third or subsequent conviction of any  
261 combination of offenses in this subsection in a separate  
262 incident within a three-year period while operating a  
263 noncommercial motor vehicle, if the conviction results in the  
264 suspension, revocation or cancellation of the commercial  
265 driver's license holder's privilege to operate any motor  
266 vehicle, a commercial driver's license holder is disqualified  
267 from operating a commercial motor vehicle for a period of  
268 one hundred twenty days.

269 (3) Making improper or erratic traffic lane changes;

270 (A) For a second conviction of any combination of  
271 offenses in this subsection in a separate incident within a  
272 three-year period while operating a commercial motor  
273 vehicle, a driver is disqualified from operating a commercial  
274 motor vehicle for a period of sixty days.

275 (B) For a second conviction of any combination of  
276 offenses in this section in a separate incident within a three-  
277 year period while operating a noncommercial motor vehicle,  
278 if the conviction results in the suspension, revocation, or  
279 cancellation of the commercial driver's license holder's  
280 privilege to operate any motor vehicle, a commercial driver's  
281 license holder is disqualified from operating a commercial  
282 motor vehicle for a period of sixty days.

283 (C) For a third or subsequent conviction of any  
284 combination of the offenses in this subsection in a separate  
285 incident in a three-year period while operating a commercial  
286 motor vehicle, a driver is disqualified from operating a  
287 commercial motor vehicle for a period of one hundred twenty  
288 days.

289 (D) For a third or subsequent conviction of any  
290 combination of offenses in this subsection in a separate  
291 incident within a three-year period while operating a  
292 noncommercial motor vehicle, if the conviction results in the  
293 suspension, revocation or cancellation of the commercial  
294 driver's license holder's privilege to operate any motor  
295 vehicle, a commercial driver's license holder is disqualified  
296 from operating a commercial motor vehicle for a period of  
297 one hundred twenty days.

298 (4) Following the vehicle ahead too closely;

299 (A) For a second conviction of any combination of  
300 offenses in this subsection in a separate incident within a  
301 three-year period while operating a commercial motor  
302 vehicle, a driver is disqualified from operating a commercial  
303 motor vehicle for a period of sixty days.

304 (B) For a second conviction of any combination of  
305 offenses in this section in a separate incident within a three-  
306 year period while operating a noncommercial motor vehicle,

307 if the conviction results in the suspension, revocation, or  
308 cancellation of the commercial driver's license holder's  
309 privilege to operate any motor vehicle, a commercial driver's  
310 license holder is disqualified from operating a commercial  
311 motor vehicle for a period of sixty days.

312 (C) For a third or subsequent conviction of any  
313 combination of the offenses in this subsection in a separate  
314 incident in a three-year period while operating a commercial  
315 motor vehicle, a driver is disqualified from operating a  
316 commercial motor vehicle for a period of one hundred twenty  
317 days.

318 (D) For a third or subsequent conviction of any  
319 combination of offenses in this subsection in a separate  
320 incident within a three-year period while operating a  
321 noncommercial motor vehicle, if the conviction results in the  
322 suspension, revocation or cancellation of the commercial  
323 driver's license holder's privilege to operate any motor  
324 vehicle, a commercial driver's license holder is disqualified  
325 from operating a commercial motor vehicle for a period of  
326 one hundred twenty days.

327 (5) Violating any law relating to traffic control arising in  
328 connection with a fatal accident, other than a parking  
329 violation;

330 (A) For a second conviction of any combination of  
331 offenses in this subsection in a separate incident within a  
332 three-year period while operating a commercial motor  
333 vehicle, a driver is disqualified from operating a commercial  
334 motor vehicle for a period of sixty days.

335 (B) For a second conviction of any combination of  
336 offenses in this section in a separate incident within a three-  
337 year period while operating a noncommercial motor vehicle,

338 if the conviction results in the suspension, revocation, or  
339 cancellation of the commercial driver's license holder's  
340 privilege to operate any motor vehicle, a commercial driver's  
341 license holder is disqualified from operating a commercial  
342 motor vehicle for a period of sixty days.

343 (C) For a third or subsequent conviction of any  
344 combination of the offenses in this subsection in a separate  
345 incident in a three-year period while operating a commercial  
346 motor vehicle, a driver is disqualified from operating a  
347 commercial motor vehicle for a period of one hundred twenty  
348 days.

349 (D) For a third or subsequent conviction of any  
350 combination of offenses in this subsection in a separate  
351 incident within a three-year period while operating a  
352 noncommercial motor vehicle, if the conviction results in the  
353 suspension, revocation or cancellation of the commercial  
354 driver's license holder's privilege to operate any motor  
355 vehicle, a commercial motor vehicle license holder  
356 is disqualified from operating a commercial motor vehicle for  
357 a period of one hundred twenty days.

358 (6) Driving a commercial motor vehicle without  
359 obtaining a commercial driver's license;

360 (A) For a second conviction of any combination of  
361 offenses in this subsection in a separate incident within a  
362 three-year period while operating a commercial motor  
363 vehicle, a driver is disqualified from operating a commercial  
364 motor vehicle for a period of sixty days.

365 (B) For a third or subsequent conviction of any  
366 combination of the offenses in this subsection in a separate  
367 incident in a three-year period while operating a commercial  
368 motor vehicle, a driver is disqualified from operating a



369 commercial motor vehicle for a period of one hundred twenty  
370 days.

371 (7) Driving a commercial motor vehicle without a  
372 commercial driver's license in the driver's possession,  
373 provided that any person who provides proof of possession  
374 of a commercial driver's license to the enforcement agency  
375 that issued the citation, by the court appearance or fine  
376 payment deadline shall not be guilty of this offense;

377 (A) For a second conviction of any combination of  
378 offenses in this subsection in a separate incident within a  
379 three-year period while operating a commercial motor  
380 vehicle, a commercial driver's license holder is disqualified  
381 from operating a commercial motor vehicle for a period of  
382 sixty days.

383 (B) For a third or subsequent conviction of any  
384 combination of the offenses in this subsection in a separate  
385 incident in a three-year period while operating a commercial  
386 motor vehicle, a commercial driver's license holder  
387 is disqualified from operating a commercial motor vehicle for  
388 a period of one hundred twenty days.

389 (8) Driving a commercial motor vehicle without the  
390 proper class of commercial driver's license or the proper  
391 endorsements for the specific vehicle group being operated,  
392 or for the passengers or type of cargo being transported;

393 (A) For a second conviction of any combination of  
394 offenses in this subsection in a separate incident within a  
395 three-year period while operating a commercial motor  
396 vehicle, a commercial driver's license holder is disqualified  
397 from operating a commercial motor vehicle for a period of  
398 sixty days.

399 (B) For a third or subsequent conviction of any  
400 combination of the offenses in this subsection in a separate  
401 incident in a three-year period while operating a commercial  
402 motor vehicle, a commercial driver's license holder  
403 is disqualified from operating a commercial motor vehicle for  
404 a period of one hundred twenty days.

405 (d) Any person convicted of operating a commercial  
406 motor vehicle in violation of any federal, state or local law or  
407 ordinance pertaining to any of the railroad crossing violations  
408 described in subdivisions one through six of this subsection  
409 is disqualified from operating a commercial motor vehicle for  
410 the period of time specified;

411 (1) Failing to slow down and check that the tracks are  
412 clear of an approaching train, if not required to stop in  
413 accordance with the provisions of section three, article  
414 twelve, chapter seventeen-c of this code;

415 (A) For the first conviction, a driver is disqualified from  
416 operating a commercial motor vehicle for a period of sixty  
417 days;

418 (B) For a second conviction of any combination of  
419 offenses in this subsection within a three-year period, a driver  
420 is disqualified from operating a commercial motor vehicle for  
421 one hundred twenty days; and

422 (C) For a third or subsequent conviction of any  
423 combination of offenses in this subsection within a three-year  
424 period, a driver is disqualified from operating a commercial  
425 motor vehicle for one year.

426 (2) Failing to stop before reaching the crossing, if the  
427 tracks are not clear, if not required to stop, in accordance  
428 with the provisions of section one, article twelve, chapter  
429 seventeen-c of this code;

430           (A) For the first conviction, a driver is disqualified from  
431 operating a commercial motor vehicle for a period of sixty  
432 days;

433           (B) For a second conviction of any combination of  
434 offenses in this subsection within a three-year period, a driver  
435 is disqualified from operating a commercial motor vehicle for  
436 one hundred twenty days; and

437           (C) For a third or subsequent conviction of any  
438 combination of offenses in this subsection within a three-year  
439 period, a driver is disqualified from operating a commercial  
440 motor vehicle for one year.

441           (3) Failing to stop before driving onto the crossing, if  
442 required to stop in accordance with the provisions of section  
443 three, article twelve, chapter seventeen-c of this code;

444           (A) For the first conviction, a driver is disqualified from  
445 operating a commercial motor vehicle for a period of sixty  
446 days;

447           (B) For a second conviction of any combination of  
448 offenses in this subsection within a three-year period, the  
449 driver is disqualified from operating a commercial motor  
450 vehicle for one hundred twenty days; and

451           (C) For a third or subsequent conviction of any  
452 combination of offenses in this subsection within a three-year  
453 period, a driver is disqualified from operating a commercial  
454 motor vehicle for one year.

455           (4) Failing to have sufficient space to drive completely  
456 through the crossing without stopping in accordance with the  
457 provisions of section three, article twelve, chapter seventeen-  
458 c of this code;

459           (A) For the first conviction, a driver is disqualified from  
460 operating a commercial motor vehicle for a period of sixty  
461 days;

462           (B) For a second conviction of any combination of  
463 offenses in this subsection within a three-year period, a driver  
464 is disqualified from operating a commercial motor vehicle for  
465 one hundred twenty days; and

466           (C) For a third or subsequent conviction of any  
467 combination of offenses in this subsection within a three-year  
468 period, a driver is disqualified from operating a commercial  
469 motor vehicle for one year.

470           (5) Failing to obey a traffic control device or the  
471 directions of an enforcement official at the crossing in  
472 accordance with the provisions of section one, article twelve,  
473 chapter seventeen-c of this code; or

474           (A) For the first conviction, a driver is disqualified from  
475 operating a commercial motor vehicle for a period of sixty  
476 days;

477           (B) For a second conviction of any combination of  
478 offenses in this subsection within a three-year period, a driver  
479 is disqualified from operating a commercial motor vehicle for  
480 one hundred twenty days; and

481           (C) For a third or subsequent conviction of any  
482 combination of offenses in this subsection within a three-year  
483 period, a driver is disqualified from operating a commercial  
484 motor vehicle for one year.

485           (6) Failing to negotiate a crossing because of insufficient  
486 undercarriage clearance in accordance with the provisions of  
487 section three, article twelve, chapter seventeen-c of this code.

488 (A) For the first conviction, a driver is disqualified from  
489 operating a commercial motor vehicle for a period of sixty  
490 days;

491 (B) For a second conviction of any combination of  
492 offenses in this subsection within a three-year period, a driver  
493 is disqualified from operating a commercial motor vehicle for  
494 one hundred twenty days; and

495 (C) For a third or subsequent conviction of any  
496 combination of offenses in this subsection within a three-year  
497 period, a driver is disqualified from operating a commercial  
498 motor vehicle for one year.

499 (e) Any person who is convicted of violating an out-of-  
500 service order while operating a commercial motor vehicle  
501 is disqualified for the following periods of time if:

502 (1) Convicted of violating a driver or vehicle out-of-  
503 service order while transporting nonhazardous materials;

504 (A) For the first conviction of violating an out-of-service  
505 order while operating a commercial motor vehicle, a driver  
506 is disqualified from operating a commercial motor vehicle for  
507 one hundred eighty days.

508 (B) For a second conviction in a separate incident within  
509 a ten-year period for violating an out of service order while  
510 operating a commercial motor vehicle, a driver is disqualified  
511 from operating a commercial motor vehicle for two years.

512 (C) For a third or subsequent conviction in a separate  
513 incident within a ten-year period for violating an out-of-  
514 service order while operating a commercial motor vehicle, a  
515 driver is disqualified from operating a commercial motor  
516 vehicle for three years.

517 (2) Convicted of violating a driver or vehicle out-of-  
518 service order while transporting hazardous materials required  
519 to be placarded under 49 C.F.R. Part §172, Subpart F (2004),  
520 or while operating a vehicle designed to transport sixteen or  
521 more passengers including the driver;

522 (A) For the first conviction of violating an out of service  
523 order while operating a commercial motor vehicle, a driver  
524 is disqualified from operating a commercial motor vehicle for  
525 one hundred eighty days.

526 (B) For a second conviction in a separate incident within  
527 a ten-year period for violating an out-of-service order while  
528 operating a commercial motor vehicle, a driver is disqualified  
529 from operating a commercial motor vehicle for three years.

530 (C) For a third or subsequent conviction in a separate  
531 incident within a ten-year period for violating an out-of-  
532 service order while operating a commercial motor vehicle, a  
533 driver is disqualified from operating a commercial motor  
534 vehicle for three years.

535 (f) After disqualifying, suspending, revoking or canceling  
536 a commercial driver's license, the division shall update its  
537 records to reflect that action within ten days.

538 (g) In accordance with the provisions of 49 U.S.C.  
539 §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), and  
540 notwithstanding the provisions of section twenty-five, article  
541 eleven, chapter sixty-one of this code, no record of  
542 conviction, revocation, suspension or disqualification related  
543 to any type of motor vehicle traffic control offense, other  
544 than a parking violation, of a commercial driver's license  
545 holder or a person operating a commercial motor vehicle may  
546 be masked, expunged, deferred, or be subject to any  
547 diversion program.

548 (h) Notwithstanding any provision in this code to the  
549 contrary, the division may not issue any temporary driving  
550 permit, work-only driving permit or hardship license or  
551 permit that authorizes a person to operate a commercial  
552 motor vehicle when his or her privilege to operate any motor  
553 vehicle has been revoked, suspended, disqualified or  
554 otherwise canceled for any reason.

555 (i) In accordance with the provisions of 49 C.F.R.  
556 §391.15(b), a driver is disqualified from operating a  
557 commercial motor vehicle for the duration of any suspension,  
558 revocation or cancellation of his or her driver's license or  
559 privilege to operate a motor vehicle by this state or by any  
560 other state or jurisdiction until the driver complies with the  
561 terms and conditions for reinstatement set by this state or by  
562 another state or jurisdiction.

563 (j) In accordance with the provisions of 49 C.F.R. 353.52  
564 (2006), the division shall immediately disqualify a driver's  
565 privilege to operate a commercial motor vehicle upon a  
566 notice from the Assistant Administrator of the Federal Motor  
567 Carrier Safety Administration that the driver poses an  
568 imminent hazard. Any disqualification period imposed under  
569 the provisions of this subsection shall be served concurrently  
570 with any other period of disqualification if applicable.

571 (k) In accordance with the provisions of 49 C.F.R.  
572 1572.11(a), the division shall immediately disqualify a  
573 driver's privilege to operate a commercial motor vehicle if  
574 the driver fails to surrender his or her driver's license with a  
575 hazardous material endorsement to the division upon proper  
576 notice by the division to the driver that the division received  
577 notice from the Department of Homeland Security  
578 Transportation Security Administration of an initial  
579 determination of threat assessment and immediate revocation  
580 that the driver does not meet the standards for security threat

581 assessment provided in 49 C.F.R. 1572.5. The  
582 disqualification remains in effect until the driver either  
583 surrenders the driver's license to the division or provides the  
584 division with an affidavit attesting to the fact that the driver  
585 has lost or is otherwise unable to surrender the license.

#### **§17E-1-25. Penalties.**

1 (a) It is a misdemeanor for any person to violate any of  
2 the provisions of this chapter unless the violation is by this  
3 chapter or other law of this state, declared to be a felony.

4 (b) Unless another penalty is provided in this chapter or  
5 by the laws of this state, every person convicted of a  
6 misdemeanor for the violation of any provisions of this  
7 chapter shall be fined not less than \$100 nor more than  
8 \$1,000, or confined for not more than six months in jail, or  
9 both fined and confined, except that for the second violation  
10 of section seven of this article and, upon conviction thereof,  
11 the offender shall be fined not less than \$500 nor more than  
12 \$2,000 or confined for not less than six months nor more than  
13 nine months in jail, or both fined and confined. For the third  
14 or any subsequent conviction for violation of section seven  
15 of this article, upon conviction thereof, the offender shall be  
16 fined not less than one \$1,000 nor more than \$2,500, or  
17 confined for not less than nine months nor more than one  
18 year in the county jail, or both fined and confined.

19 (c) The division shall impose a civil penalty, in addition  
20 to any penalty required under the provisions of this section  
21 on any driver who is convicted of violating subsection (e),  
22 section thirteen of this article. The penalty shall be \$2,500  
23 for the first offense and \$5,000 for each subsequent offense.



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## CHAPTER 56

**(H. B. 4026 - By Delegates M. Poling,  
Paxton, Williams, Beach, Louisos,  
Smith, D. Walker, Andes, Canterbury,  
Ireland and Romine)**

[Passed March 12, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 23, 2010.]

AN ACT to repeal §18-23-1, §18-23-2, §18-23-3, §18-23-4, §18-23-5, §18-23-13, §18-23-14, §18-23-15, §18-23-18, §18-23-22, §18-23-23 and §18-23-24 of the Code of West Virginia, 1931, as amended; to repeal §18B-14-1, §18B-14-2, §18B-14-3, §18B-14-4, §18B-14-5, §18B-14-5a, §18B-14-6 and §18B-14-7 of said code; to amend and reenact §5-6-4a of said code; to amend and reenact §18B-1B-4 of said code; to amend and reenact §18B-2A-4 of said code; to amend and reenact §18B-2B-6 of said code; to amend and reenact §18B-4-6 of said code; to amend and reenact §18B-5-4 of said code; to amend and reenact §18B-10-8 of said code; and to amend said code by adding thereto a new article, designated §18B-19-1, §18B-19-2, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-8, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-12, §18B-19-13, §18B-19-14, §18B-19-15, §18B-19-16, §18B-19-17 and §18B-19-18, all relating to higher education capital facilities generally; repealing certain specific duties of governing boards of higher education institutions; eliminating condemnation rights of those boards; eliminating execution of contracts and deeds by those boards; eliminating certain obligation concerning capital construction and repair duties; eliminating the authority of certain state institutions from

selling certain properties and lease-back provisions; replacing those duties that are being repealed with similar responsibilities; setting forth certain specific responsibilities of the Higher Education Policy Commission and the Council for Community and Technical College Education; reviewing tuition and fee increases; reviewing and approving capital project planning, financing, management and maintenance; permitting the acquisition, sale, transfer, exchange, lease, conveyance and condemnation of real property; permitting the construction and operation of capital facilities; permitting the collection and use of certain capital fees; establishing in the State Treasury a capital maintenance fund for each state institution of higher education; setting forth legislative findings and intent; defining terms; requiring rulemaking; providing for system facilities institution and facilities planning; designating Marshall Community and Technical College as Mountwest Community and Technical College; making certain technical corrections; and deleting certain obsolete language.

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

That §18-23-1, §18-23-2, §18-23-3, §18-23-4, §18-23-5, §18-23-13, §18-23-14, §18-23-15, §18-23-18, §18-23-22, §18-23-23 and §18-23-24 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-14-1, §18B-14-2, §18B-14-3, §18B-14-4, §18B-14-5, §18B-14-5a, §18B-14-6 and §18B-14-7 of said code be repealed; that §5-6-4a of said code be amended and reenacted; that §18B-1B-4 of said code be amended and reenacted; that §18B-2A-4 of said code be amended and reenacted; that §18B-2B-6 of said code be amended and reenacted; that §18B-4-6 of said code be amended and reenacted; that §18B-5-4 of said code be amended and reenacted; that §18B-10-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §18B-19-1, §18B-19-2, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-8, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-12, §18B-19-13, §18B-19-14, §18B-19-15, §18B-19-16, §18B-19-17 and §18B-19-18, 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.**

18B. **Higher Education.**

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

**ARTICLE 6. STATE BUILDINGS.**

**§5-6-4a. Review of real property contracts and agreements;  
master plan for office space.**

1 (a) The Secretary of Administration shall provide to the  
2 Joint Committee on Government and Finance a copy of a  
3 contract or agreement for real property exceeding \$1 million  
4 and a report setting forth a detailed summary of the terms of the  
5 contract or agreement, including the name of the owner of the  
6 property and the agent involved in the sale, at least thirty days  
7 prior to any sale, exchange, transfer, purchase, lease purchase,  
8 lease or rental of real property, any refundings of lease  
9 purchases, leases or rental agreements, any construction of new  
10 buildings and any other acquisition or lease of buildings, office  
11 space or grounds by any state agency, but excepting the  
12 transactions of the Higher Education Policy Commission,  
13 Council for Community and Technical College Education, state  
14 institutions of higher education and the Division of Highways  
15 for state road purposes pursuant to article two-a, chapter  
16 seventeen of this code: *Provided*, That a contract or agreement  
17 for the lease purchase, lease or rental of real property by any  
18 state agency, where the costs of real property acquisition and  
19 improvements are to be financed, in whole or in part, with bond  
20 proceeds, may contain a preliminary schedule of rents and  
21 leases for purposes of review by the committee.

22 (b) For renewals of contracts or agreements required to  
23 be reported by this section, the Secretary of Administration  
24 shall provide a report setting forth a detailed summary of the  
25 terms of the contract or agreement, including the name of the  
26 owner of the property.

27 (c) Within thirty days after receipt of the contract,  
28 agreement or report, the committee shall meet and review the  
29 contract, agreement or report.

## **CHAPTER 18B. HIGHER EDUCATION.**

### **Article**

- 1B. Higher Education Policy Commission.**
- 2A. Board of Governors.**
- 2B. West Virginia Council for Community and Technical College Education.**
- 4. General Administration.**
- 5. Higher Education Budgets and Expenditures.**
- 10. Fees and Other Money Collected at State Institutions of Higher Education.**
- 19. Capital Projects and Facilities Needs.**

## **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

### **\*§18B-1B-4. Powers and duties of Higher Education Policy Commission.**

1 (a) The primary responsibility of the commission is to  
2 develop, establish and implement policy that will achieve the  
3 goals and objectives found in section one-a, article one and  
4 article one-d of this chapter. The commission shall exercise  
5 its authority and carry out its responsibilities in a manner that  
6 is consistent and not in conflict with the powers and duties  
7 assigned by law to the West Virginia Council for Community  
8 and Technical College Education and the powers and duties  
9 assigned to the governing boards of Marshall University and  
10 West Virginia University, respectively. To that end, the

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\***CLERK'S NOTE:** This section was also amended by S. B. 611 (Chapter 68) which passed subsequent to this act.

11 commission, has the following powers and duties relating to  
12 the institutions under its jurisdiction:

13 (1) Develop, oversee and advance the public policy  
14 agenda pursuant to section one, article one-a of this chapter  
15 to address major challenges facing the state, including, but  
16 not limited to, the goals and objectives found in section one-  
17 a, article one of this chapter and article one-d of this chapter  
18 and including specifically those goals and objectives  
19 pertaining to the compacts created pursuant to section seven,  
20 article one-d of this chapter and to develop and implement  
21 the master plan described in section five, article one-d of this  
22 chapter for the purpose of accomplishing the mandates of this  
23 section;

24 (2) Develop, oversee and advance the promulgation and  
25 implementation of a financing rule for state institutions of  
26 higher education under its jurisdiction. The rule shall meet  
27 the following criteria:

28 (A) Provide for an adequate level of educational and  
29 general funding for institutions pursuant to section five,  
30 article one-a of this chapter;

31 (B) Serve to maintain institutional assets, including, but  
32 not limited to, human and physical resources and eliminating  
33 deferred maintenance;

34 (C) Invest and provide incentives for achieving the  
35 priority goals in the public policy agenda, including, but not  
36 limited to, those found in section one-a, article one of this  
37 chapter; and

38 (D) Evaluate institutions' requests for tuition and fee  
39 increases except Marshall University and West Virginia  
40 University which are subject to the provisions of section one,  
41 article ten of this chapter;

42           (3) In collaboration with the council, create a policy  
43 leadership structure capable of the following actions:

44           (A) Developing, building public consensus around and  
45 sustaining attention to a long-range public policy agenda. In  
46 developing the agenda, the commission and council shall  
47 seek input from the Legislature and the Governor and  
48 specifically from the State Board of Education and local  
49 school districts in order to create the necessary linkages to  
50 assure smooth, effective and seamless movement of students  
51 through the public education and post-secondary education  
52 systems and to ensure that the needs of public school courses  
53 and programs can be fulfilled by the graduates produced and  
54 the programs offered;

55           (B) Ensuring that the governing boards carry out their  
56 duty effectively to govern the individual institutions of higher  
57 education; and

58           (C) Holding the higher education institutions and the  
59 higher education systems as a whole accountable for  
60 accomplishing their missions and implementing the  
61 provisions of the compacts;

62           (4) Develop and adopt each institutional compact;

63           (5) Review and adopt the annual updates of the  
64 institutional compacts;

65           (6) Serve as the accountability point to state  
66 policymakers:

67           (A) The Governor for implementation of the public  
68 policy agenda; and

69           (B) The Legislature by maintaining a close working  
70 relationship with the legislative leadership and the

71 Legislative Oversight Commission on Education  
72 Accountability;

73 (7) Jointly with the council, promulgate legislative rules  
74 pursuant to article three-a, chapter twenty-nine-a of this code  
75 to fulfill the purposes of section five, article one-a of this  
76 chapter;

77 (8) Establish and implement a peer group for each  
78 institution as described in section three, article one-a of this  
79 chapter;

80 (9) Establish and implement the benchmarks and  
81 performance indicators necessary to measure institutional  
82 progress in achieving state policy priorities and institutional  
83 missions pursuant to section seven, article one-d of this  
84 chapter;

85 (10) Report to the Legislature and to the Legislative  
86 Oversight Commission on Education Accountability annually  
87 during the January interim meeting period on a date and at a  
88 time and location to be determined by the President of the  
89 Senate and the Speaker of the House of Delegates. The  
90 report shall address at least the following:

91 (A) The performance of its system of higher education  
92 during the previous fiscal year, including, but not limited to,  
93 progress in meeting the goals, objectives, and priorities set  
94 forth in article one and article one-d of this chapter and in the  
95 commission's master plan and institutional compacts;

96 (B) The commission's priorities for new operating and  
97 capital investments and the justification for the priority;

98 (C) Recommendations of the commission for statutory  
99 changes necessary or expedient to achieve state goals and  
100 objectives;

101 (11) Establish a formal process for identifying capital  
102 investment needs and for determining priorities for these  
103 investments for consideration by the Governor and the  
104 Legislature as part of the appropriation request process  
105 pursuant to article nineteen of this chapter;

106 (12) Develop standards and evaluate governing board  
107 requests for capital project financing in accordance with  
108 article nineteen of this chapter;

109 (13) Ensure that governing boards manage capital  
110 projects and facilities needs effectively, including review and  
111 approval or disapproval of capital projects, in accordance  
112 with article nineteen of this chapter;

113 (14) Acquire legal services that are considered necessary,  
114 including representation of the commission, its institutions,  
115 employees and officers before any court or administrative  
116 body, notwithstanding any other provision of this code to the  
117 contrary. The counsel may be employed either on a salaried  
118 basis or on a reasonable fee basis. In addition, the  
119 commission may, but is not required to, call upon the  
120 Attorney General for legal assistance and representation as  
121 provided by law;

122 (15) Employ a Chancellor for Higher Education pursuant  
123 to section five of this article;

124 (16) Employ other staff as necessary and appropriate to  
125 carry out the duties and responsibilities of the commission  
126 and the council, in accordance with article four of this  
127 chapter;

128 (17) Provide suitable offices in Charleston for the  
129 chancellor, vice chancellors and other staff;

130 (18) Advise and consent in the appointment of the  
131 presidents of the institutions of higher education under its



132 jurisdiction pursuant to section six of this article. The role of  
133 the commission in approving an institutional president is to  
134 assure through personal interview that the person selected  
135 understands and is committed to achieving the goals and  
136 objectives as set forth in the institutional compact and in  
137 section one-a, article one of this chapter;

138 (19) Approve the total compensation package from all  
139 sources for presidents of institutions under its jurisdiction, as  
140 proposed by the governing boards. The governing boards  
141 shall obtain approval from the commission of the total  
142 compensation package both when institutional presidents are  
143 employed initially and afterward when any change is made in  
144 the amount of the total compensation package;

145 (20) Establish and implement the policy of the state to  
146 assure that parents and students have sufficient information  
147 at the earliest possible age on which to base academic  
148 decisions about what is required for students to be successful  
149 in college, other post-secondary education and careers  
150 related, as far as possible, to results from current assessment  
151 tools in use in West Virginia;

152 (21) Approve and implement a uniform standard jointly  
153 with the council to determine which students shall be placed  
154 in remedial or developmental courses. The standard shall be  
155 aligned with college admission tests and assessment tools  
156 used in West Virginia and shall be applied uniformly by the  
157 governing boards throughout the public higher education  
158 system. The chancellors shall develop a clear, concise  
159 explanation of the standard which they shall communicate to  
160 the State Board of Education and the State Superintendent of  
161 Schools;

162 (22) Jointly with the council, develop and implement an  
163 oversight plan to manage systemwide technology by:

164 (A) Expanding distance learning and technology  
165 networks to enhance teaching and learning, promote access  
166 to quality educational offerings with minimum duplication of  
167 effort; and

168 (B) Increasing the delivery of instruction to  
169 nontraditional students, to provide services to business and  
170 industry and increase the management capabilities of the  
171 higher education system;

172 (C) Notwithstanding any other provision of law or this  
173 code to the contrary, the council, commission and state  
174 institutions of higher education are not subject to the  
175 jurisdiction of the Chief Technology Officer for any purpose;

176 (23) Establish and implement policies and procedures to  
177 ensure that a student may transfer and apply toward the  
178 requirements for a bachelor's degree the maximum number of  
179 credits earned at any regionally accredited in-state or out-  
180 of-state community and technical college with as few  
181 requirements to repeat courses or to incur additional costs as  
182 is consistent with sound academic policy;

183 (24) Establish and implement policies and procedures to  
184 ensure that a student may transfer and apply toward the  
185 requirements for a degree the maximum number of credits  
186 earned at any regionally accredited in-state or out-of-state  
187 higher education institution with as few requirements to  
188 repeat courses or to incur additional costs as is consistent  
189 with sound academic policy;

190 (25) Establish and implement policies and procedures to  
191 ensure that a student may transfer and apply toward the  
192 requirements for a master's degree the maximum number of  
193 credits earned at any regionally accredited in-state or out-of-  
194 state higher education institution with as few requirements to  
195 repeat courses or to incur additional costs as is consistent  
196 with sound academic policy;

197           (26) Establish and implement policies and programs, in  
198 cooperation with the council and the institutions of higher  
199 education, through which a student who has gained  
200 knowledge and skills through employment, participation in  
201 education and training at vocational schools or other  
202 education institutions, or Internet-based education programs,  
203 may demonstrate by competency-based assessment that he or  
204 she has the necessary knowledge and skills to be granted  
205 academic credit or advanced placement standing toward the  
206 requirements of an associate's degree or a bachelor's degree  
207 at a state institution of higher education;

208           (27) Seek out and attend regional, national and  
209 international meetings and forums on education and  
210 workforce development-related topics, as in the  
211 commission's discretion is critical for the performance of  
212 their duties as members, for the purpose of keeping abreast  
213 of education trends and policies to aid it in developing the  
214 policies for this state to meet the established education goals  
215 and objectives pursuant to section one-a, article one of this  
216 chapter and article one-d of this chapter;

217           (28) Promulgate and implement a rule for higher  
218 education governing boards and institutions to follow when  
219 considering capital projects pursuant to article nineteen of  
220 this chapter;

221           (29) Consider and submit to the appropriate agencies of  
222 the executive and legislative branches of state government an  
223 appropriation request that reflects recommended  
224 appropriations for the commission and the institutions under  
225 its jurisdiction. The commission shall submit as part of its  
226 appropriation request the separate recommended  
227 appropriation request received from the council, both for the  
228 council and the institutions under the council's jurisdiction.  
229 The commission annually shall submit the proposed  
230 institutional allocations based on each institution's progress  
231 toward meeting the goals of its institutional compact;

232           (30) The commission may assess institutions under its  
233 jurisdiction, including the state institutions of higher  
234 education known as Marshall University and West Virginia  
235 University, for the payment of expenses of the commission  
236 or for the funding of statewide higher education services,  
237 obligations or initiatives related to the goals set forth for the  
238 provision of public higher education in the state;

239           (31) Promulgate rules allocating reimbursement of  
240 appropriations, if made available by the Legislature, to  
241 institutions of higher education for qualifying noncapital  
242 expenditures incurred in providing services to students with  
243 physical, learning or severe sensory disabilities;

244           (32) Make appointments to boards and commissions  
245 where this code requires appointments from the State College  
246 System Board of Directors or the University of West Virginia  
247 System Board of Trustees which were abolished effective  
248 June 30, 2000, except in those cases where the required  
249 appointment has a specific and direct connection to the  
250 provision of community and technical college education, the  
251 appointment shall be made by the council. Notwithstanding  
252 any provisions of this code to the contrary, the commission  
253 or the council may appoint one of its own members or any  
254 other citizen of the state as its designee. The commission and  
255 council shall appoint the total number of persons in the  
256 aggregate required to be appointed by these previous  
257 governing boards;

258           (33) Pursuant to article three-a, chapter twenty-nine-a of  
259 this code and section six, article one of this chapter,  
260 promulgate rules necessary or expedient to fulfill the  
261 purposes of this chapter. The commission and the council  
262 shall promulgate a uniform joint legislative rule for the  
263 purpose of standardizing, as much as possible, the  
264 administration of personnel matters among the state  
265 institutions of higher education;

266           (34) Determine when a joint rule among the governing  
267 boards of the institutions under its jurisdiction is necessary or  
268 required by law and, in those instances, in consultation with  
269 the governing boards of all the institutions under its  
270 jurisdiction, promulgate the joint rule;

271           (35) Promulgate and implement a rule jointly with the  
272 council whereby course credit earned at a community and  
273 technical college transfers for program credit at any other  
274 state institution of higher education and is not limited to  
275 fulfilling a general education requirement;

276           (36) By November 1, 2010, promulgate a rule pursuant  
277 to section one, article ten of this chapter, establishing tuition  
278 and fee policy for all institutions of higher education under  
279 the jurisdiction of the commission, including Marshall  
280 University and West Virginia University. The rule shall  
281 include, but is not limited to, the following:

282           (A) Comparisons with peer institutions;

283           (B) Differences among institutional missions;

284           (C) Strategies for promoting student access;

285           (D) Consideration of charges to out-of-state students; and

286           (E) Such other policies as the commission and council  
287 consider appropriate;

288           (37) Implement general disease awareness initiatives to  
289 educate parents and students, particularly dormitory  
290 residents, about meningococcal meningitis; the potentially  
291 life-threatening dangers of contracting the infection;  
292 behaviors and activities that can increase risks; measures that  
293 can be taken to prevent contact or infection; and potential  
294 benefits of vaccination. The commission shall encourage

295 institutions that provide medical care to students to provide  
296 access to the vaccine for those who wish to receive it; and

297 (38) Notwithstanding any other provision of this code to  
298 the contrary, sell, lease, convey or otherwise dispose of all or  
299 part of any real property that it owns, in accordance with  
300 article nineteen of this chapter.

301 (b) In addition to the powers and duties listed in  
302 subsection (a) of this section, the commission has the  
303 following general powers and duties related to its role in  
304 developing, articulating and overseeing the implementation  
305 of the public policy agenda:

306 (1) Planning and policy leadership, including a distinct  
307 and visible role in setting the state's policy agenda and in  
308 serving as an agent of change;

309 (2) Policy analysis and research focused on issues  
310 affecting the system as a whole or a geographical region of  
311 the system;

312 (3) Development and implementation of institutional  
313 mission definitions, including use of incentive funds to  
314 influence institutional behavior in ways that are consistent  
315 with public priorities;

316 (4) Academic program review and approval for  
317 institutions under its jurisdiction, including the use of  
318 institutional missions as a template to judge the  
319 appropriateness of both new and existing programs and the  
320 authority to implement needed changes. The commission's  
321 authority to review and approve academic programs for either  
322 the state institution of higher education known as Marshall  
323 University or West Virginia University is limited to programs  
324 that are proposed to be offered at a new location not presently  
325 served by that institution;

326 (5) Distribution of funds appropriated to the commission,  
327 including incentive and performance-based funding;

328 (6) Administration of state and federal student aid  
329 programs under the supervision of the Vice Chancellor for  
330 Administration, including promulgation of any rules  
331 necessary to administer those programs;

332 (7) Serving as the agent to receive and disburse public  
333 funds when a governmental entity requires designation of a  
334 statewide higher education agency for this purpose;

335 (8) Developing, establishing and implementing  
336 information, assessment and accountability systems,  
337 including maintaining statewide data systems that facilitate  
338 long-term planning and accurate measurement of strategic  
339 outcomes and performance indicators;

340 (9) Jointly with the council, promulgating and  
341 implementing rules for licensing and oversight for both  
342 public and private degree-granting and nondegree-granting  
343 institutions that provide post-secondary education courses or  
344 programs in the state pursuant to the findings and policy  
345 recommendations required by section eleven of this article;

346 (10) Developing, implementing and overseeing statewide  
347 and regional projects and initiatives related to providing post-  
348 secondary education at the baccalaureate level and above  
349 such as those using funds from federal categorical programs  
350 or those using incentive and performance-based funding from  
351 any source; and

352 (11) Quality assurance that intersects with all other duties  
353 of the commission particularly in the areas of research, data  
354 collection and analysis, planning, policy analysis, program  
355 review and approval, budgeting and information and  
356 accountability systems.

357 (c) In addition to the powers and duties provided in  
358 subsections (a) and (b) of this section and any other powers  
359 and duties as may be assigned to it by law, the commission  
360 has any other powers and duties necessary or expedient to  
361 accomplish the purposes of this article.

362 (d) The commission may withdraw specific powers of a  
363 governing board of an institution under its jurisdiction for a  
364 period not to exceed two years, if the commission makes a  
365 determination that any of the following conditions exist:

366 (1) The governing board has failed for two consecutive  
367 years to develop or implement an institutional compact as  
368 required in article one-d of this chapter;

369 (2) The commission has received information,  
370 substantiated by independent audit, of significant  
371 mismanagement or failure to carry out the powers and duties  
372 of the board of governors according to state law; or

373 (3) Other circumstances which, in the view of the  
374 commission, severely limit the capacity of the board of  
375 governors to carry out its duties and responsibilities.

376 Specific powers of a governing board may not be  
377 withdrawn for a period exceeding two years. During that time  
378 the commission may take all steps necessary to restore sound,  
379 stable and responsible institutional governance.

## **ARTICLE 2A. BOARDS OF GOVERNORS.**

### **§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 each master plan at the institutional level resides  
10 with the board of governors, but the ultimate responsibility  
11 for approving the final version of each institutional master  
12 plan, including periodic updates, resides with the commission  
13 or council, as appropriate.

14           (2) Each institutional master plan shall include, but not be  
15 limited to, the following:

16           (A) A detailed demonstration of how the institutional  
17 master plan will be used to meet the goals and objectives of  
18 the institutional 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) Documentation showing how the governing board  
26 involved the commission or council, as appropriate,  
27 institutional constituency groups, clientele of the institution  
28 and the general public in the development of all segments of  
29 the institutional master plan.

30           (3) The plan shall be established for periods of not fewer  
31 than three nor more than five years and shall be revised  
32 periodically as necessary, including adding or deleting degree

33 programs as the governing board in its discretion determines  
34 is necessary;

35 (c) Develop a ten-year campus development plan in  
36 accordance with article nineteen of this chapter;

37 (d) Prescribe for the institution, under its jurisdiction, in  
38 accordance with its master plan and compact, specific  
39 functions and responsibilities to achieve the goals, objectives  
40 and priorities established in articles one and one-d of this  
41 chapter to meet the higher education needs of its area of  
42 responsibility and to avoid unnecessary duplication;

43 (e) Direct the preparation of an appropriation request for  
44 the institution under its jurisdiction, which relates directly to  
45 missions, goals and projections as found in the institutional  
46 master plan and the institutional compact;

47 (f) Consider, revise and submit to the commission or  
48 council, as appropriate, an appropriation request on behalf of  
49 the institution under its jurisdiction;

50 (g) Review, at least every five years, all academic  
51 programs offered at the institution under its jurisdiction. The  
52 review shall address the viability, adequacy and necessity of  
53 the programs in relation to established state goals, objectives  
54 and priorities, the institutional master plan, the institutional  
55 compact and the education and workforce needs of its  
56 responsibility district. As a part of the review, each  
57 governing board shall require the institution under its  
58 jurisdiction to conduct periodic studies of its graduates and  
59 their employers to determine placement patterns and the  
60 effectiveness of the education experience. Where  
61 appropriate, these studies should coincide with the studies  
62 required of many academic disciplines by their accrediting  
63 bodies;

64           (h) Ensure that the sequence and availability of academic  
65 programs and courses offered by the institution under its  
66 jurisdiction is such that students have the maximum  
67 opportunity to complete programs in the time frame normally  
68 associated with program completion. Each governing board  
69 is responsible to see that the needs of nontraditional college-  
70 age students are appropriately addressed and, to the extent it  
71 is possible for the individual governing board to control, to  
72 assure core course work completed at the institution is  
73 transferable to any other state institution of higher education  
74 for credit with the grade earned;

75           (i) Subject to article one-b of this chapter, approve the  
76 teacher education programs offered in the institution under its  
77 control. In order to permit graduates of teacher education  
78 programs to receive a degree from a nationally accredited  
79 program and in order to prevent expensive duplication of  
80 program accreditation, the commission may select and use  
81 one nationally recognized teacher education program  
82 accreditation standard as the appropriate standard for  
83 program evaluation;

84           (j) Involve faculty, students and classified employees in  
85 institutional-level planning and decisionmaking when those  
86 groups are affected;

87           (k) Subject to the provisions of federal law and pursuant to  
88 articles seven, eight and nine of this chapter and to rules adopted  
89 by the commission and the council, administer a system for the  
90 management of personnel matters, including, but not limited to,  
91 personnel classification, compensation and discipline for  
92 employees at the institution under its jurisdiction;

93           (l) Administer a system for hearing employee grievances  
94 and appeals. Notwithstanding any other provision of this  
95 code to the contrary, the procedure established in article two,  
96 chapter six-c of this code is the exclusive mechanism for  
97 hearing prospective employee grievances and appeals;

98 (m) Solicit and use or expend voluntary support,  
99 including financial contributions and support services, for the  
100 institution under its jurisdiction;

101 (n) Appoint a president for the institution under its  
102 jurisdiction subject to section six, article one-b of this chapter;

103 (o) Conduct written performance evaluations of the  
104 president pursuant to section six, article one-b of this chapter;

105 (p) 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 (q) Submit to the commission or council, as appropriate,  
109 any data or reports requested by the commission or council,  
110 as appropriate, within the time frame set by the commission  
111 or council;

112 (r) Enter into contracts or consortium agreements with the  
113 public schools, private schools or private industry to provide  
114 technical, vocational, college preparatory, remedial and  
115 customized training courses at locations either on campuses  
116 of the state institutions of higher education or at off-campus  
117 locations in the institution's responsibility district. To  
118 accomplish this goal, the boards may share resources among  
119 the various groups in the community;

120 (s) Provide and transfer funding and property to certain  
121 corporations pursuant to section ten, article twelve of this  
122 chapter;

123 (t) Delegate, with prescribed standards and limitations, the  
124 part of its power and control over the business affairs of the  
125 institution to the president in any case where it considers the  
126 delegation necessary and prudent in order to enable the  
127 institution to function in a proper and expeditious manner and to

128 meet the requirements of its master plan and compact. If a  
129 governing board elects to delegate any of its power and control  
130 under this subsection, it shall enter the delegation in the minutes  
131 of the meeting when the decision was made and shall notify the  
132 commission or council, as appropriate. Any delegation of power  
133 and control may be rescinded by the appropriate governing  
134 board, the commission or council, as appropriate, at any time, in  
135 whole or in part, except that the commission may not revoke  
136 delegations of authority made by the governing boards of  
137 Marshall University or West Virginia University as they relate  
138 to the state institutions of higher education known as Marshall  
139 University and West Virginia University;

140 (u) Unless changed by the commission or the council, as  
141 appropriate, continue to abide by existing rules setting forth  
142 standards for acceptance of advanced placement credit for the  
143 institution under its jurisdiction. Individual departments at a state  
144 institution of higher education may, upon approval of the  
145 institutional faculty senate, require higher scores on the advanced  
146 placement test than scores designated by the governing board  
147 when the credit is to be used toward meeting a requirement of the  
148 core curriculum for a major in that department;

149 (v) Consult, cooperate and work with the State Treasurer  
150 and the State Auditor to update as necessary and maintain an  
151 efficient and cost-effective system for the financial  
152 management and expenditure of appropriated and  
153 nonappropriated revenue at the institution under its  
154 jurisdiction that ensures that properly submitted requests for  
155 payment be paid on or before the due date but, in any event,  
156 within fifteen days of receipt in the State Auditor's office;

157 (w) In consultation with the appropriate chancellor and the  
158 Secretary of the Department of Administration, develop, update  
159 as necessary and maintain a plan to administer a consistent  
160 method of conducting personnel transactions, including, but not  
161 limited to, hiring, dismissal, promotions and transfers at the

162 institution under its jurisdiction. Each personnel transaction  
163 shall be accompanied by the appropriate standardized system or  
164 forms, which shall be submitted to the respective governing  
165 board and the Department of Finance and Administration;

166 (x) Notwithstanding any other provision of this code to  
167 the contrary, transfer funds from any account specifically  
168 appropriated for its use to any corresponding line item in a  
169 general revenue account at any agency or institution under its  
170 jurisdiction as long as the transferred funds are used for the  
171 purposes appropriated;

172 (y) Transfer funds from appropriated special revenue  
173 accounts for capital improvements under its jurisdiction to  
174 special revenue accounts at agencies or institutions under its  
175 jurisdiction as long as the transferred funds are used for the  
176 purposes appropriated in accordance with article nineteen of this  
177 chapter;

178 (z) Notwithstanding any other provision of this code to  
179 the contrary, acquire legal services that are necessary,  
180 including representation of the governing board, its  
181 institution, employees and officers before any court or  
182 administrative body. The counsel may be employed either on  
183 a salaried basis or on a reasonable fee basis. In addition, the  
184 governing board may, but is not required to, call upon the  
185 Attorney General for legal assistance and representation as  
186 provided by law; and

187 (aa) Contract and pay for disability insurance for a class  
188 or classes of employees at a state institution of higher  
189 education under its jurisdiction.

**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 six,  
11 article one of this chapter and article three-a, chapter twenty-  
12 nine-a of this code to implement this section and applicable  
13 provisions of article one-d of this chapter. To implement  
14 article one-d of this chapter relevant to community and  
15 technical colleges, the council may propose rules jointly with  
16 the commission or separately and may choose to address all  
17 components of the accountability system in a single rule or  
18 may propose additional rules to cover specific components.

19 (c) The council has the following powers and duties  
20 relating to the authority established in subsection (a) of this  
21 section:

22 (1) Develop, oversee and advance the public policy  
23 agenda for community and technical college education for the  
24 purpose of accomplishing the mandates of this section,  
25 including, but not limited to, the following:

26 (A) Achieving the goals and objectives established in  
27 articles one and one-d of this chapter;

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\*CLERK'S NOTE: This section was also amended by S. B. 611 (Chapter 68)  
which passed subsequent to this act.

28 (B) Addressing the goals and objectives contained in the  
29 institutional compacts created pursuant to section seven,  
30 article one-d of this chapter; and

31 (C) Developing and implementing the master plan  
32 described in section five, article one-d of this chapter;

33 (2) Propose a legislative rule pursuant to subsection (b)  
34 of this section and article three-a, chapter twenty-nine-a of  
35 this code to develop and implement a financing policy for  
36 community and technical college education in West Virginia.  
37 The rule shall meet the following criteria:

38 (A) Provide for an adequate level of educational and  
39 general funding for institutions pursuant to section five,  
40 article one-a of this chapter;

41 (B) Serve to maintain institutional assets, including, but  
42 not limited to, human and physical resources and deferred  
43 maintenance;

44 (C) Establish a plan for strategic funding to strengthen  
45 capacity for support of community and technical college  
46 education;

47 (D) Establish a plan that measures progress and provides  
48 performance-based funding to institutions which make  
49 significant progress in the following specific areas:

50 (i) Achieving the objectives and priorities established in  
51 article one-d of this chapter;

52 (ii) Serving targeted populations, especially working age  
53 adults twenty-five years of age and over;

54 (iii) Providing access to high-cost, high-demand technical  
55 programs in every region of the state;



56 (iv) Increasing the percentage of functionally literate  
57 adults in every region of the state; and

58 (v) Providing high-quality community and technical  
59 college education services to residents of every region of the  
60 state; and

61 (E) Evaluate institutions' requests for tuition and fee  
62 increases subject to section one, article ten of this chapter;

63 (3) Create a policy leadership structure relating to  
64 community and technical college education capable of the  
65 following actions:

66 (A) Developing, building public consensus around and  
67 sustaining attention to a long-range public policy agenda. In  
68 developing the agenda, the council shall seek input from the  
69 Legislature and the Governor and specifically from the State  
70 Board of Education and local school districts in order to  
71 create the necessary linkages to assure smooth, effective and  
72 seamless movement of students through the public education  
73 and post-secondary education systems and to ensure that the  
74 needs of public school courses and programs can be fulfilled  
75 by the graduates produced and the programs offered;

76 (B) Ensuring that the governing boards of the institutions  
77 under the council's jurisdiction carry out their duty  
78 effectively to govern the individual institutions of higher  
79 education; and

80 (C) Holding each community and technical college and  
81 the statewide network of independently accredited  
82 community and technical colleges as a whole accountable for  
83 accomplishing their missions and achieving the goals and  
84 objectives established in articles one, one-d and three-c of  
85 this chapter;

86           (4) Develop for inclusion in the statewide public agenda,  
87 a plan for raising education attainment, increasing adult  
88 literacy, promoting workforce and economic development  
89 and ensuring access to advanced education for the citizens of  
90 West Virginia;

91           (5) Provide statewide leadership, coordination, support  
92 and technical assistance to the community and technical  
93 colleges and to provide a focal point for visible and effective  
94 advocacy for their work and for the public policy agendas  
95 approved by the commission and council.

96           (6) Review and adopt annually all institutional compacts  
97 for the community and technical colleges pursuant to section  
98 seven, article one-d of this chapter;

99           (7) Fulfill the mandates of the accountability system  
100 established in article one-d of this chapter and report on  
101 progress in meeting established goals, objectives and  
102 priorities to the elected leadership of the state;

103           (8) Propose a legislative rule pursuant to subsection (b)  
104 of this section and article three-a, chapter twenty-nine-a of  
105 this code to establish benchmarks and indicators in  
106 accordance with this subsection;

107           (9) Establish and implement the benchmarks and  
108 performance indicators necessary to measure institutional  
109 progress:

110           (A) In meeting state goals, objectives and priorities  
111 established in articles one and one-d of this chapter;

112           (B) In carrying out institutional missions; and

113           (C) In meeting the essential conditions established in  
114 article three-c of this chapter;

115 (10) Collect and analyze data relating to the performance of  
116 community and technical colleges in every region of West  
117 Virginia and report periodically or as directed to the Legislative  
118 Oversight Commission on Education Accountability on the  
119 progress in meeting the goals and objectives established in  
120 articles one and one-d of this chapter.

121 Additionally, the council shall report annually during the  
122 January interim meeting period on a date and at a time and  
123 location to be determined by the President of the Senate and  
124 the Speaker of the House of Delegates.

125 The annual report shall address at least the following:

126 (A) The performance of the community and technical  
127 college network during the previous fiscal year, including,  
128 but not limited to, progress in meeting the goals, objectives  
129 and priorities established in articles one and one-d of this  
130 chapter and in the council's master plan and institution  
131 compacts;

132 (B) The priorities of the council for new operating and  
133 capital investments and the justification for the priority; and

134 (C) Recommendations of the council for statutory  
135 changes necessary or expedient to achieve established state  
136 goals and objectives;

137 (11) In accordance with article nineteen of this chapter:

138 (A) Establish a formal process for identifying needs for  
139 capital investments and for determining priorities for these  
140 needs for consideration by the Governor and the Legislature  
141 as part of the appropriation request process;

142 (B) Ensure that the governing boards adhere to the capital  
143 construction and maintenance provisions of article nineteen  
144 of this chapter; and

145 (C) Notwithstanding any other provision of this code to  
146 the contrary, sell, lease, convey or otherwise dispose of all or  
147 part of any real property that it owns.

148 (12) Draw upon the expertise available within Workforce  
149 West Virginia and the West Virginia Development Office as  
150 a resource in the area of workforce development and training;

151 (13) Acquire legal services that are considered necessary,  
152 including representation of the council, its institutions,  
153 employees and officers before any court or administrative  
154 body, notwithstanding any other provision of this code to the  
155 contrary. The counsel may be employed either on a salaried  
156 basis or on a reasonable fee basis. In addition, the council  
157 may, but is not required to, call upon the Attorney General  
158 for legal assistance and representation as provided by law;

159 (14) Employ a chancellor for community and technical  
160 college education pursuant to section three of this article;

161 (15) Employ other staff as necessary and appropriate to  
162 carry out the duties and responsibilities of the council  
163 consistent with section two, article four of this chapter;

164 (16) Employ other staff as necessary and appropriate to  
165 carry out the duties and responsibilities of the council who  
166 are employed solely by the council;

167 (17) Provide suitable offices in Charleston for the  
168 chancellor and other staff;

169 (18) Approve the total compensation package from all  
170 sources for presidents of community and technical colleges,  
171 as proposed by the governing boards. The governing boards  
172 shall obtain approval from the council of the total  
173 compensation package both when presidents are employed  
174 initially and subsequently when any change is made in the  
175 amount of the total compensation package;

176           (19) Establish and implement policies and procedures to  
177 ensure that a student may transfer and apply toward the  
178 requirements for a degree the maximum number of credits  
179 earned at any regionally accredited in-state or out-of-state  
180 higher education institution with as few requirements to  
181 repeat courses or to incur additional costs as is consistent  
182 with sound academic policy;

183           (20) Establish and implement policies and programs,  
184 jointly with the community and technical colleges, through  
185 which a student who has gained knowledge and skills  
186 through employment, participation in education and training  
187 at vocational schools or other education institutions, or  
188 Internet-based education programs, may demonstrate by  
189 competency-based assessment the necessary knowledge and  
190 skills to be granted academic credit or advanced placement  
191 standing toward the requirements of an associate's degree or  
192 a bachelor's degree at a state institution of higher education;

193           (21) Seek out and attend regional and national meetings  
194 and forums on education and workforce development-related  
195 topics, that council members consider critical for the  
196 performance of their duties. The council shall keep abreast  
197 of national and regional community and technical college  
198 education trends and policies to aid members in developing  
199 the policies for this state that meet the education goals and  
200 objectives established in articles one and one-d of this  
201 chapter;

202           (22) Assess community and technical colleges for the  
203 payment of expenses of the council or for the funding of  
204 statewide services, obligations or initiatives related  
205 specifically to the provision of community and technical  
206 college education;

207           (23) Promulgate rules allocating reimbursement of  
208 appropriations, if made available by the Legislature, to

209 community and technical colleges for qualifying noncapital  
210 expenditures incurred in the provision of services to students  
211 with physical, learning or severe sensory disabilities;

212 (24) Assume the prior authority of the commission in  
213 examining and approving tuition and fee increase proposals  
214 submitted by community and technical college governing  
215 boards as provided in section one, article ten of this chapter.

216 (25) Develop and submit to the commission, a single  
217 appropriation request for community and technical college  
218 education that reflects recommended appropriations for  
219 community and technical colleges and that meets the  
220 following conditions:

221 (A) Incorporates the provisions of the financing rule  
222 mandated by this section to measure and provide  
223 performance funding to institutions that achieve or make  
224 significant progress toward achieving established state goals,  
225 objectives and priorities;

226 (B) Considers the progress of each institution toward  
227 meeting the essential conditions set forth in section three,  
228 article three-c of this chapter, including independent  
229 accreditation; and

230 (C) Considers the progress of each institution toward  
231 meeting the goals, objectives and priorities established in  
232 article one-d of this chapter and its approved institutional  
233 compact.

234 (26) Administer and distribute the independently  
235 accredited community and technical college development  
236 account;

237 (27) Establish a plan of strategic funding to strengthen  
238 capacity for support and assure delivery of high quality

239 community and technical college education in all regions of  
240 the state;

241 (28) Foster coordination among all state-level, regional  
242 and local entities providing post-secondary vocational  
243 education or workforce development and coordinate all  
244 public institutions and entities that have a community and  
245 technical college mission;

246 (29) Assume the principal responsibility for oversight of  
247 those community and technical colleges seeking independent  
248 accreditation and for holding governing boards accountable  
249 for meeting the essential conditions pursuant to article three-c  
250 of this chapter;

251 (30) Advise and consent in the appointment of the  
252 presidents of the community and technical colleges pursuant  
253 to section six, article one-b of this chapter. The role of the  
254 council in approving a president is to assure through personal  
255 interview that the person selected understands and is  
256 committed to achieving the goals and objectives established  
257 in the institutional compact and in articles one, one-d and  
258 three-c of this chapter;

259 (31) Provide a single, statewide link for current and  
260 prospective employers whose needs extend beyond one  
261 locality;

262 (32) Provide a mechanism capable of serving two or  
263 more institutions to facilitate joint problemsolving in areas  
264 including, but not limited to, the following:

265 (A) Defining faculty roles and personnel policies;

266 (B) Delivering high-cost technical education programs  
267 across the state;

268 (C) Providing one-stop service for workforce training to  
269 be delivered by multiple institutions; and

270 (D) Providing opportunities for resource-sharing and  
271 collaborative ventures;

272 (33) Provide support and technical assistance to develop,  
273 coordinate and deliver effective and efficient community and  
274 technical college education programs and services in all  
275 regions of the state;

276 (34) Assist the community and technical colleges in  
277 establishing and promoting links with business, industry and  
278 labor in the geographic areas for which each community and  
279 technical college is responsible;

280 (35) Develop alliances among the community and technical  
281 colleges for resource sharing, joint development of courses and  
282 courseware, and sharing of expertise and staff development;

283 (36) Serve aggressively as an advocate for development  
284 of a seamless curriculum;

285 (37) Cooperate with all providers of education services in  
286 the state to remove barriers relating to a seamless system of  
287 public and higher education and to transfer and articulation  
288 between and among community and technical colleges, state  
289 colleges and universities and public education, preschool  
290 through grade twelve;

291 (38) Encourage the most efficient use of available  
292 resources;

293 (39) Coordinate with the commission in informing public  
294 school students, their parents and teachers of the academic  
295 preparation that students need in order to be prepared  
296 adequately to succeed in their selected fields of study and  
297 career plans, including presentation of academic career fairs;



298           (40) Jointly with the commission, approve and implement  
299 a uniform standard, as developed by the chancellors, to  
300 determine which students shall be placed in remedial or  
301 developmental courses. The standard shall be aligned with  
302 college admission tests and assessment tools used in West  
303 Virginia and shall be applied uniformly by the governing  
304 boards throughout the public higher education system. The  
305 chancellors shall develop a clear, concise explanation of the  
306 standard which the governing boards shall communicate to  
307 the State Board of Education and the State Superintendent of  
308 Schools;

309           (41) Develop and implement strategies and curriculum  
310 for providing developmental education which shall be  
311 applied by any state institution of higher education providing  
312 developmental education.

313           (42) Develop a statewide system of community and  
314 technical college programs and services in every region of  
315 West Virginia for competency-based certification of  
316 knowledge and skills, including a statewide competency-  
317 based associate degree program;

318           (43) Review and approve all institutional master plans for  
319 the community and technical colleges pursuant to section  
320 four, article two-a of this chapter;

321           (44) Propose rules for promulgation pursuant to  
322 subsection (b) of this section and article three-a, chapter  
323 twenty-nine-a of this code that are necessary or expedient for  
324 the effective and efficient performance of community and  
325 technical colleges in the state;

326           (45) In its sole discretion, transfer any rule under its  
327 jurisdiction, other than a legislative rule, to the jurisdiction of  
328 the governing boards, which may rescind, revise, alter or  
329 amend any rule transferred pursuant to rules adopted by the

330 council, and provide technical assistance to the institutions  
331 under its jurisdiction to aid them in promulgating rules;

332 (46) Develop for inclusion in the higher education report  
333 card, as defined in section eight, article one-d of this chapter,  
334 a separate section on community and technical colleges. This  
335 section shall include, but is not limited to, evaluation of the  
336 institutions based upon the benchmarks and indicators  
337 developed in subdivision (9) of this subsection;

338 (47) Facilitate continuation of the Advantage Valley  
339 Community College Network under the leadership and  
340 direction of Mountwest Community and Technical College;

341 (48) Initiate and facilitate creation of other regional  
342 networks of affiliated community and technical colleges that  
343 the council finds to be appropriate and in the best interests of  
344 the citizens to be served;

345 (49) Develop with the State Board of Education plans for  
346 secondary and post-secondary vocational-technical-  
347 occupational and adult basic education, including, but not  
348 limited to, the following:

349 (A) Policies to strengthen vocational-technical-  
350 occupational and adult basic education; and

351 (B) Programs and methods to assist in the improvement,  
352 modernization and expanded delivery of vocational-  
353 technical-occupational and adult basic education programs;

354 (50) Distribute federal vocational education funding  
355 provided under the Carl D. Perkins Vocational and Technical  
356 Education Act of 1998, PL 105-332, with an emphasis on  
357 distributing financial assistance among secondary and post-  
358 secondary vocational- technical-occupational and adult basic  
359 education programs to help meet the public policy agenda.

360           In distributing funds the council shall use the following  
361 guidelines:

362           (A) The State Board of Education shall continue to be the  
363 fiscal agent for federal vocational education funding;

364           (B) The percentage split between the State Board of  
365 Education and the council shall be determined by rule  
366 promulgated by the council under article three-a, chapter  
367 twenty-nine-a of this code;

368           (51) Collaborate, cooperate and interact with all  
369 secondary and post-secondary vocational-technical-  
370 occupational and adult basic education programs in the state,  
371 including the programs assisted under the federal Carl D.  
372 Perkins Vocational and Technical Education Act of 1998, PL  
373 105-332, and the Workforce Investment Act of 1998, to  
374 promote the development of seamless curriculum and the  
375 elimination of duplicative programs;

376           (52) Coordinate the delivery of vocational-technical  
377 occupational and adult basic education in a manner designed  
378 to make the most effective use of available public funds to  
379 increase accessibility for students;

380           (53) Analyze and report to the State Board of Education  
381 on the distribution of spending for vocational-technical-  
382 occupational and adult basic education in the state and on the  
383 availability of vocational-technical-occupational and adult  
384 basic education activities and services within the state;

385           (54) Promote the delivery of vocational-technical-  
386 occupational education, adult basic education and community  
387 and technical college education programs in the state that  
388 emphasize the involvement of business, industry and labor  
389 organizations;

390           (55) Promote public participation in the provision of  
391 vocational-technical-occupational education, adult basic  
392 education and community and technical education at the local  
393 level, emphasizing programs which involve the participation  
394 of local employers and labor organizations;

395           (56) Promote equal access to quality vocational-technical-  
396 occupational education, adult basic education and community  
397 and technical college education programs to handicapped and  
398 disadvantaged individuals, adults in need of training and  
399 retraining, single parents, homemakers, participants in programs  
400 designed to eliminate sexual bias and stereotyping and criminal  
401 offenders serving in correctional institutions;

402           (57) Meet annually between the months of October and  
403 December with the Advisory Committee of Community and  
404 Technical College Presidents created pursuant to section  
405 eight of this article to discuss those matters relating to  
406 community and technical college education in which  
407 advisory committee members or the council may have an  
408 interest;

409           (58) Accept and expend any gift, grant, contribution,  
410 bequest, endowment or other money for the purposes of this  
411 article;

412           (59) Assume the powers set out in section nine of this  
413 article. The rules previously promulgated by the state  
414 College System Board of Directors pursuant to that section  
415 and transferred to the commission are hereby transferred to  
416 the council and shall continue in effect until rescinded,  
417 revised, altered or amended by the council;

418           (60) Pursuant to subsection (b) of this section and article  
419 three-a, chapter twenty-nine-a of this code, promulgate a  
420 uniform joint legislative rule with the commission for the  
421 purpose of standardizing, as much as possible, the

422 administration of personnel matters among the institutions of  
423 higher education;

424 (61) Determine when a joint rule among the governing  
425 boards of the community and technical colleges is necessary  
426 or required by law and, in those instances and in consultation  
427 with the governing boards, promulgate the joint rule;

428 (62) Subject to section one, article ten of this chapter,  
429 promulgate a rule establishing tuition and fee policy for all  
430 governing boards under its jurisdiction. The rule shall  
431 include, but is not limited to, the following:

432 (A) Comparisons with peer institutions;

433 (B) Differences among institutional missions;

434 (C) Strategies for promoting student access;

435 (D) Consideration of charges to out-of-state students; and

436 (E) Any other policies the council considers appropriate;

437 (63) In cooperation with the West Virginia Division of  
438 Highways, study a method for increasing the signage  
439 signifying community and technical college locations along  
440 the state interstate highways, and report to the Legislative  
441 Oversight Commission on Education Accountability  
442 regarding any recommendations and required costs; and

443 (64) Promulgate and implement a rule jointly with the  
444 commission whereby any course credit earned at a  
445 community and technical college transfers for program credit  
446 at any other state institution of higher education and is not  
447 limited to fulfilling a general education requirement.

448 (d) In addition to the powers and duties listed in  
449 subsections (a), (b) and (c) of this section, the council has the

450 following general powers and duties related to its role in  
451 developing, articulating and overseeing the implementation  
452 of the public policy agenda for community and technical  
453 colleges:

454 (1) Planning and policy leadership including a distinct  
455 and visible role in setting the state's policy agenda for the  
456 delivery of community and technical college education and  
457 in serving as an agent of change;

458 (2) Policy analysis and research focused on issues  
459 affecting the community and technical college network as a  
460 whole or a geographical region of the network;

461 (3) Development and implementation of each community  
462 and technical college mission definition including use of  
463 incentive and performance funds to influence institutional  
464 behavior in ways that are consistent with achieving  
465 established state goals, objectives and priorities;

466 (4) Academic program review and approval for the  
467 institutions under its jurisdiction, including the use of  
468 institutional missions as a template to judge the  
469 appropriateness of both new and existing programs and the  
470 authority to implement needed changes;

471 (5) Development of budget and allocation of resources  
472 for institutions delivering community and technical college  
473 education, including reviewing and approving institutional  
474 operating and capital budgets and distributing incentive and  
475 performance-based funding;

476 (6) Acting as the agent to receive and disburse public  
477 funds related to community and technical college education  
478 when a governmental entity requires designation of a  
479 statewide higher education agency for this purpose;

480 (7) Development, establishment and implementation of  
481 information, assessment and internal accountability systems,  
482 including maintenance of statewide data systems that  
483 facilitate long-term planning and accurate measurement of  
484 strategic outcomes and performance indicators for  
485 community and technical colleges;

486 (8) Jointly with the commission, development,  
487 establishment and implementation of policies for licensing  
488 and oversight of both public and private degree-granting and  
489 nondegree-granting institutions that provide post-secondary  
490 education courses or programs;

491 (9) Development, implementation and oversight of  
492 statewide and regional projects and initiatives related  
493 specifically to providing community and technical college  
494 education such as those using funds from federal categorical  
495 programs or those using incentive and performance-based  
496 funding from any source; and

497 (10) Quality assurance that intersects with all other duties  
498 of the council particularly in the areas of planning, policy  
499 analysis, program review and approval, budgeting and  
500 information and accountability systems.

501 (e) The council may withdraw specific powers of a  
502 governing board under its jurisdiction for a period not to  
503 exceed two years if the council makes a determination that  
504 any of the following conditions exist:

505 (1) The governing board has failed for two consecutive  
506 years to develop an institutional compact as required in  
507 section seven, article one-d of this chapter;

508 (2) The council has received information, substantiated  
509 by independent audit, of significant mismanagement or  
510 failure to carry out the powers and duties of the board of  
511 governors according to state law; or

512 (3) Other circumstances which, in the view of the  
513 council, severely limit the capacity of the board of governors  
514 to carry out its duties and responsibilities.

515 The period of withdrawal of specific powers may not  
516 exceed two years during which time the council may take  
517 steps necessary to reestablish the conditions for restoration of  
518 sound, stable and responsible institutional governance.

519 (f) In addition to the powers and duties provided in  
520 subsections (a), (b), (c) and (d) of this section and any others  
521 assigned to it by law, the council has those powers and duties  
522 necessary or expedient to accomplish the purposes of this  
523 article.

524 (g) When the council and commission, each, is required  
525 to consent, cooperate, collaborate or provide input into the  
526 actions of the other the following conditions apply:

527 (1) The body acting first shall convey its decision in the  
528 matter to the other body with a request for concurrence in the  
529 action;

530 (2) The commission or the council, as the receiving body,  
531 shall place the proposal on its agenda and shall take final  
532 action within sixty days of the date when the request for  
533 concurrence is received; and

534 (3) If the receiving body fails to take final action within  
535 sixty days, the original proposal stands and is binding on both  
536 the commission and the council.

#### **ARTICLE 4. GENERAL ADMINISTRATION.**

**§18B-4-6. Regulation of parking, speed flow of traffic on  
campus roads and driveways; civil and criminal  
penalties; disposition of revenue.**



1           (a) Notwithstanding any other motor vehicle or traffic  
2 law or regulation to the contrary, a governing board may  
3 regulate and control at any state institution under its  
4 jurisdiction the speed, flow and parking of vehicles on  
5 campus roads, driveways and parking facilities or areas.

6           (1) Rules for this purpose shall be promulgated by the  
7 governing boards in the manner prescribed in section six,  
8 article one of this chapter; and

9           (2) When so promulgated, the rules have the force and  
10 effect of law.

11           (3) The governing board shall post in a conspicuous  
12 location in each parking facility or area, a summary of the  
13 rules governing the use of the facility or area including, but  
14 not limited to, the availability of temporary parking permits  
15 and where these permits may be obtained and the penalties  
16 which may be imposed for violations of the rules.

17           (4) The governing board shall post in a conspicuous  
18 location along each campus road and driveway notice signs  
19 pertaining to the speed of vehicles, spaces available for  
20 parking, directional flow of traffic and penalties which may  
21 be imposed for violations of the rules.

22           (b) Any person parking or operating a vehicle in violation  
23 of the rules shall be issued a citation:

24           (1) Describing the offense charged; and

25           (2) Ordering an appearance:

26           (A) Within ten days, excluding Saturdays, Sundays and  
27 holidays observed by the state institution, before a designated  
28 official of the institution;

29 (B) Before a magistrate located in the county if the  
30 person cited fails to appear within the ten days; or

31 (C) Before the judge of the municipal court, if the state  
32 institution is located within a municipality having such an  
33 official and the person cited fails to appear within the ten  
34 days.

35 (c) The designated official of the state institution has  
36 exclusive jurisdiction of the offense during the ten-day period  
37 until the citation is forwarded to a magistrate. For the state  
38 institutions of higher education under the jurisdiction of the  
39 governing board of Marshall University and for the state  
40 institution of higher education known as West Virginia  
41 University only, the designated official of the institution has  
42 exclusive jurisdiction of the offense for thirty days following  
43 the violation. After thirty days the official shall forward the  
44 citation to a magistrate. Any person cited may plead no  
45 contest to the offense and, by so pleading, is subject to a civil  
46 penalty to be determined uniformly by the designated official  
47 and commensurate with the severity of the offense. For the  
48 state institutions under the jurisdiction of the governing board  
49 of Marshall University and for the state institution of higher  
50 education known as West Virginia University only, the  
51 amount imposed may not exceed \$20. For all other  
52 institutions the amount may not exceed \$10, for each offense  
53 as partial reimbursement to the state institution of higher  
54 education for the cost of regulating traffic and parking. In the  
55 case of the state institutions under the jurisdiction of the  
56 governing board of Marshall University and in the case of the  
57 state institution of higher education known as West Virginia  
58 University only, the designated official shall determine the  
59 penalty uniformly, commensurate with the severity of the  
60 offense, and may apply academic restrictions in lieu of  
61 requiring a student to appear in court and receive penalties  
62 otherwise provided in this section. Moneys derived from  
63 civil penalties imposed in this subsection shall be deposited  
64 in the institution's auxiliary and auxiliary capital fees fund.

65 (d) Upon expiration of the ten-day or thirty-day period,  
66 as applicable, or upon a pleading of not guilty before the  
67 designated official of the state institution within the  
68 applicable period, the magistrate or judge of the municipal  
69 court has jurisdiction of the offense. Any person cited under  
70 this section, upon a finding of guilty by the magistrate or  
71 municipal judge, is subject to a fine for each offense by the  
72 state institutions under the jurisdiction of the governing board  
73 of Marshall University and for the state institution of higher  
74 education known as West Virginia University only, of up to  
75 \$40, and at all other state institutions not less than \$10 nor  
76 more than \$20, the amount to be commensurate with the  
77 severity of the offense.

78 (e) Each designated official of a state institution presiding  
79 over a case under this section shall keep a record of every  
80 citation which alleges a violation of the provisions, or the  
81 rules promulgated in accordance with this section, and shall  
82 keep a record of every official action in reference to the  
83 citation including, but not limited to, a record of every plea  
84 of no contest, conviction or acquittal, of the offense charged,  
85 and the amount of the fine or civil penalty resulting from  
86 each citation.

87 (f) Whenever a vehicle is parked on any state institution  
88 campus road, driveway or parking facility or area in a manner  
89 which violates posted rules and substantially impedes the  
90 flow of traffic or endangers the health and safety, in addition  
91 to issuing a citation and any procedures set forth in this  
92 section, the institution may remove the vehicle, by towing or  
93 otherwise, to an area owned by the institution or areas  
94 designated for this purpose. The vehicle, having been towed  
95 to the designated area or areas, may be rendered immovable  
96 by use of locking wheel blocks or other device not damaging  
97 to the vehicle. The state institution of higher education shall  
98 maintain any vehicle towed in the same condition as it was  
99 immediately prior to being towed, but is not liable for any

100 damage to a vehicle towed to, or kept in, a designated area  
101 pursuant to this section. The state institution of higher  
102 education shall pay for the cost of removing the vehicle and  
103 has a right to reimbursement from the owner for this cost and  
104 for the reasonable cost of keeping the vehicle in the  
105 designated area. Until payment of these costs, the state  
106 institution of higher education may retain possession of the  
107 vehicle and the institution shall have a lien on the vehicle for  
108 the amount due. The state institution of higher education  
109 may enforce this lien in the manner provided in section  
110 fourteen, article eleven, chapter thirty-eight of this code for  
111 the enforcement of other liens. For the state institutions of  
112 higher education under the jurisdiction of the governing  
113 board of Marshall University and for the state institution of  
114 higher education known as West Virginia University only,  
115 this subsection also applies when a vehicle is subject to three  
116 or more unpaid citations.

117 (g) If, at any time, Mountwest Community and Technical  
118 College ceases to share a physical campus location with  
119 Marshall University, it may not be included as an institution  
120 under the jurisdiction of the governing board of Marshall  
121 University for the purposes of subsections (c), (d) and (f) of  
122 this section.

## **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 shall purchase or acquire all materials, supplies, equipment,  
3 services and printing required for that governing board or the  
4 council or commission, as appropriate, and the state  
5 institutions of higher education under their jurisdiction,  
6 except the governing boards of Marshall University and West

7 Virginia University, respectively, are subject to subsection  
8 (d) of this section.

9 (b) The commission and council jointly shall adopt rules  
10 governing and controlling acquisitions and purchases in  
11 accordance with this section. The rules shall ensure that the  
12 following procedures are followed:

13 (1) No person is precluded from participating and making  
14 sales thereof to the council, commission or governing board  
15 except as otherwise provided in section five of this article.  
16 Providing consulting services such as strategic planning  
17 services does not preclude or inhibit the governing boards,  
18 council or commission from considering a qualified bid or  
19 response for delivery of a product or a commodity from the  
20 individual providing the services;

21 (2) Specifications are established and prescribed for  
22 materials, supplies, equipment, services and printing to be  
23 purchased;

24 (3) Purchase order, requisition or other forms as may be  
25 required are adopted and prescribed;

26 (4) Purchases and acquisitions in such quantities, at such  
27 times and under contract, are negotiated for and made in the  
28 open market or through other accepted methods of  
29 governmental purchasing as may be practicable in  
30 accordance with general law;

31 (5) Bids are advertised on all purchases exceeding  
32 \$25,000, and made by means of sealed or electronically-  
33 submitted bids and competitive bidding or advantageous  
34 purchases effected through other accepted governmental  
35 methods and practices. Competitive bids are not required for  
36 purchases of \$25,000 or less.

37           (6) Notices for acquisitions and purchases for which  
38 competitive bids are being solicited are posted in the  
39 purchasing office of the specified institution involved in the  
40 purchase, at least two weeks prior to making the purchases.  
41 The rules shall ensure that the notice is available to the public  
42 during business hours;

43           (7) Purchases are made in the open market;

44           (8) Vendors are notified of bid solicitation and  
45 emergency purchasing; and

46           (9) No fewer than three bids are obtained when bidding  
47 is required, except if fewer than three bids are submitted, an  
48 award may be made from among those received.

49           (c) When a state institution of higher education submits  
50 a contract, agreement or other document to the Attorney  
51 General for approval as to form as required by this chapter  
52 the following conditions apply:

53           (1) "Form" means compliance with the Constitution and  
54 statutes of the State of West Virginia;

55           (2) The Attorney General does not have the authority to  
56 reject a contract, agreement or other document based on the  
57 substantive provisions in the contract, agreement or  
58 document or any extrinsic matter as long as it complies with  
59 the Constitution and statutes of this state;

60           (3) Within fifteen days of receipt, the Attorney General  
61 shall notify the appropriate state institution of higher  
62 education in writing that the contract, agreement or other  
63 document is approved or disapproved as to form. If the  
64 contract, agreement or other document is disapproved as to  
65 form, the notice of disapproval shall identify each defect that  
66 supports the disapproval; and

67           (4) If the state institution elects to challenge the  
68 disapproval by filing a writ of mandamus or other action and  
69 prevails, then the Attorney General shall pay reasonable  
70 attorney fees and costs incurred.

71           (d) Pursuant to this subsection, the governing boards of  
72 Marshall University and West Virginia University,  
73 respectively, may carry out the following actions:

74           (1) Purchase or acquire all materials, supplies, equipment,  
75 services and printing required for the governing board  
76 without approval from the commission or the Vice  
77 Chancellor for Administration and may issue checks in  
78 advance to cover postage as provided in subsection (f) of this  
79 section;

80           (2) Make purchases from cooperative buying groups,  
81 consortia, the federal government or from federal government  
82 contracts if the materials, supplies, services, equipment or  
83 printing to be purchased is available from these groups and  
84 if this would be the most financially advantageous manner of  
85 making the purchase;

86           (3) Select and acquire by contract or lease all grounds,  
87 buildings, office space or other space, and capital  
88 improvements, including equipment, if the rental is  
89 necessarily required by the governing board; and

90           (4) Use purchase cards under terms approved for the  
91 commission, the council and governing boards of state  
92 institutions of higher education and participate in any  
93 expanded program of use as provided in subsection (u) of this  
94 section.

95           (e) The governing boards shall adopt sufficient  
96 accounting and auditing procedures and promulgate and  
97 adopt appropriate rules subject to section six, article one of

98 this chapter to govern and control acquisitions, purchases,  
99 leases and other instruments for grounds, buildings, office or  
100 other space, and capital improvements, including equipment,  
101 or lease-purchase agreements.

102 (f) The council, commission or each governing board  
103 may issue a check in advance to a company supplying  
104 postage meters for postage used by that board, the council or  
105 commission and by the state institutions of higher education  
106 under their jurisdiction.

107 (g) When a purchase is to be made by bid, any or all bids  
108 may be rejected. However, all purchases based on advertised  
109 bid requests shall be awarded to the lowest responsible bidder  
110 taking into consideration the qualities of the articles to be  
111 supplied, their conformity with specifications, their suitability  
112 to the requirements of the governing boards, council or  
113 commission and delivery terms. The preference for resident  
114 vendors as provided in section thirty-seven, article three,  
115 chapter five-a of this code applies to the competitive bids  
116 made pursuant to this section.

117 (h) The governing boards, council and commission shall  
118 maintain a purchase file, which shall be a public record and  
119 open for public inspection.

120 (1) After the award of the order or contract, the governing  
121 boards, council and commission shall indicate upon the  
122 successful bid the following information:

123 (A) Designation as the successful bid;

124 (B) The reason any bids were rejected; and

125 (C) The reason for rejection, if the mathematical low  
126 vendor was not awarded the order or contract.



127           (2) A record in the purchase file may not be destroyed  
128 without the written consent of the Legislative Auditor. Those  
129 files in which the original documentation has been held for at  
130 least one year and in which the original documents have been  
131 reproduced and archived on microfilm or other equivalent  
132 method of duplication may be destroyed without the written  
133 consent of the Legislative Auditor.

134           (3) All files, no matter the storage method, shall be open  
135 for inspection by the Legislative Auditor upon request.

136           (i) The commission and council, also jointly, shall  
137 promulgate rules to prescribe qualifications to be met by any  
138 person who is to be employed as a buyer pursuant to this  
139 section. These rules shall require that a person may not be  
140 employed as a buyer unless that person, at the time of  
141 employment has one of the following qualifications:

142           (1) Is 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 \$50,000, payable to the State of West Virginia, with a  
149 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 these buyers, a blanket surety  
156 bond may be obtained. The bond shall be filed with the  
157 Secretary of State and the cost of the bond shall be paid from  
158 funds appropriated to the applicable governing board or the  
159 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 to determine whether  
172 the amount of the purchase is within the quarterly allotment  
173 of the commission, council or governing board, is in  
174 accordance with the approved expenditure schedule and  
175 otherwise conforms to the article.

176 (l) The governing boards, council and commission may  
177 make requisitions upon the State Auditor for a sum to be  
178 known as an advance allowance account, not to exceed five  
179 percent of the total of the appropriations for the governing  
180 board, council or commission, and the State Auditor shall  
181 draw a warrant upon the Treasurer for those accounts. All  
182 advance allowance accounts shall be accounted for by the  
183 applicable governing board or the council or commission  
184 once every thirty days or more often if required by the State  
185 Auditor.

186 (m) Contracts entered into pursuant to this section shall  
187 be signed by the applicable governing board or the council or  
188 commission in the name of the state and shall be approved as  
189 to form by the Attorney General. A contract which requires  
190 approval as to form by the Attorney General is considered  
191 approved if the Attorney General has not responded within  
192 fifteen days of presentation of the contract. A contract or a  
193 change order for that contract and notwithstanding any other  
194 provision of this code to the contrary, associated documents

195 such as performance and labor/material payments, bonds and  
196 certificates of insurance which use terms and conditions or  
197 standardized forms previously approved by the Attorney  
198 General and do not make substantive changes in the terms  
199 and conditions of the contract do not require approval as to  
200 form by the Attorney General. The Attorney General shall  
201 make a list of those changes which he or she considers to be  
202 substantive and the list, and any changes to the list, shall be  
203 published in the State Register. A contract that exceeds the  
204 dollar amount requiring competitive sealed bids in this  
205 section shall be filed with the State Auditor. If requested to  
206 do so, the governing boards, council or commission shall  
207 make all contracts available for inspection by the State  
208 Auditor. The governing board, council or commission, as  
209 appropriate, shall prescribe the amount of deposit or bond to  
210 be submitted with a bid or contract, if any, and the amount of  
211 deposit or bond to be given for the faithful performance of a  
212 contract.

213 (n) If the governing board, council or commission  
214 purchases or contracts for materials, supplies, equipment,  
215 services and printing contrary to sections four through seven  
216 of this article or the rules pursuant to this article, the purchase  
217 or contract is void and of no effect.

218 (o) A governing board or the council or commission, as  
219 appropriate, may request the director of purchasing to make  
220 available the facilities and services of that department to the  
221 governing boards, council or commission in the purchase and  
222 acquisition of materials, supplies, equipment, services and  
223 printing. The director of purchasing shall cooperate with that  
224 governing board, council or commission, as appropriate, in  
225 all such purchases and acquisitions upon that request.

226 (p) Each governing board or the council or commission,  
227 as appropriate, may permit private institutions of higher  
228 education to join as purchasers on purchase contracts for

229 materials, supplies, services and equipment entered into by  
230 that governing board or the council or commission. A private  
231 institution desiring to join as purchaser on purchase contracts  
232 shall file with that governing board or the council or  
233 commission, as appropriate, an affidavit signed by the  
234 president or designee of the private institution requesting that  
235 it be authorized to join as purchaser on purchase contracts of  
236 that governing board or the council or commission, as  
237 appropriate. The private institution shall agree that it is  
238 bound by such terms and conditions as that governing board  
239 or the council or commission may prescribe and that it will  
240 be responsible for payment directly to the vendor under each  
241 purchase contract.

242 (q) Notwithstanding any other provision of this code to  
243 the contrary, the governing boards, council and commission,  
244 as appropriate, may make purchases from cooperative buying  
245 groups, consortia, the federal government or from federal  
246 government contracts if the materials, supplies, services,  
247 equipment or printing to be purchased is available from that  
248 source, and purchasing from that source would be the most  
249 financially advantageous manner of making the purchase.

250 (r) An independent performance audit of all purchasing  
251 functions and duties which are performed at any state  
252 institution of higher education, except Marshall University  
253 and West Virginia University, shall be performed each fiscal  
254 year. The Joint Committee on Government and Finance shall  
255 conduct the performance audit and the governing boards,  
256 council and commission, as appropriate, are responsible for  
257 paying the cost of the audit from funds appropriated to the  
258 governing boards, council or commission.

259 (1) The governing boards of Marshall University and  
260 West Virginia University, respectively, shall provide for  
261 independent performance audits of all purchasing functions  
262 and duties on their campuses at least once in each three-year  
263 period.

264           (2) Each audit shall be inclusive of the entire time period  
265           that has elapsed since the date of the preceding audit.

266           (3) Copies of all appropriate documents relating to any  
267           audit performed by the governing boards of Marshall  
268           University and West Virginia University shall be furnished  
269           to the Joint Committee on Government and Finance and the  
270           Legislative Oversight Commission on Education  
271           Accountability within thirty days of the date the audit report  
272           is completed.

273           (s) The governing boards shall require each institution  
274           under their respective jurisdictions to notify and inform every  
275           vendor doing business with that institution of section fifty-  
276           four, article three, chapter five-a of this code, also known as  
277           the Prompt Pay Act of 1990.

278           (t) Consultant services, such as strategic planning  
279           services, do not preclude or inhibit the governing boards,  
280           council or commission from considering any qualified bid or  
281           response for delivery of a product or a commodity because of  
282           the rendering of those consultant services.

283           (u) Purchasing card use may be expanded by the council,  
284           commission and state institutions of higher education  
285           pursuant to this subsection.

286           (1) The council and commission jointly shall establish  
287           procedures to be implemented by the council, commission  
288           and any institution under their respective jurisdictions using  
289           purchasing cards. The procedures shall ensure that each  
290           meets the following conditions:

291           (A) Appropriate use of the purchasing card system;

292           (B) Full compliance with article three, chapter twelve of  
293           this code relating to the purchasing card program; and

294 (C) Sufficient accounting and auditing procedures for all  
295 purchasing card transactions.

296 (2) Notwithstanding any other provision of this code to  
297 the contrary, the council, commission and any institution  
298 authorized pursuant to subdivision (3) of this subsection may  
299 use purchasing cards for the following purposes:

300 (A) Payment of travel expenses directly related to the job  
301 duties of the traveling employee, including, but not limited  
302 to, fuel and food; and

303 (B) Payment of any routine, regularly scheduled  
304 payment, including, but not limited to, utility payments and  
305 real property rental fees.

306 (3) The commission and council each shall evaluate the  
307 capacity of each institution under its jurisdiction for  
308 complying with the procedures established pursuant to  
309 subdivision (2) of this subsection. The commission and  
310 council each shall authorize expanded use of purchasing  
311 cards pursuant to that subdivision for any institution it  
312 determines has the capacity to comply.

**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, govern  
4 the collection, disposition and use of the capital and auxiliary

5 capital fees authorized by section one of this article. The  
6 statutory provisions governing collection and disposition of  
7 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 the following:

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 or fund on a cash basis, in whole or in part,  
40 in combination with any federal, state or other grants or  
41 contributions, for any one or 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 commission, when singly or jointly requested by  
60 the council or governing boards, periodically may issue  
61 revenue bonds of the state as provided in this section to  
62 finance all or part of the purposes and pledge all or any part  
63 of the moneys in the special funds for the payment of the  
64 principal of and interest on the revenue bonds, and for  
65 reserves for the revenue bonds. Any pledge of the special  
66 funds for the revenue bonds shall be a prior and superior



67 charge on the special funds over the use of any of the moneys  
68 in the funds to pay for the cost of any of the purposes on a  
69 cash basis. Any expenditures from the special funds, other  
70 than for the retirement of revenue bonds, may be made by the  
71 commission or governing boards only to meet the cost of a  
72 predetermined capital improvements program for one or  
73 more of the state institutions of higher education, in the order  
74 of priority agreed upon by the governing board or boards and  
75 the commission and for which the aggregate revenue  
76 collections projected are presented to the Governor for  
77 inclusion in the annual budget bill, and are approved by the  
78 Legislature for expenditure. Any expenditure made pursuant  
79 to subsection (e) of this section shall be part of the ten-year  
80 campus development plan approved by the governing board  
81 pursuant to section three, article nineteen of this chapter.

82 (g) The revenue bonds periodically may be authorized  
83 and issued by the commission or governing boards to  
84 finance, in whole or in part, the purposes provided in this  
85 section in an aggregate principal amount not exceeding the  
86 amount which the commission determines can be paid as to  
87 both principal and interest and reasonable margins for a  
88 reserve therefor from the moneys in the special funds.

89 (h) The issuance of the revenue bonds shall be authorized  
90 by a resolution adopted by the governing board receiving the  
91 proceeds and the commission, and the revenue bonds shall  
92 bear the date or dates; mature at such time or times not  
93 exceeding forty years from their respective dates; be in such  
94 form either coupon or registered, with such exchangeability  
95 and interchangeability privileges; be payable in such medium  
96 of payment and at such place or places, within or without the  
97 state; be subject to such terms of prior redemption at such  
98 prices not exceeding one hundred five per centum of the  
99 principal amount thereof; and have the other terms and  
100 provisions determined by the governing board receiving the  
101 proceeds and by the commission. The revenue bonds shall be

102 signed by the Governor and by the chancellor of the  
103 commission or the chair of the governing boards authorizing  
104 the issuance of the revenue bonds, under the Great Seal of the  
105 State, attested by the Secretary of State, and the coupons  
106 attached to the revenue bonds shall bear the facsimile  
107 signature of the chancellor of the commission or the chair of  
108 the appropriate governing boards. The revenue bonds shall  
109 be sold in the manner the commission or governing board  
110 determines is in the best interests of the state.

111 (i) The commission or governing boards may enter into  
112 trust agreements with banks or trust companies, within or  
113 without the state, and in the trust agreements or the  
114 resolutions authorizing the issuance of the bonds may enter  
115 into valid and legally binding covenants with the holders of  
116 the revenue bonds as to the custody, safeguarding and  
117 disposition of the proceeds of the revenue bonds, the moneys  
118 in the special funds, sinking funds, reserve funds or any other  
119 moneys or funds; as to the rank and priority, if any, of  
120 different issues of revenue bonds by the commission or  
121 governing boards under this section; as to the maintenance or  
122 revision of the amounts of the fees; as to the extent to which  
123 swap agreements, as defined in subsection (h), section two,  
124 article two-g, chapter thirteen of this code shall be used in  
125 connection with the revenue bonds, including such provisions  
126 as payment, term, security, default and remedy provisions as  
127 the commission considers necessary or desirable, if any,  
128 under which the fees may be reduced; and as to any other  
129 matters or provisions which are considered necessary and  
130 advisable by the commission or governing boards in the best  
131 interests of the state and to enhance the marketability of the  
132 revenue bonds.

133 (j) After the issuance of any revenue bonds, the fees at  
134 the state institutions of higher education pledged to the  
135 payment of the revenue bonds may not be reduced as long as  
136 any of the revenue bonds are outstanding and unpaid except

137 under the terms, provisions and conditions contained in the  
138 resolution, trust agreement or other proceedings under which  
139 the revenue bonds were issued. The revenue bonds are and  
140 constitute negotiable instruments under the Uniform  
141 Commercial Code of this state; together with the interest  
142 thereon, be exempt from all taxation by the State of West  
143 Virginia, or by any county, school district, municipality or  
144 political subdivision thereof; and the revenue bonds may not  
145 be considered to be obligations or debts of the state and the  
146 credit or taxing power of the state may not be pledged  
147 therefor, but the revenue bonds shall be payable only from  
148 the revenue pledged therefor as provided in this section.

149 (k) Additional revenue bonds may be issued by the  
150 commission or governing boards pursuant to this section and  
151 financed by additional revenues or funds dedicated from  
152 other sources. The special revenue fund in the State Treasury  
153 known as the Community and Technical College Capital  
154 Improvement Fund into which shall be deposited the amounts  
155 specified in subsection (j), section eighteen, article twenty-  
156 two, chapter twenty-nine of this code is continued. All  
157 amounts deposited in the fund shall be pledged to the  
158 repayment of the principal, interest and redemption premium,  
159 if any, on any revenue bonds or refunding revenue bonds  
160 authorized by the commission for community and technical  
161 college capital improvements or used by the council on a  
162 cash basis as provided under subdivision (4), subsection (j),  
163 section eighteen, article twenty-two, chapter twenty-nine of  
164 this code for community and technical college capital  
165 improvements or capital projects.

166 (l) Funding of systemwide and campus-specific revenue  
167 bonds under any other section of this code is continued and  
168 authorized pursuant to the terms of this section. Revenues of  
169 any state institution of higher education pledged to the  
170 repayment of any revenue bonds issued pursuant to this code  
171 shall remain pledged.

172 (m) Any revenue bonds for state institutions of higher  
173 education proposed to be issued under this section or other  
174 sections of this code first must be approved by the  
175 commission.

176 (n) Revenue bonds issued pursuant to this code may be  
177 issued by the commission or governing boards, either singly  
178 or jointly.

179 (o) Fees pledged for repayment of revenue bonds issued  
180 under this section or article twelve-b, chapter eighteen prior  
181 to or after the effective date of this section shall be  
182 transferred to the commission in a manner prescribed by the  
183 commission. The commission may transfer funds from the  
184 accounts of institutions pledged for the repayment of revenue  
185 bonds issued prior to the effective date of this section or  
186 issued subsequently by the commission upon the request of  
187 institutions, if an institution fails to transfer the pledged  
188 revenues to the commission in a timely manner.

189 (p) Effective July 1, 2004, the capital and auxiliary  
190 capital fees authorized by this section and section one of this  
191 article are in lieu of any other fees set out in this code for  
192 capital and auxiliary capital projects to benefit public higher  
193 education institutions. Notwithstanding any other provisions  
194 of this code to the contrary, in the event any capital, tuition,  
195 registration or auxiliary fees are pledged to the payment of  
196 any revenue bonds issued pursuant to any general bond  
197 resolutions of the commission, any of its predecessors or any  
198 institution, adopted prior to the effective date of this section,  
199 the fees shall remain in effect in amounts not less than the  
200 amounts in effect as of that date, until the revenue bonds  
201 payable from any of the fees have been paid or the pledge of  
202 the fees is otherwise legally discharged.

#### **ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.**

- §18B-19-1. Legislative findings and intent.
- §18B-19-2. Definitions.
- §18B-19-3. System capital development planning.
- §18B-19-4. Campus development plans.
- §18B-19-5. Capital appropriation requests.
- §18B-19-6. Capital project financing.
- §18B-19-7. Capital project management.
- §18B-19-8. Maintenance.
- §18B-19-9. Higher education facilities information system.
- §18B-19-10. Authorization to sell property; use of proceeds.
- §18B-19-11. Authorization to lease-purchase.
- §18B-19-12. Authorization to lease.
- §18B-19-13. Real property contracts and agreements.
- §18B-19-14. Authorization for sale lease-back.
- §18B-19-15. Construction and operation of auxiliary facilities; fees for auxiliary enterprises.
- §18B-19-16. Condemnation generally.
- §18B-19-17. Legislative rule.
- §18B-19-18. Reporting.

### **§18B-19-1. Legislative findings and intent.**

1           (a) The Legislature makes the following findings:

2           (1) State institutions of higher education vary widely in  
3           the conditions of their facilities infrastructure.

4           (2) State institutions of higher education vary widely in  
5           their ability to incur debt for capital improvements. It is  
6           nearly impossible for community and technical colleges and  
7           some smaller baccalaureate institutions to fund significant  
8           capital improvements in the absence of state funding.

9           (3) A student enrolled at a community and technical  
10          college that previously was administratively linked to another  
11          state institution of higher education pays substantially higher  
12          tuition and mandatory fees than a student enrolled at a  
13          freestanding community and technical college. This cost  
14          discrepancy is due in large part to the significantly higher  
15          capital fees charged to these students to pay debt service for  
16          capital improvements.

17          (4) The substantial amount of capital fees that students  
18          must pay at the institution level contributes significantly to

19 the poor grade the state receives in the category of  
20 “Affordability” in *Measuring Up: The National Report Card*  
21 *on Higher Education*.

22 (5) It is beneficial for the state to provide additional  
23 ongoing capital funding to reduce the obligation of students  
24 and parents to bear the cost of higher education capital  
25 improvements and facilities maintenance.

26 (6) West Virginia is one of only a few states that does not  
27 address higher education capital improvements and facilities  
28 maintenance needs through a statewide plan.

29 (7) State funding for capital improvements should align  
30 with state and system higher education goals, objectives and  
31 priorities as set forth in article one-d of this chapter.

32 (8) State capital funding should focus primarily on  
33 educational and general capital improvements, not auxiliary  
34 capital improvements.

35 (9) Renovations of existing buildings generally deserve  
36 greater consideration for state funding than new construction.  
37 However, new construction may deserve greater  
38 consideration than renovation when a state or system goal,  
39 objective or priority is implicated.

40 (10) As the Legislature increases funding for new  
41 educational and general capital improvements and major  
42 renovations, and supplants existing educational and general  
43 debt, institutions should target funds for maintenance and  
44 deferred maintenance needs.

45 (11) If community and technical colleges are to keep the  
46 cost of education affordable, they cannot be expected to fund  
47 maintenance obligations entirely from student capital fees.

48           (12) The commission and council should scrutinize  
49 carefully all requests from institutions to incur additional debt  
50 in order to determine their effect on institution debt capacity  
51 and the impact that incurring additional debt will have on  
52 students.

53           (13) State institutions of higher education ultimately  
54 should target adequate state capital contributions and capital  
55 fees to address maintenance and deferred maintenance needs.

56           (14) Until institutions are able to generate sufficient  
57 revenue to address maintenance and deferred maintenance  
58 needs, the Legislature should provide periodic funding to  
59 assist institutions in addressing these needs. Funding priority  
60 should be given to projects that address building code  
61 requirements and critical maintenance needs.

62           (15) In supporting future high priority capital needs, the  
63 Legislature, commission and council should not reward  
64 institutions with state funding if they neglect to address  
65 facilities maintenance needs or do not prudently manage their  
66 capital resources.

67           (16) Once an institution's capital development plan has  
68 been approved by the governing board and the commission  
69 or council, as appropriate, project priorities should not  
70 change significantly from year to year.

71           (17) Commission and council staff should participate to  
72 a greater extent in managing capital projects at smaller  
73 institutions than at larger institutions since smaller  
74 institutions often lack the expertise necessary to plan, design  
75 and complete projects at or under budget.

76           (b) The intent of the Legislature relating to this article  
77 includes, but is not limited to, the following:

78 (1) Dedicated state funding sources shall be designated to  
79 finance construction and renovation of educational and  
80 general facilities at state institutions of higher education from  
81 time to time;

82 (2) Capital project lists submitted by institutions to the  
83 commission or council, as appropriate, and capital project  
84 lists submitted by the commission and council to the state  
85 budget office, Legislative Oversight Commission on  
86 Education Accountability, and Joint Committee on  
87 Government and Finance for consideration for state funding  
88 shall be reasonable requests that align with state and system  
89 goals, objectives and priorities and ones which reasonably  
90 could be funded if approved;

91 (3) As the Legislature increases its responsibility for  
92 financing new educational and general facilities and major  
93 renovations, the commission, council and institutions shall  
94 ensure that sufficient capital revenues are available for  
95 maintenance and that the facilities are maintained adequately;

96 (4) Ongoing state funding shall be dedicated to  
97 supplement capital fees available for maintenance at  
98 community and technical colleges; and

99 (5) Once a system capital plan is in place, institutions  
100 shall set aside adequate funding annually to ensure that  
101 ongoing facilities maintenance needs are met.

**§18B-19-2. Definitions.**

1 As used in this article, the following terms have the  
2 meanings ascribed to them.

3 (a) “ADA” means the Americans with Disabilities Act of  
4 1990, 42 U.S.C. §12101, *et seq.*



5           (b) “Auxiliary enterprise” means an entity that exists to  
6 furnish goods or services to students, faculty, staff or others;  
7 charges a fee directly related to, although not necessarily  
8 equal to, the cost of the goods or services; and is managed as  
9 essentially self-supporting.

10           (c) “Auxiliary facility” means a building or structure that  
11 is used for an auxiliary enterprise including, but not limited  
12 to, residence halls, food services, parking, intercollegiate  
13 athletics, faculty and staff housing, student unions,  
14 bookstores and other service centers.

15           (d) “Auxiliary fees” means funds derived from, but not  
16 limited to, the following sources:

17           (1) Parking fees received from any source;

18           (2) Revenues received from athletic events, including  
19 ticket sales, television revenues and skybox fees;

20           (3) Bookstore revenues;

21           (4) Student union vendor and user fees;

22           (5) Donations or grants from any external source;

23           (6) Facility rental fees; and

24           (7) Fees assessed to students to support auxiliary  
25 enterprises.

26           (e) “Capital planning” means a purposeful activity that  
27 focuses attention on long term physical plant objectives  
28 which should be accomplished in a logical sequence over  
29 time as opportunities arise and resources become available.

30           (f) “Capital project management” means planning,  
31 designing, bidding and providing construction administration

32 and oversight of architectural, engineering and construction  
33 contracts and projects.

34 (g) “Deferred maintenance” means repair, maintenance  
35 and renewal of capital facilities which should be part of  
36 normal maintenance management, but which have been  
37 postponed to a future budget cycle or until funds become  
38 available.

39 (h) “Educational and general capital fees” means the fees  
40 collected from students to pay debt service for capital  
41 improvement bonds issued by the commission and governing  
42 boards for educational and general facilities, for the  
43 maintenance of those facilities and to fund capital  
44 improvements in those facilities on a cash basis.

45 (i) “Educational and general facility” means a building or  
46 structure used for instruction and instructional support  
47 purposes, and includes classroom, laboratory, library,  
48 computer laboratory, faculty and administrative office and  
49 other academic support spaces.

50 (j) “Extraordinary circumstance” or “extraordinary  
51 circumstances” means, a situation involving life-safety  
52 issues, issues that would result in extensive damage to a  
53 facility if not addressed immediately, any unforeseen  
54 opportunity to use external funds and any other situation the  
55 commission or council determines should warrant special  
56 consideration.

57 (k) “Life-safety” means a condition existing on a campus  
58 that, if not corrected immediately, would jeopardize the  
59 safety and property of students, faculty, staff and the visiting  
60 public.

61 (l) “Maintenance” means the work necessary within a  
62 budget cycle to realize the originally anticipated life of a

63 fixed asset, including buildings, fixed equipment and  
64 infrastructure.

65 (m) “Governing board”, “state institution of higher  
66 education” and “institution under the jurisdiction of the  
67 commission” means all state institutions of higher education  
68 including Marshall University and West Virginia University  
69 and their respective governing boards.

**§18B-19-3. System capital development planning.**

1 (a) By December 31, 2011, the commission and council,  
2 jointly or separately, shall develop a system capital  
3 development plan for approval by the Legislative Oversight  
4 Commission on Education Accountability. At a minimum  
5 the initial plan shall include the following:

6 (1) System goals for capital development;

7 (2) An explanation of how system capital development  
8 goals align with state goals, objectives and priorities  
9 established in articles one and one-d of this chapter and with  
10 system master plans;

11 (3) A process for prioritizing capital projects for state  
12 funding based on their ability to further state goals, objectives  
13 and priorities and system capital development goals;

14 (4) A building renewal formula to calculate a dollar  
15 benchmark that shall be collected annually and invested in  
16 facilities to minimize deferred maintenance and to provide  
17 the commission and council objective information to  
18 determine if the investments in maintenance are occurring;

19 (5) A process for governing boards to follow in  
20 developing and submitting campus development plans to the  
21 commission or council, as appropriate, for approval;

22 (6) A process for governing boards to follow to ensure  
23 that sufficient revenue is generated for and applied toward  
24 facilities maintenance; and

25 (7) A discussion addressing how capital fees dedicated to  
26 debt service for the bond issue to be paid off in 2012 will be  
27 used after the payoff date.

28 (b) The system capital development plan shall be  
29 developed in consultation with governing boards and  
30 appropriate institution staff. Before approving the capital  
31 development plan, the commission and council shall afford  
32 interested parties an opportunity to comment on the plan  
33 through a notice-and-comment period of at least thirty days.

34 (c) The commission and council shall update its system  
35 capital development plan at least once in each ten-year  
36 period.

#### **§18B-19-4. Campus development plans.**

1 (a) Each governing board shall update its current campus  
2 development plan and submit the updated plan to the  
3 commission or council, as appropriate, for approval by June  
4 30, 2013. A campus development plan shall be developed for  
5 a ten-year period and shall align with criteria specified in the  
6 following sources:

7 (1) The system capital development plan;

8 (2) The institution's approved master plan and compact;  
9 and

10 (3) The current campus development plan objectives.

11 (b) Campus development plans are intended to be  
12 aspirational; however, an institution's plan shall be

13 appropriate to its size, mission, and enrollment and to the  
14 fiscal constraints within which the institution operates. At a  
15 minimum the campus development plan shall include the  
16 following:

17 (1) The governing board's development strategy;

18 (2) An assessment of the general condition and suitability  
19 of buildings and facilities, including deferred maintenance,  
20 life-safety and building code issues, ADA requirements and  
21 energy efficiency;

22 (3) An assessment of the impact of projected enrollment  
23 and demographic changes on building and facility needs;

24 (4) A comprehensive list of deferred maintenance  
25 projects that need to be addressed for each campus by  
26 building or facility including an estimated cost for each;

27 (5) A list of existing buildings and facilities in need of  
28 renovations, additions, demolition or any combination  
29 thereof;

30 (6) A list of major site improvements that are needed,  
31 including vehicular and pedestrian circulation, parking and  
32 landscaping;

33 (7) A list of telecommunications, utilities and other  
34 infrastructure improvements that are needed;

35 (8) A delineation of clear property acquisition boundaries  
36 that are reasonably appropriate for campus expansion;

37 (9) A list of proposed new facilities and building sites;

38 (10) A list of capital projects in priority order;

39           (11) Estimates of the timing, phasing and projected costs  
40 associated with individual projects;

41           (12) If an institution has multiple campuses in close  
42 proximity, a delineation of how the campuses should interact  
43 and support each other to minimize duplication of facilities,  
44 improve efficiency and be aesthetically compatible;

45           (13) A statement of the impact of the plan upon the local  
46 community and the input afforded local and regional  
47 government entities and the public with respect to its  
48 implementation; and

49           (14) Any other requirement established by the  
50 commission and council in the rules required by section  
51 seventeen of this article.

52           (c) Campus development plans shall incorporate all  
53 current and proposed facilities, including educational and  
54 general and auxiliary facilities.

55           (d) At the next regularly scheduled meeting of the  
56 commission or council, as applicable, following the fifth  
57 anniversary date after the commission or council approves  
58 the development plan of a governing board, the governing  
59 board shall report on the progress made in the first five years  
60 to implement the campus development plan for each campus  
61 under its jurisdiction. In addition, the governing board shall  
62 report on its plans to implement the remaining five-year  
63 period of its campus development plan.

64           (e) Each governing board shall update its campus  
65 development plan at least once during each ten-year period  
66 and any update is subject to the approval of the commission  
67 or council, as appropriate.

68 (f) A governing board may not implement a campus  
69 development plan or plan update that has not been approved  
70 by the commission or council, as appropriate.

**§18B-19-5. Capital appropriation requests.**

1 (a) The commission and council each shall submit a  
2 prioritized capital appropriation request annually to the state  
3 budget office as required by article two, chapter eleven-b of  
4 this code consisting of major capital projects and  
5 maintenance projects.

6 (b) The commission and council each shall develop a  
7 process for governing boards to follow in submitting a list of  
8 major educational and general capital projects so that a  
9 prioritized major capital project list, approved by the  
10 commission or council, as appropriate, may be submitted to  
11 the state budget office by the applicable deadline.

12 (1) The governing board's major capital project list shall  
13 include the following items:

14 (A) Projects identified in the governing board's approved  
15 campus development plan or plans. A project may not be  
16 included which is not contained in the approved plan, except  
17 when extraordinary circumstances otherwise warrant;

18 (B) A current estimate of each project's estimated cost  
19 accounting for inflation since completion of the campus  
20 development plan. The size and scope of the project may not  
21 change unless the campus development plan has been  
22 updated and approved as provided in section three of this  
23 article; and

24 (C) Any additional information required to be provided  
25 by the commission, council or state budget office.

26           (2) The commission and council each shall rank the  
27 major capital projects submitted by the governing boards  
28 according to priority consistent with the criteria outlined in  
29 the system capital development plan. The council and  
30 commission may not submit to the state budget office a  
31 request for an institution which the commission or council  
32 determines reasonably could not secure funding through the  
33 appropriation process during the following fiscal year.

34           (c) The commission and council each shall develop a  
35 process for governing boards to follow in submitting a list of  
36 maintenance projects so that a prioritized maintenance  
37 project list, approved by the commission or council, as  
38 appropriate, may be submitted to the state budget office by  
39 the applicable deadline.

40           (1) No later than April 1, 2011, and annually thereafter,  
41 the commission and council, as appropriate, shall provide  
42 each governing board a building renewal calculation that  
43 identifies the funds that should be collected and invested in  
44 its buildings and facilities during the next fiscal year to  
45 maintain them and minimize deferred maintenance.

46           (2) As soon as it receives the building renewal  
47 calculation, each governing board shall make realistic  
48 revenue estimates of the funds available for maintenance  
49 projects from educational and general capital fees, from  
50 auxiliary and auxiliary capital fees and from any other  
51 revenue that may be used for maintenance projects, as well as  
52 any anticipated reserves. The governing boards then shall  
53 identify and submit proposed maintenance projects,  
54 consistent with its campus development plan or plans, to be  
55 funded from these revenues.

56           (3) The commission and council each shall report to the  
57 Legislative Oversight Commission on Education  
58 Accountability on the revenue available to governing boards



59 for educational and general and auxiliary maintenance  
60 projects, as well as any shortfalls based on building renewal  
61 formula calculation, and major maintenance projects that  
62 institutions propose to undertake during the upcoming fiscal  
63 year.

64 (4) The commission shall work with institutions under its  
65 jurisdiction to ensure that adequate funds are generated to  
66 fund maintenance and build adequate reserves from  
67 educational and general and auxiliary capital fees and other  
68 revenue consistent with the building renewal formula. The  
69 Legislature recognizes that it may take several years for this  
70 to be accomplished fully.

71 (5) The council shall work with the Legislature and  
72 institutions under its jurisdiction to ensure that a combination  
73 of appropriated and nonappropriated revenue is available to  
74 fund maintenance and build adequate reserves at community  
75 and technical colleges consistent with the building renewal  
76 formula.

#### **§18B-19-6. Capital project financing.**

1 (a) The commission and governing boards, jointly or  
2 singly, may issue revenue bonds for capital project financing  
3 in accordance with section eight, article ten of this chapter.

4 (b) A governing board may seek funding for and initiate  
5 construction or renovation work only for projects contained  
6 in an approved campus development plan.

7 (c) A governing board may fund capital improvements on  
8 a cash basis, through bonding or through another financing  
9 method that is approved by the commission and by the  
10 council, if appropriate.

11 (1) If the cost of an improvement project for any  
12 institution, except Marshall University or West Virginia

13 University, exceeds \$1 million, the governing board first  
14 shall obtain the approval of the commission or council, as  
15 appropriate. If the cost of an improvement project for  
16 Marshall University or West Virginia University exceeds \$15  
17 million, the governing board first shall obtain the approval of  
18 the commission.

19 (2) Prior to approving bonding or any alternative  
20 financing method, the commission, and council if  
21 appropriate, shall evaluate the following issues:

22 (A) The institution's debt capacity and ability to meet the  
23 debt service payments for the full term of the financing;

24 (B) The institution's capacity to generate revenue  
25 sufficient to complete the project;

26 (C) The institution's ability to fund ongoing operations  
27 and maintenance;

28 (D) The impact of the financing arrangement on students;  
29 and

30 (E) Any other factor considered appropriate.

31 (d) A governing board shall notify the Joint Committee  
32 on Government and Finance at least thirty days before  
33 beginning construction or renovation work on any capital  
34 project in excess of \$1 million.

35 (e) The commission may pledge all or part of the fees of  
36 any or all state institutions of higher education as part of a  
37 system bond issue.

38 (f) Any fee or revenue source pledged prior to the  
39 effective date of this section for payment of any outstanding  
40 debt remains in effect until the debt is fully repaid or  
41 refunded.

**§18B-19-7. Capital project management.**

1           (a) The commission, council and governing boards shall  
2 ensure that capital funds are spent appropriately and that  
3 capital projects are managed effectively. Project  
4 management shall be conducted in all respects according to  
5 sound business practices and applicable laws, and rules.

6           (b) The commission shall employ a sufficient number of  
7 competent facilities staff experienced in capital project  
8 development and management that is suitable for the number,  
9 size and complexity of the capital projects being managed.  
10 By December 31, 2011, and continuing thereafter, at least  
11 one employee shall be Leadership in Energy and  
12 Environmental Design (LEED) certified.

13           (c) An institution that has entered into construction  
14 contracts averaging more than \$50 million over the most  
15 recent rolling five-year period is responsible for capital  
16 project management at that institution if it meets the  
17 following additional conditions:

18           (1) The governing board shall employ a facilities staff  
19 experienced in capital project development and management  
20 that is suitable for the number, size and complexity of the  
21 capital projects being managed and, by December 31, 2011,  
22 and continuing thereafter, at least one of these employees  
23 shall be Leadership in Energy and Environmental Design  
24 (LEED) certified;

25           (2) The governing board shall promulgate and adopt a  
26 capital project management rule in accordance with section  
27 six, article one of this chapter which is consistent with the  
28 capital management rules of the commission and council.  
29 The capital project management rule shall include at least the  
30 following items:

31 (A) Delineation of the governing board's responsibilities  
32 with respect to capital project management and the  
33 responsibilities delegated to the institution's president;

34 (B) A requirement for the use of the state's standard  
35 contract documents for architectural, engineering,  
36 construction, construction management and design-build  
37 services as appropriate to a particular project;

38 (C) The governing board's requirements for the following  
39 procedures:

40 (i) Monitoring and approving project designs to ensure  
41 conformance with the state and system goals, objectives and  
42 priorities and the governing board's master plan, compact  
43 and campus development plan;

44 (ii) Approving project budgets, including a reasonable  
45 contingency reserve for unknown or unexpected expenses  
46 and for bidding;

47 (iii) Approving architectural, engineering and  
48 construction contracts exceeding an amount to be determined  
49 by the governing board;

50 (iv) Approving contract modifications and construction  
51 change orders; and

52 (v) Providing a method for project closeout and final  
53 acceptance of the project by the governing board.

54 (3) The institutional capital project management rule  
55 shall be filed with the commission no later than one hundred  
56 eighty days following the effective date of the rule required  
57 of the commission and council in section seventeen of this  
58 article.

59           (4) The commission may review or audit projects greater  
60 than \$5 million periodically to ascertain that appropriate  
61 capital project management practices are being employed.

62           (d) For institutions that have entered into construction  
63 contracts averaging at least \$20 million, but not more than  
64 \$50 million, over the most recent rolling five-year period:

65           (1) The governing board, with assistance as requested  
66 from the commission, shall manage all capital projects if the  
67 governing board meets the following conditions:

68           (A) Employs at least one individual experienced in  
69 capital project development and management; and

70           (B) Promulgates and adopts a capital project management  
71 rule in accordance with section six, article one of this chapter  
72 that is approved by the commission. The capital project  
73 management rule may be amended at the discretion of the  
74 governing board, but amendments shall be submitted to the  
75 commission for review and approval before becoming effective.

76           (2) The capital project management rule of the governing  
77 board shall include at least the following items:

78           (A) Delineation of the governing board's responsibilities  
79 with respect to capital project management and the  
80 responsibilities delegated to the institution's president;

81           (B) A requirement for the use of the state's standard  
82 contract documents for architectural, engineering,  
83 construction, construction management and design-build  
84 services as appropriate to a particular project; and

85           (C) The governing board's requirements for the following  
86 procedures:

87 (i) Monitoring and approving project designs to ensure  
88 conformance with the state and system goals, objectives and  
89 priorities and the governing board's master plan, compact  
90 and campus development plan;

91 (ii) Approving project budgets, including a reasonable  
92 contingency reserve for unknown or unexpected expenses  
93 and for bidding;

94 (iii) Approving architectural, engineering, construction  
95 and other capital contracts exceeding an amount to be  
96 determined by the governing board;

97 (iv) Approving contract modifications and construction  
98 change orders; and

99 (v) Providing a method for project closeout and final  
100 acceptance of the project by the governing board.

101 (3) If an institution does not meet the provisions of this  
102 subsection, the commission shall manage all capital projects  
103 exceeding \$1 million.

104 (4) The commission staff shall review and audit  
105 periodically all projects greater than \$1 million to ascertain  
106 that appropriate project management practices are being  
107 employed. If serious deficiencies are identified and not  
108 addressed sufficiently within ninety days, commission staff  
109 may assume management of all projects.

110 (e) For institutions that have entered into construction  
111 contracts averaging less than \$20 million over the most  
112 recent rolling five-year period and for all community and  
113 technical colleges, the commission and council shall manage  
114 capital projects exceeding \$1 million. In the rule required by  
115 section seventeen of this article, the commission and council,  
116 as appropriate, shall adopt procedures to afford participation

117 by the governing boards and staff in the planning,  
118 development and execution of capital projects.

**§18B-19-8. Maintenance.**

1 (a) Each governing board shall ensure that facilities under  
2 its jurisdiction are maintained and that a listing of any major  
3 deferred maintenance projects is provided annually to the  
4 commission or council, as appropriate.

5 (b) Each governing board shall strive to invest annually  
6 an amount for maintenance that is consistent with the  
7 building renewal formula developed and approved by the  
8 commission and council and to generate a reserve sufficient  
9 to address unexpected maintenance needs.

10 (c) The commission and council shall determine whether  
11 a governing board is devoting sufficient resources for  
12 maintenance based on the following criteria:

13 (1) The amount of maintenance expenditures compared  
14 to building renewal formula estimates of appropriate  
15 expenditures; and

16 (2) Periodic evaluations of the conditions of facilities at  
17 the institution and its performance and effectiveness in  
18 maintaining its facilities.

**§18B-19-9. Higher education facilities information system.**

1 (a) The commission and council jointly shall develop and  
2 maintain a higher education facilities information system.  
3 The higher education facilities information system shall serve  
4 as a vehicle for carrying out the following functions:

5 (1) Acquisition of statewide data;

6           (2) Statewide standardization of space use and  
7 classification based on nationally recognized standards and  
8 measurements to facilitate comparisons among post-  
9 secondary education institutions within the state and in the  
10 region and nation; and

11           (3) Other purposes as determined by the commission and  
12 council.

13           (b) At a minimum the higher education facilities  
14 information system shall serve the following purposes:

15           (1) Develop and maintain a statewide inventory of higher  
16 education facilities, including those acquired by long-term  
17 lease, lease-purchase or other arrangement whereby the  
18 institution has long-term beneficial use. The inventory shall  
19 include, but is not limited to, the institution and campus  
20 location of the facility, the construction date, the original  
21 cost, square footage, floor plans, type of construction,  
22 ownership status, the purposes for which it is used, the  
23 current replacement cost and any other data the commission  
24 and council consider appropriate;

25           (2) Develop and maintain an inventory of all rooms  
26 within each facility, which includes, but is not limited to, the  
27 room number, the square footage, room usage, number of  
28 student stations and any other data the commission and  
29 council consider appropriate;

30           (3) Provide a vehicle for institutions to submit capital  
31 appropriation requests to the commission and council;

32           (4) Provide a vehicle to track the status and cost of  
33 institution capital projects from inception to completion,  
34 including major maintenance and deferred maintenance  
35 projects; and



36 (5) Provide information on facilities needed to calculate  
37 the building renewal formula.

38 (c) The commission and council shall establish  
39 benchmarks for classroom and class laboratory use including  
40 an analysis of utilization for the fall and spring semesters of  
41 each academic year. The efficient use of classrooms and  
42 class laboratories is a factor in determining whether an  
43 institution needs additional classroom and laboratory  
44 facilities.

45 (d) Each governing board and any institution under its  
46 jurisdiction shall participate and cooperate with the  
47 commission and council in all respects in the development  
48 and maintenance of the higher education facilities  
49 information system.

50 (e) The higher education facilities information system  
51 may be used for other purposes set forth by the commission  
52 and council in the rules required by section seventeen of this  
53 article.

**§18B-19-10. Authorization to sell property; use of proceeds.**

1 (a) Notwithstanding any other provision of law or this  
2 code to the contrary, the commission, council and governing  
3 boards each may sell, lease, convey or otherwise dispose of  
4 all or part of any real property that it owns, either by contract  
5 or at public auction, and retain the proceeds of the  
6 transaction.

7 (1) The commission, council and governing boards may  
8 not sell, lease, convey or otherwise dispose of any real  
9 property without first performing the following steps:

10 (A) Providing for property appraisal by two independent  
11 licensed appraisers. The property may not be sold for less  
12 than the average of the two appraisals;

13 (B) Providing notice to the public in the county in which  
14 the real property is located by a Class II legal advertisement  
15 pursuant to section two, article three, chapter fifty-nine of  
16 this code;

17 (C) Holding a public hearing on the issue in the county in  
18 which the real property is located; and

19 (D) In the case of the commission, notifying the Joint  
20 Committee on Government and Finance.

21 (2) Any proceeds from the sale, lease, conveyance or  
22 other disposal of real property that is used jointly by  
23 institutions or for statewide programs under the jurisdiction  
24 of the commission or the council shall be transferred to the  
25 General Revenue Fund of the state.

26 (b) The commission, council or a governing board shall  
27 deposit the net proceeds from the sale, lease, conveyance or  
28 other disposal of real property into a special revenue account  
29 in the State Treasury to be appropriated by the Legislature in  
30 the annual budget bill for the purchase of additional real  
31 property, equipment or technology, or for capital  
32 improvements or maintenance at the institution that sold the  
33 surplus real property.

#### **§18B-19-11. Authorization to lease-purchase.**

1 (a) The commission or council may enter into lease-  
2 purchase agreements for capital improvements, including  
3 equipment, on behalf of, or for the benefit of, a state  
4 institution of higher education, the commission or council.

5 (b) After the commission or council, as appropriate, has  
6 granted approval for a lease-purchase agreement by a  
7 governing board, the board may enter into a lease-purchase  
8 agreement for capital improvements, including equipment.

9 (c) The governing boards of Marshall University and  
10 West Virginia University may enter into lease-purchase  
11 agreements without seeking the approval of the commission.

12 (d) A lease-purchase agreement constitutes a special  
13 obligation of the State of West Virginia. The obligation may  
14 be met from any funds legally available to the commission,  
15 council or the institution and shall be cancelable at the option  
16 of the commission, council, or governing board at the end of  
17 any fiscal year. The obligation, or any assignment or  
18 securitization of the obligation, never constitutes an  
19 indebtedness of the State of West Virginia or any department,  
20 agency or political subdivision of the state, within the  
21 meaning of any constitutional provision or statutory  
22 limitation, and may not be a charge against the general credit  
23 or taxing powers of the state or any political subdivision of  
24 the state. The facts shall be plainly stated in any lease-  
25 purchase agreement.

26 (e) A lease-purchase agreement shall prohibit assignment  
27 or securitization without consent of the lessee and the  
28 approval of the agreement as to form by the Attorney  
29 General. Proposals for any agreement shall be requested in  
30 accordance with the requirements of this section and rules of  
31 the commission and council. In addition, any lease-purchase  
32 agreement that exceeds \$100,000 total shall be approved as  
33 to form by the Attorney General.

34 (f) The interest component of any lease-purchase  
35 obligation is exempt from all taxation of the State of West  
36 Virginia, except inheritance, estate and transfer taxes. It is  
37 the intent of the Legislature that if the requirements set forth  
38 in the Internal Revenue Code of 1986, as amended, and any  
39 regulations promulgated pursuant thereto are met, the interest  
40 component of any lease-purchase obligation also is exempt  
41 from the gross income of the recipient for purposes of federal  
42 income taxation and may be designated by the governing

43 board or the president of the institution as a bank-qualified  
44 obligation.

**§18B-19-12. Authorization to lease.**

1 (a) Notwithstanding any other provision of this code to  
2 the contrary, the commission, council and governing boards  
3 may lease, or offer to lease, as lessee, any grounds, buildings,  
4 office or other space in the name of the state.

5 (b) The commission, council and governing boards have  
6 sole authority to select and to acquire by contract or lease all  
7 grounds, buildings, office space or other space, the rental of  
8 which is required necessarily by the commission, council or  
9 institutions.

10 (c) Before executing any rental contract or lease, the  
11 commission, council or a governing board shall determine the  
12 fair market value for the rental of the requested grounds,  
13 buildings, office space or other space, in the condition in  
14 which they exist, and shall contract for or lease the premises  
15 at a price not to exceed the fair market value.

16 (d) The commission, council and each governing board  
17 may enter into long-term agreements for buildings land and  
18 space for periods longer than one fiscal year but not to  
19 exceed forty years.

20 (e) Any lease shall contain, in substance, all the following  
21 provisions:

22 (1) The commission, council or governing board, as  
23 lessee, has the right to cancel the lease without further  
24 obligation on the part of the lessee upon giving thirty days'  
25 written notice to the lessor at least thirty days prior to the last  
26 day of the succeeding month;

27           (2) The lease is considered canceled without further  
28 obligation on the part of the lessee if the Legislature or the  
29 federal government fails to appropriate sufficient funds for  
30 the lease or otherwise acts to impair the lease or cause it to be  
31 canceled; and

32           (3) The lease is considered renewed for each ensuing  
33 fiscal year during the term of the lease unless it is canceled  
34 by the commission, council or governing board before the  
35 end of the then-current fiscal year.

36           (f) The commission, council or institution that is granted  
37 any grounds, buildings, office space or other space leased in  
38 accordance with this section may not order or make  
39 permanent changes of any type thereto, unless the  
40 commission, council or governing board, as appropriate, has  
41 first determined that the change is necessary for the proper,  
42 efficient and economically sound operation of the institution.  
43 For purposes of this section, a "permanent change" means  
44 any addition, alteration, improvement, remodeling, repair or  
45 other change involving the expenditure of state funds for the  
46 installation of any tangible thing that cannot be economically  
47 removed from the grounds, buildings, office space or other  
48 space when vacated by the institution.

49           (g) Leases and other instruments for grounds, buildings,  
50 office or other space, once approved by the commission,  
51 council or governing board, may be signed by the chief  
52 executive officer, or designee, of the commission, council or  
53 institution.

54           (h) Any lease or instrument exceeding \$100,000 annually  
55 shall be approved as to form by the Attorney General. A  
56 lease or other instrument for grounds, buildings, office or  
57 other space that contains a term, including any options, of  
58 more than six months for its fulfillment shall be filed with the  
59 State Auditor.

**§18B-19-13. Real property contracts and agreements.**

1 (a) Except as provided elsewhere in this article, any  
2 purchase of real estate, any lease-purchase agreement and  
3 any construction of new buildings or other acquisition of  
4 buildings, office space or grounds resulting from these  
5 transactions, shall be approved by the commission or council,  
6 as appropriate, and provided to the Joint Committee on  
7 Government and Finance for prior review, if the transaction  
8 exceeds \$1 million.

9 (b) The commission, council and each governing board  
10 shall provide the following to the Joint Committee on  
11 Government and Finance:

12 (1) A copy of any contract or agreement to which it is a  
13 party for real property if the contract or agreement exceeds  
14 \$1 million; and

15 (2) A report setting forth a detailed summary of the terms  
16 of the contract or agreement, including the name of the  
17 property owner and the agent involved in the sale.

18 (c) The copy and report required by subsection (b) of this  
19 section shall be provided at least thirty days before any sale,  
20 exchange, transfer, purchase, lease-purchase, lease or rental  
21 of real property, refundings of lease-purchases, leases or  
22 rental agreements, construction of new buildings, and any  
23 other acquisition or lease of buildings, office space or  
24 grounds.

25 (d) A contract or agreement that is for the lease purchase,  
26 lease or rental of real property, where the costs of real  
27 property acquisition and improvements are to be financed, in  
28 whole or in part, with bond proceeds, may contain a  
29 preliminary schedule of rents and leases for purposes of  
30 review by the committee.

31 (e) For renewals of contracts or agreements required by  
32 this section to be reported, the commission, council or  
33 governing board shall provide a report setting forth a detailed  
34 summary of the terms of the contract or agreement, including  
35 the name of the property owner.

36 (f) The Joint Committee on Government and Finance  
37 shall meet and review any contract, agreement or report  
38 within thirty days of receipt.

39 (g) Each governing board shall provide to the  
40 commission or council, as appropriate, a copy of any contract  
41 or agreement submitted to the Joint Committee on  
42 Government and Finance pursuant to this section.

**§18B-19-14. Authorization for sale lease-back.**

1 (a) Notwithstanding any other provision of this code to  
2 the contrary, a governing board may sell any building that is  
3 on unencumbered real property to which the board holds title  
4 and may lease back the same building if the governing board  
5 obtains approval of the commission or council, as  
6 appropriate, before incurring any obligation. The board shall  
7 deposit the net proceeds of the transaction into a special  
8 revenue account in the State Treasury to be appropriated by  
9 the Legislature for the use of the institution at which the real  
10 property is located. Prior to such action, the board shall take  
11 the following steps:

12 (1) Provide for the property to be appraised by two  
13 licensed appraisers. The board may not sell the property for  
14 less than the average of the two appraisals; and

15 (2) Retain independent financial and legal services to  
16 examine fully all aspects of the transaction.

17           (b) The sale may be made only to a special purpose entity  
18 that exists primarily for the purpose of supporting the  
19 institution at which the building is located.

**§18B-19-15. Construction and operation of auxiliary facilities;  
fees for auxiliary enterprises.**

1           (a) A governing board may provide, construct, erect,  
2 improve, equip, maintain and operate auxiliary facilities, as  
3 defined in section two of this article, for students, employees  
4 and visitors on land it owns or leases.

5           (b) The cost of construction, erection, improvement or  
6 equipment may be paid with the proceeds of revenue bonds  
7 authorized by this code or by any other financing method  
8 provided in this article.

9           (c) A governing board may engage experts in  
10 engineering, architecture and construction and other experts  
11 as it considers necessary and may specify the payment and  
12 contract terms which are included in the cost of the project.

13           (d) A governing board may promulgate and adopt rules  
14 and charge fees for use of its facilities. The fees charged  
15 shall be structured so as to generate funds sufficient for the  
16 following purposes:

17           (1) To maintain payment of the principal of and interest  
18 on any revenue bonds, and for reserves for the revenue  
19 bonds;

20           (2) To operate the auxiliary enterprise;

21           (3) To satisfy annual building renewal formula  
22 requirements; and

23           (4) To build a reserve for major renovation or  
24 replacement.



25 (e) All moneys collected for the use of auxiliary facilities  
26 shall be paid to the credit of and expended by the governing  
27 board of that institution in accordance with section thirteen,  
28 article ten of this chapter.

**§18B-19-16. Condemnation generally.**

1 (a) The commission, council and governing boards each  
2 may acquire land or buildings by condemnation for the use  
3 and benefit of any state institution under its jurisdiction. A  
4 condemnation proceeding conducted pursuant to this section  
5 is governed by chapter fifty-four of this code.

6 (b) The commission, council and governing boards each  
7 may condemn any interest, right or privilege, land or  
8 improvement, which in its opinion is necessary, in the  
9 manner provided by law for the acquisition by this state of  
10 property for public purposes. The state is under no obligation  
11 to accept and pay for any property condemned and may pay  
12 for the property only from the funds provided for that  
13 purpose.

14 (c) In any proceeding to condemn, the order shall be  
15 made by the court having jurisdiction of the suit, action or  
16 proceedings. A bond or other security may be required by  
17 the court securing the property owner against any loss or  
18 damage to be sustained by reason of the state's failure to  
19 accept and pay for the property. The bond or security may  
20 not impose liability or debt on or of the state as contemplated  
21 by the Constitution of the State in relation to state debt.

**§18B-19-17. Legislative rule.**

1 The commission and council jointly shall propose a rule  
2 or rules for legislative approval in accordance with article  
3 three-a, chapter twenty-nine-a of this code, to implement this  
4 article.

**§18B-19-18. Reporting.**

1           (a) By July 1, 2013, and annually thereafter, the  
2 commission and council shall provide a general status report  
3 to the Legislative Oversight Commission on Education  
4 Accountability on the progress being made in implementing  
5 the state-wide capital development plan and on the progress  
6 of the governing boards in implementing the objectives of  
7 institutions' campus development plans.

8           (b) The process required by the commission and council  
9 for reporting by the governing boards shall be included in the  
10 rules required by section seventeen of this article.

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**CHAPTER 57**

**(Com. Sub. for S. B. 631 - By Senators  
Plymale, Wells and Browning)**

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[Passed March 8, 2010; in effect July 1, 2010.]  
[Approved by the Governor on March 16, 2010.]

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AN ACT to amend and reenact §18-2A-1, §18-2A-2, §18-2A-3, §18-2A-4, §18-2A-5, §18-2A-6, §18-2A-7, §18-2A-8 and §18-2A-9 of the Code of West Virginia, 1931, as amended, all relating generally to instructional resources; process for approval and adoption of instructional resources in public schools; replacing the terms “textbooks”, “instructional materials” and “learning technologies” with “instructional resources” and modifying affected code provisions accordingly; modifying limit on adoption cycles; providing for listing of instructional resources on the state multiple list;

requiring a method for review and adding new and substantially revised resources to the multiple list; providing for county waivers of adoption cycles; providing method for counties to select new or different resource before end of a contract period; providing a method for vendor update of resources; revising the bidding, selection and approval process; permitting the multiple list to be published in an electronic format; requiring contracts to be filed pursuant to the state board process; providing for review of electronic instructional resources; providing for regional education service agency level selection teams; and ensuring equity of access to electronic instructional resources for all students.

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

That §18-2A-1, §18-2A-2, §18-2A-3, §18-2A-4, §18-2A-5, §18-2A-6, §18-2A-7, §18-2A-8 and §18-2A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 2A. ADOPTION OF INSTRUCTIONAL RESOURCES.**

- §18-2A-1. Definition; adoption groups; adoption schedule.
- §18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.
- §18-2A-3. Disposition of and requests for samples.
- §18-2A-4. Execution of contracts; bond.
- §18-2A-5. Selection by county boards; school curriculum teams.
- §18-2A-6. Retail prices; limitation on profit; violation; penalty.
- §18-2A-7. Exchange privilege; use of supplementary items; state-approved depositories authorized.
- §18-2A-8. Instructional resources must be approved and listed; when changes may be effected; rules.
- §18-2A-9. Gifts and bribes to influence adoption of instructional resources a felony; penalty.

### **§18-2A-1. Definition; adoption groups; adoption schedule.**

- 1 (a) "Instructional Resources" include print materials,
- 2 electronic resources and systems, or combinations of such
- 3 instructional resources which convey information to the pupil.

4           (b) Instructional resources approved for adoption and  
5 listed on the state multiple list shall substantially cover the  
6 required content and skills for the subject as approved by the  
7 state board . The instructional resources shall be current and  
8 the information shall be presented accurately. The  
9 instructional resources may consist of a single resource, print  
10 or electronic, or a compilation of resources, print or  
11 electronic, that together cover the required criteria established  
12 for approval as a primary instructional resource. The  
13 resources may be updated or otherwise changed and  
14 improved on an ongoing basis to ensure that they are current  
15 and accurate.

16           (c) On or before July 1 of each year, the state board shall  
17 classify the elementary and secondary school subjects  
18 required to be taught in the schools of our state into adoption  
19 groups by related subject fields as nearly as possible. A  
20 schedule for the periods of adoption, not to exceed six years,  
21 shall be determined by the state board. However, during the  
22 school year beginning on July 1, 2010, the state board shall  
23 develop a method by which newly developed and  
24 substantially revised instructional materials submitted by  
25 vendors or available as open resources may be reviewed for  
26 compliance with established criteria. When an instructional  
27 resource is found to be in compliance with established  
28 criteria, it may be added to the official multiple list and  
29 thereafter be available for adoption by a county board.  
30 County board instructional resources adoption committees  
31 may request a waiver of the adoption cycles from the state  
32 board. Software, print and electronic magazines, print and  
33 electronic newspapers and other print and electronic  
34 periodicals and other licensed or subscription-based  
35 instructional resources may be purchased county board for  
36 classroom use to supplement those items adopted on the state  
37 multiple list without having to comply with the adoption  
38 procedures provided in this article.

39 (d) Software, print and electronic magazines, print and  
40 electronic newspapers and print and electronic periodicals are  
41 considered to be instructional resources for purposes of  
42 special excess levies subject to the provisions of section  
43 sixteen, article eight, chapter eleven of this code when the  
44 described purpose under that section is for textbooks or  
45 instructional resources.

46 (e) A county board that selects an electronic instructional  
47 resource may, subject to the approval by the state board of its  
48 request to do so, choose not to renew that option before the  
49 end of the established contract period and select a new or  
50 different instructional resource from the official multiple  
51 listing before the end of the established contract period.

52 (f) The vendor of an adopted electronic resource, after  
53 notice of explanation to the state board, may offer an update  
54 to the navigational features or management system, or both,  
55 related to the learning technology and may update the content  
56 of the learning technology as needed to accurately reflect  
57 current knowledge or information without charge. Vendor  
58 changes to the electronic resources may not require the  
59 purchase of a new operating system during the established  
60 contract period. Vendors shall continue to provide support  
61 for the version adopted.

62 (g) The state board shall adopt guidelines and procedures  
63 for updates and changes to electronic instructional resources  
64 submitted by vendors.

**§18-2A-2. Request for samples and bids; deposit by bidder;  
selection, approval and publication of multiple  
list.**

1 (a) Prior to each adoption year, and not later than August  
2 1, the state board by written request or otherwise shall ask the  
3 various vendors of instructional resources, print or electronic,  
4 or any combination thereof, to submit samples and prices on

5 items considered appropriate by the state board to teach the  
6 curriculum in the public elementary and secondary schools of  
7 the state for the current adoption period. The state board also  
8 shall accept for consideration newly developed and  
9 substantially revised instructional resources for content areas  
10 not in the current adoption cycle.

11 (b) All bids or proposals shall be under seal, and each  
12 bidder shall deposit in the State Treasury such sum of money  
13 as the state board may designate, such deposit to be not less  
14 than \$1,000, and not more than \$3,000 and such deposit shall  
15 be forfeited to the general school fund if such bidder shall fail  
16 or refuse to make and execute such contract and bond as are  
17 herein required in case of acceptance of all or part of the  
18 vendor's bid, and otherwise shall be returned to such bidder  
19 after the contract has been made. The state board reserves  
20 the right to set the sum of money a vendor is required to  
21 deposit in the State Treasury upon submitting a bid:  
22 *Provided*, That the vendor has a previous history of failure or  
23 refusal to execute contracts or bonds with the State of West  
24 Virginia. The state board may set and collect review fees  
25 from publishers and vendors participating in the state  
26 instructional resources approval and adoption process.

27 (c) All bids shall be opened by the state board, or its  
28 designee, in public session. After considering the subject  
29 matter, product quality, general suitability, and prices of  
30 items submitted, the state board shall, prior to March 1 of  
31 each year in which approvals for adoption are made by it,  
32 establish a committee of teachers and other educational  
33 specialists, including a sufficient number with experience  
34 with electronic instructional resources, and with the aid of the  
35 committee, shall on or before December 1, prior to county  
36 adoptions, select, approve and publish a list of items in each  
37 subject and grade in the elementary and secondary subjects  
38 required to be taught by the state board. The committee of  
39 teachers and other educational specialists shall report their

40 recommendations to the state board on or before November  
41 15, of the year preceding the adoption by the county board.  
42 The state board may create a standing committee of teachers  
43 and other education specialists, including a sufficient number  
44 with experience with electronic instructional resources, for  
45 each subject and grade level to review all new or revised  
46 instructional resources submitted after the initial approvals  
47 for adoption.

**§18-2A-3. Disposition of and requests for samples.**

1 (a) Items to be reviewed in excess of the official sample  
2 submitted to the state board for examination shall remain the  
3 property of the vendor submitting them if claimed within  
4 thirty days after state board adoption of the multiple list. If  
5 not claimed within that period, the items may be sold by the  
6 state board and the money credited to the Department of  
7 Education Instructional Resources Fund or items may be  
8 distributed to state educational agencies.

9 (b) Sample items submitted to county boards or regional  
10 education service agency selection teams remain the property  
11 of the vendor submitting them if claimed within thirty days  
12 after instructional materials have been formally adopted.  
13 Unclaimed items may be distributed free of charge by the  
14 respective county board or regional educational service  
15 agency to any school, library or individual who may have  
16 need for the sample items.

17 (c) Vendors claiming samples within the thirty-day  
18 period shall notify the respective board of education or  
19 regional education service agency at the time samples are  
20 submitted for study of their intent to recall the samples. All  
21 costs shall be borne by the vendors.

22 (d) No county or regional education service agency  
23 adoption committee is entitled to request or receive more  
24 than eight free samples of any multigrade program being

25 considered for adoption. Any single grade level subject area  
26 items used above grade six shall be limited to five free  
27 samples per county selection committee. Any individual  
28 requesting samples in excess of these limits shall be billed by  
29 the vendor at the lowest wholesale price plus shipping. In the  
30 case of electronic instructional resources, it is sufficient for  
31 vendors to provide access for the purpose of reviewing the  
32 resources via a user name and password to a web-based  
33 resource or through on-line file transfer or download.

**§18-2A-4. Execution of contracts; bond.**

1 (a) When the selection and approval of the multiple list  
2 have been properly made, it is the duty of the state board to  
3 furnish contracts for the selected items with the vendors  
4 within thirty days of the approval and adoption of the  
5 multiple list, prepare a list of the adopted resources on the  
6 multiple list and publish it in electronic format and make the  
7 list available through a page on the West Virginia  
8 Department of Education web page. The contract for  
9 adoption shall run for a period of time as designated by the  
10 state board.

11 (b) Each vendor awarded a contract by the West  
12 Virginia Department of Education shall enter into a bond  
13 payable to the State of West Virginia in the penal sum of not  
14 less than \$2,000 and not more than \$10,000 to be approved  
15 by the state board of public works. The bond shall be  
16 executed as surety by a responsible surety company  
17 authorized to carry on its business in West Virginia. The  
18 contract shall be prepared by the Attorney General in  
19 accordance with the terms and provisions of this article.  
20 The contract shall be executed in triplicate, one copy to be  
21 held by the vendor, one by the state board and one attached  
22 to the bond filed with the board of public works.

23 (c) Bonds required of successful vendors shall provide  
24 that:



25           (1) The vendor will furnish any of the instructional  
26 resources on the multiple list under vendors contract for the  
27 period of the adoption, from the date of the bond, to any  
28 county school unit, a dealer appointed by the county, or any  
29 state board approved depository or depositories as defined  
30 in section seven of this article, at the lowest wholesale price  
31 contained in the bids or contracts made to any other county  
32 school unit, dealer, county, school or depository in any other  
33 state, like conditions prevailing. The state board shall  
34 determine, from time to time, the terms of the bids and  
35 contracts and may require the vendor to bear the costs of  
36 shipping, mail or transportation or offer any other financial  
37 benefit available in the highest amount paid by a vendor to  
38 any other county school unit, dealer, county or depository in  
39 any other state: *Provided*, That the state board shall decide  
40 whether from time to time bids and contracts for  
41 instructional resources are to be for the delivery directly to  
42 each county school unit, dealer appointed by the county,  
43 county or to each depository or depositories, or any  
44 combination thereof, under this section.

45           (2) The vendor will automatically reduce the prices in  
46 West Virginia when prices are reduced anywhere in the  
47 United States, so that no such item or items shall at any time  
48 be sold in West Virginia at a higher wholesale price than  
49 received for items elsewhere in the United States, like  
50 conditions prevailing.

51           (3) All items sold in West Virginia will be identical with  
52 the official samples submitted to the state board as regards  
53 quality standards, specifications, subject matter, and other  
54 particulars which may affect the value of the items. The  
55 state board may, however, during the period of the contract  
56 approve revised editions of adopted items, which will  
57 authorize a vendor to furnish such revisions. All contracts  
58 and bonds shall be filed in accordance with the appropriate  
59 state board process prior to July 1.

**§18-2A-5. Selection by county boards; school curriculum teams.**

1 (a) Vendors, upon requests of county superintendents,  
2 shall furnish to county boards the requested sample copies  
3 of resources that were selected and placed on the state  
4 multiple list by the state board in accordance with the  
5 provisions of section three of this article. In the case of  
6 electronic instructional resources, it is sufficient for vendors  
7 to provide access for the purpose of reviewing the resources  
8 via a web-hosted online format.

9 (b) School curriculum teams shall make their curriculum  
10 and instructional needs known to the county superintendent  
11 and selection committees prior to the consideration of any  
12 adopted grouping in accordance with the provisions of  
13 section three of this article. The county board shall, upon  
14 recommendation of the county superintendent with the aid  
15 of a committee of teachers and not later than May 1 of the  
16 year following that in which the multiple list for the group  
17 was made and approved, select from the state multiple list  
18 one or more resources to deliver instruction for a period as  
19 provided for elsewhere in this article. Counties are  
20 authorized to include nonvoting advisors from the general  
21 public in the adoption process, but shall require advisors to  
22 provide their assessment of the resources appropriate for the  
23 subject before the voting committee commences the  
24 selection process.

25 (c) In order to avoid duplication and to maximize  
26 resources, with agreement of all county superintendents  
27 within a regional education service agency area and  
28 subsequent regional education service agency actions, a  
29 regional education service agency instructional resources  
30 selection team may be established to conduct a review of  
31 selected resources placed on the state multiple list by the  
32 state board. The membership of the selection team will be  
33 established through agreement of the county superintendents

34 with representation of all counties, including any nonvoting  
35 advisors from the general public. The resource selection  
36 team will provide recommendations to each county  
37 superintendent for consideration, review and adoption by  
38 each county board.

39 (d) County boards adopting electronic instructional  
40 resources shall ensure equity of access for all students at  
41 school and shall have a plan to provide equity of access at  
42 home if necessary through alternate avenues including, but  
43 not limited to, print, software, and hardware support.

**§18-2A-6. Retail prices; limitation on profit; violation; penalty.**

1 It shall be the duty of the state board to fix prices at  
2 which the various instructional resources on the state  
3 multiple list shall be sold to patrons, the excess of which  
4 above contract price shall represent the profit to the retailer;  
5 but in no case shall such profit exceed twenty percent of the  
6 contract price. The state board shall notify each county  
7 superintendent of the instructional resources on the state  
8 multiple list and the prices at which they are to be sold, and  
9 any person selling such resources at a higher price than that  
10 fixed by the state board shall be guilty of a misdemeanor,  
11 and, upon conviction thereof, shall be fined not less than  
12 \$10 nor more than \$50.

**§18-2A-7. Exchange privilege; use of supplementary items;  
state-approved depositories authorized.**

1 Contractors shall arrange for the exchange of items,  
2 allowing pupils or boards of education an exchange price as  
3 liberal as granted on the same items to any city, county, or  
4 state in the United States, like conditions prevailing. The  
5 exchange privilege shall extend through one entire school  
6 year. Nothing in this article prevents the use of  
7 supplementary instructional resources, print or electronic,

8 provided they do not displace the adopted instructional  
9 resources, nor the use of more advanced items in such  
10 schools as may be ready for the same. The state Board of  
11 Education is authorized to approve any depository or  
12 depositories, either public or private, to serve any county or  
13 several counties, whose purpose includes, but is not limited  
14 to, offering the savings and services generally associated  
15 with local distribution of instructional resources or  
16 electronic instructional resources that are not web-based, or  
17 any combination thereof, to counties and schools.

**§18-2A-8. Instructional resources must be approved and listed; when changes may be effected; rules.**

1 (a) No instructional resource, print or electronic, may be  
2 used in any public elementary or secondary school in West  
3 Virginia as the primary source to deliver the instructional  
4 goals and objectives for state required courses unless it has  
5 been approved and listed on the state multiple list by the state  
6 board, except as otherwise provided in this section. Any  
7 changes of items made by the state board shall become  
8 effective upon approval. The state board may upon request  
9 by a county board and upon justification of that request, and  
10 subsequent to the adoption by a county board approve the  
11 adoption of additional items to meet the needs of specific  
12 children which were not provided for in the original adoption,  
13 or waive the requirement to adopt and use resources in a  
14 particular school as provided for in section six, article five-a  
15 of this chapter. Nothing in this section shall apply to the  
16 supplementary items that are needed from time to time.

17 (b) The state board may grant permission to county  
18 boards for the continued use of previously adopted resources  
19 that are listed on the most recently expired multiple list  
20 appropriate for the subject category under consideration. The  
21 continued use shall not exceed a period as designated by the  
22 state board. The state board may make such rules as it may

23 deem necessary and expedient to carry out the provisions of  
24 this article.

**§18-2A-9. Gifts and bribes to influence adoption of instructional resources a felony; penalty.**

1 Any member of the state board, any county  
2 superintendent, any member of a county board or any other  
3 person who shall receive, solicit, or accept any gift, present,  
4 or thing of value to influence that individual in the vote for  
5 the adoption of instructional resources, print or electronic, or  
6 any combination thereof, or any person who shall either  
7 directly or indirectly give or offer to give any such gift,  
8 present, or thing of value to any person to influence that  
9 individual in voting for the adoption of instructional  
10 resources, print or electronic, or any combination thereof,  
11 shall be guilty of a felony and, upon conviction thereof, shall  
12 be confined in a correctional facility for not less than one  
13 year nor more than three years.

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## CHAPTER 58

**(Com. Sub. for H. B. 4436 - By Delegates  
Shaver, M. Poling, Perry, Williams,  
Ennis, Beach, Lawrence, Romine,  
Pethel, Paxton and Cann)**

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[Passed March 11, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 19, 2010.]

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AN ACT to amend and reenact §18-2E-5 and §18-5A-6 of the Code of West Virginia, 1931, as amended, relating to promoting student achievement; revising accountability finding; clarifying

optional usage of certain testing or assessment instruments; publishing and making such instruments available to curriculum teams and teacher collaborations; making exclusions from accreditation and evaluations for failure to use or exercise of discretion in using certain assessments, strategies and programs; adding circumstance to definition of low performing school; providing for state system of support for low performing schools and modifying process and time lines for improvement; requiring schools and school systems to work collaboratively with state system of support in certain circumstances; requiring school curriculum teams to review certain non required tests and assessments and providing it discretion to determine usage; authorizing team to request waiver of state and county requirements to use certain assessments, instructional strategies or programs; updating waivers for instructional resources; providing for optional adoption by schools of process for teacher collaboration to replace or in addition to school curriculum team; and providing for membership, mission and structure.

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

That §18-2E-5 and §18-5A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**Article**

**2E. High Quality Educational Programs.**

**5A. Local School Improvement.**

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

**§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.**

1       (a) *Legislative findings, purpose and intent.* -- The  
2 Legislature makes the following findings with respect to the  
3 process for improving education and its purpose and intent in  
4 the enactment of this section:

5       (1) The process for improving education includes four  
6 primary elements, these being:

7       (A) Standards which set forth the knowledge and skills  
8 that students should know and be able to do as the result of  
9 a thorough and efficient education that prepares them for the  
10 twenty-first century, including measurable criteria to evaluate  
11 student performance and progress;

12       (B) Assessments of student performance and progress  
13 toward meeting the standards;

14       (C) A system of accountability for continuous  
15 improvement defined by high quality standards for schools  
16 and school systems articulated by a rule promulgated by the  
17 state board and outlined in subsection (c) of this section that  
18 will build capacity in schools and districts to meet rigorous  
19 outcomes that assure student performance and progress  
20 toward obtaining the knowledge and skills intrinsic to a high  
21 quality education rather than monitoring for compliance with  
22 specific laws and regulations; and

23       (D) A method for building the capacity and improving  
24 the efficiency of schools and school systems to improve  
25 student performance and progress.

26       (2) As the Constitutional body charged with the general  
27 supervision of schools as provided by general law, the state  
28 board has the authority and the responsibility to establish the  
29 standards, assess the performance and progress of students  
30 against the standards, hold schools and school systems  
31 accountable and assist schools and school systems to build

32 capacity and improve efficiency so that the standards are met,  
33 including, when necessary, seeking additional resources in  
34 consultation with the Legislature and the Governor.

35 (3) As the Constitutional body charged with providing for  
36 a thorough and efficient system of schools, the Legislature  
37 has the authority and the responsibility to establish and be  
38 engaged constructively in the determination of the knowledge  
39 and skills that students should know and be able to do as the  
40 result of a thorough and efficient education. This determination  
41 is made by using the process for improving education to  
42 determine when school improvement is needed, by evaluating  
43 the results and the efficiency of the system of schools, by  
44 ensuring accountability and by providing for the necessary  
45 capacity and its efficient use.

46 (4) In consideration of these findings, the purpose of this  
47 section is to establish a process for improving education that  
48 includes the four primary elements as set forth in subdivision  
49 (1) of this subsection to provide assurances that the high  
50 quality standards are, at a minimum, being met and that a  
51 thorough and efficient system of schools is being provided  
52 for all West Virginia public school students on an equal  
53 education opportunity basis.

54 (5) The intent of the Legislature in enacting this section  
55 and section five-c of this article is to establish a process  
56 through which the Legislature, the Governor and the state  
57 board can work in the spirit of cooperation and collaboration  
58 intended in the process for improving education to consult  
59 and examine the performance and progress of students,  
60 schools and school systems and, when necessary, to consider  
61 alternative measures to ensure that all students continue to  
62 receive the thorough and efficient education to which they  
63 are entitled. However, nothing in this section requires any  
64 specific level of funding by the Legislature.



65       (b) *Electronic county and school strategic improvement*  
66 *plans.* -- The state board shall promulgate a rule consistent  
67 with the provisions of this section and in accordance with  
68 article three-b, chapter twenty-nine-a of this code establishing  
69 an electronic county strategic improvement plan for each  
70 county board and an electronic school strategic improvement  
71 plan for each public school in this state. Each respective plan  
72 shall be a five-year plan that includes the mission and goals  
73 of the school or school system to improve student, school or  
74 school system performance and progress, as applicable. The  
75 strategic plan shall be revised annually in each area in which  
76 the school or system is below the standard on the annual  
77 performance measures. The revised annual plan also shall  
78 identify any deficiency which is reported on the check lists  
79 identified in paragraph (G), subdivision (5), subsection (I) of  
80 this section including any deficit more than a casual deficit  
81 by the county board. The plan shall be revised when required  
82 pursuant to this section to include each annual performance  
83 measure upon which the school or school system fails to meet  
84 the standard for performance and progress, the action to be  
85 taken to meet each measure, a separate time line and a date  
86 certain for meeting each measure, a cost estimate and, when  
87 applicable, the assistance to be provided by the department  
88 and other education agencies to improve student, school or  
89 school system performance and progress to meet the annual  
90 performance measure.

91       The department shall make available to all public schools  
92 through its website or the West Virginia Education  
93 Information System an electronic school strategic improvement  
94 plan boilerplate designed for use by all schools to develop an  
95 electronic school strategic improvement plan which  
96 incorporates all required aspects and satisfies all improvement  
97 plan requirements of the No Child Left Behind Act.

98       (c) *High quality education standards and efficiency*  
99 *standards.* -- In accordance with the provisions of article

100 three-b, chapter twenty-nine-a of this code, the state board  
101 shall adopt and periodically review and update high quality  
102 education standards for student, school and school system  
103 performance and processes in the following areas:

- 104 (1) Curriculum;
- 105 (2) Workplace readiness skills;
- 106 (3) Finance;
- 107 (4) Transportation;
- 108 (5) Special education;
- 109 (6) Facilities;
- 110 (7) Administrative practices;
- 111 (8) Training of county board members and administrators;
- 112 (9) Personnel qualifications;
- 113 (10) Professional development and evaluation;
- 114 (11) Student performance and progress;
- 115 (12) School and school system performance and progress;
- 116 (13) A code of conduct for students and employees;
- 117 (14) Indicators of efficiency; and
- 118 (15) Any other areas determined by the state board.

119 The standards, as applicable, shall incorporate the state's  
120 21st Century Skills Initiative and shall assure that graduates

121 are prepared for continuing post-secondary education,  
122 training and work and that schools and school systems are  
123 making progress toward achieving the education goals of the  
124 state.

125 (d) *Comprehensive statewide student assessment*  
126 *program.* -- The state board shall promulgate a rule in  
127 accordance with the provisions of article three-b, chapter  
128 twenty-nine-a of this code establishing a comprehensive  
129 statewide student assessment program to assess student  
130 performance and progress in grades three through twelve.  
131 The state board may require that student proficiencies be  
132 measured through the ACT EXPLORE and the ACT PLAN  
133 assessments or other comparable assessments, which are  
134 approved by the state board and provided by future vendors.  
135 The state board may require that student proficiencies be  
136 measured through the West Virginia writing assessment at  
137 any of the grade levels four, seven and ten determined by the  
138 state board to be appropriate: *Provided, That,* effective July  
139 1, 2008, the state board may require that student proficiencies  
140 be measured through the West Virginia writing assessment at  
141 any of the grade levels four, seven and eleven determined by  
142 the state board to be appropriate. The state board may  
143 provide through the statewide assessment program other  
144 optional testing or assessment instruments applicable to grade  
145 levels kindergarten through grade twelve which may be used  
146 by each school to promote student achievement upon  
147 approval by the school curriculum team or the process for  
148 teacher collaboration to improve instruction and learning  
149 established by the faculty senate as provided in section six,  
150 article five-a of this chapter. The state board shall annually  
151 publish and make available, electronically or otherwise, to  
152 school curriculum teams and teacher collaborative processes  
153 the optional testing and assessment instruments. The failure  
154 of a school to use any optional testing and assessment may  
155 not be cited as a deficiency in any accreditation review of the  
156 school; nor may the exercise of its discretion, as provided in

157 section six, article five-a of this chapter, in using the  
158 assessments and implementing the instructional strategies and  
159 programs that it determines best to promote student  
160 achievement at the school be cited as a deficiency in any  
161 accreditation review of the school or in the personnel  
162 evaluation of the principal. The use of assessment results are  
163 subject to the following:

164 (1) The assessment results for grade levels three through  
165 eight and eleven are the only assessment results which may  
166 be used for determining whether any school or school system  
167 has made adequate yearly progress (AYP);

168 (2) Only the assessment results in the subject areas of  
169 reading/language arts and mathematics may be used for  
170 determining whether a school or school system has made  
171 adequate yearly progress (AYP);

172 (3) The results of the West Virginia writing assessment,  
173 the ACT EXPLORE assessments and the ACT PLAN  
174 assessments may not be used for determining whether a  
175 school or school system has made adequate yearly progress  
176 (AYP);

177 (4) The results of testing or assessment instruments  
178 provided by the state board for optional use by schools and  
179 school systems to promote student achievement may not be  
180 used for determining whether a school or school system has  
181 made adequate yearly progress (AYP); and

182 (5) All assessment provisions of the comprehensive  
183 statewide student assessment program in effect for the school  
184 year 2006-2007 shall remain in effect until replaced by the  
185 state board rule.

186 (e) *Annual performance measures for Public Law 107-*  
187 *110, the Elementary and Secondary Education Act of 1965,*

188 *as amended (No Child Left Behind Act of 2001)*. -- The  
189 standards shall include annual measures of student, school  
190 and school system performance and progress for the grade  
191 levels and the content areas defined by the act. The  
192 following annual measures of student, school and school  
193 system performance and progress shall be the only measures  
194 for determining whether adequately yearly progress under the  
195 No Child Left Behind Act has been achieved:

196 (1) The acquisition of student proficiencies as indicated  
197 by student performance and progress on the required  
198 accountability assessments at the grade levels and content  
199 areas as required by the act subject to the limitations set forth  
200 in subsection (d) of this section.

201 (2) The student participation rate in the uniform statewide  
202 assessment must be at least ninety-five percent or the average  
203 of the participation rate for the current and the preceding two  
204 years is ninety-five percent for the school, county and state;

205 (3) Only for schools that do not include grade twelve, the  
206 school attendance rate which shall be no less than ninety  
207 percent in attendance for the school, county and state. The  
208 following absences are excluded:

209 (A) Student absences excused in accordance with the  
210 state board rule promulgated pursuant to section four, article  
211 eight of this chapter;

212 (B) Students not in attendance due to disciplinary  
213 measures; and

214 (C) Absent students for whom the attendance director has  
215 pursued judicial remedies compelling attendance to the extent  
216 of his or her authority; and

217 (4) The high school graduation rate which shall be no less  
218 than eighty percent for the school, county and state; or if the

219 high school graduation rate is less than eighty percent, the  
220 high school graduation rate shall be higher than the high  
221 school graduation rate of the preceding year as determined  
222 from information on the West Virginia Education Information  
223 System on August 15.

224 (f) *State annual performance measures for school and*  
225 *school system accreditation.* -- The state board shall establish  
226 a system to assess and weigh annual performance measures  
227 for state accreditation of schools and school systems in a  
228 manner that gives credit or points such as an index to prevent  
229 any one measure alone from causing a school to achieve less  
230 than full accreditation status or a school system from  
231 achieving less than full approval status: *Provided,* That a  
232 school or school system that achieves adequate yearly  
233 progress is eligible for no less than full accreditation or  
234 approval status, as applicable, and the system established  
235 pursuant to this subsection applies only to schools and school  
236 systems that do not achieve adequate yearly progress.

237 The following types of measures, as may be appropriate  
238 at the various programmatic levels, may be approved by the  
239 state board for the school and school system accreditation:

240 (1) The acquisition of student proficiencies as indicated  
241 by student performance and progress on the uniform  
242 statewide assessment program at the grade levels as provided  
243 in subsection (d) of this section. The state board may  
244 approve providing bonus points or credits for students  
245 scoring at or above mastery and distinguished levels;

246 (2) Writing assessment results in grades tested;

247 (3) School attendance rates;

248 (4) Percentage of courses taught by highly qualified  
249 teachers;

250 (5) Percentage of students scoring at benchmarks on the  
251 currently tested ACT EXPLORE and ACT PLAN assessments or  
252 other comparable assessments, which are approved by the  
253 state board and provided by future vendors;

254 (6) Graduation rates;

255 (7) Job placement rates for vocational programs;

256 (8) Percent of students passing end-of-course  
257 career/technical tests;

258 (9) Percent of students not requiring college remediation  
259 classes; and

260 (10) Bonus points or credits for subgroup improvement,  
261 advanced placement percentages, dual credit completers and  
262 international baccalaureate completers.

263 (g) *Indicators of exemplary performance and progress.* --  
264 The standards shall include indicators of exemplary student,  
265 school and school system performance and progress. The  
266 indicators of exemplary student, school and school system  
267 performance and progress shall be used only as indicators for  
268 determining whether accredited and approved schools and  
269 school systems should be granted exemplary status. These  
270 indicators shall include, but are not limited to, the following:

271 (1) The percentage of graduates who declare their intent  
272 to enroll in college and other post-secondary education and  
273 training following high school graduation;

274 (2) The percentage of graduates who receive additional  
275 certification of their skills, competence and readiness for  
276 college, other post-secondary education or employment  
277 above the level required for graduation; and

278 (3) The percentage of students who successfully complete  
279 advanced placement, dual credit and honors classes.

280 (h) *Indicators of efficiency.* -- In accordance with the  
281 provisions of article three-b, chapter twenty-nine-a of this  
282 code, the state board shall adopt by rule and periodically  
283 review and update indicators of efficiency for use by the  
284 appropriate divisions within the department to ensure  
285 efficient management and use of resources in the public  
286 schools in the following areas:

287 (1) Curriculum delivery including, but not limited to, the  
288 use of distance learning;

289 (2) Transportation;

290 (3) Facilities;

291 (4) Administrative practices;

292 (5) Personnel;

293 (6) Use of regional educational service agency programs  
294 and services, including programs and services that may be  
295 established by their assigned regional educational service  
296 agency or other regional services that may be initiated  
297 between and among participating county boards; and

298 (7) Any other indicators as determined by the state board.

299 (i) *Assessment and accountability of school and school*  
300 *system performance and processes.* -- In accordance with the  
301 provisions of article three-b, chapter twenty-nine-a of this  
302 code, the state board shall establish by rule a system of  
303 education performance audits which measures the quality of  
304 education and the preparation of students based on the annual  
305 measures of student, school and school system performance



306 and progress. The system of education performance audits  
307 shall provide information to the state board, the Legislature  
308 and the Governor, individually and collectively as the  
309 Process for Improving Education Council, upon which they  
310 may determine whether a thorough and efficient system of  
311 schools is being provided. The system of education  
312 performance audits shall include:

313 (1) The assessment of student, school and school system  
314 performance and progress based on the annual measures set  
315 forth in subsection (d) of this section;

316 (2) The evaluation of records, reports and other  
317 information collected by the department upon which the  
318 quality of education and compliance with statutes, policies  
319 and standards may be determined;

320 (3) The review of school and school system electronic  
321 strategic improvement plans; and

322 (4) The on-site review of the processes in place in  
323 schools and school systems to enable school and school  
324 system performance and progress and compliance with the  
325 standards.

326 (j) *Uses of school and school system assessment*  
327 *information.* -- The state board and the Process for Improving  
328 Education Council established pursuant to section five-c of  
329 this article shall use information from the system of  
330 education performance audits to assist them in ensuring that  
331 a thorough and efficient system of schools is being provided  
332 and to improve student, school and school system  
333 performance and progress. Information from the system of  
334 education performance audits further shall be used by the  
335 state board for these purposes, including, but not limited to,  
336 the following:

337 (1) Determining school accreditation and school system  
338 approval status;

339 (2) Holding schools and school systems accountable for  
340 the efficient use of existing resources to meet or exceed the  
341 standards; and

342 (3) Targeting additional resources when necessary to  
343 improve performance and progress.

344 The state board shall make accreditation information  
345 available to the Legislature, the Governor, the general public  
346 and to any individual who requests the information, subject  
347 to the provisions of any act or rule restricting the release of  
348 information.

349 (k) *Early detection and intervention programs.* -- Based  
350 on the assessment of student, school and school system  
351 performance and progress, the state board shall establish  
352 early detection and intervention programs using the available  
353 resources of the Department of Education, the regional  
354 educational service agencies, the Center for Professional  
355 Development and the Principals Academy, as appropriate, to  
356 assist underachieving schools and school systems to improve  
357 performance before conditions become so grave as to warrant  
358 more substantive state intervention. Assistance shall include,  
359 but is not limited to, providing additional technical assistance  
360 and programmatic, professional staff development, providing  
361 monetary, staffing and other resources where appropriate,  
362 and, if necessary, making appropriate recommendations to  
363 the Process for Improving Education Council.

364 (l) *Office of Education Performance Audits.* --

365 (1) To assist the state board and the Process for  
366 Improving Education Council in the operation of a system of  
367 education performance audits, the state board shall establish

368 an Office of Education Performance Audits consistent with  
369 the provisions of this section. The Office of Education  
370 Performance Audits shall be operated under the direction of  
371 the state board independently of the functions and  
372 supervision of the State Department of Education and state  
373 superintendent. The Office of Education Performance Audits  
374 shall report directly to and be responsible to the state board  
375 and the Process for Improving Education Council created in  
376 section five-c of this article in carrying out its duties under  
377 the provisions of this section.

378 (2) The office shall be headed by a director who shall be  
379 appointed by the state board and who shall serve at the will and  
380 pleasure of the state board. The annual salary of the director  
381 shall be set by the state board and may not exceed eighty percent  
382 of the salary cap of the State Superintendent of Schools.

383 (3) The state board shall organize and sufficiently staff  
384 the office to fulfill the duties assigned to it by law and by the  
385 state board. Employees of the State Department of Education  
386 who are transferred to the Office of Education Performance  
387 Audits shall retain their benefits and seniority status with the  
388 Department of Education.

389 (4) Under the direction of the state board, the Office of  
390 Education Performance Audits shall receive from the West  
391 Virginia education information system staff research and  
392 analysis data on the performance and progress of students,  
393 schools and school systems, and shall receive assistance, as  
394 determined by the state board, from staff at the State  
395 Department of Education, the regional education service  
396 agencies, the Center for Professional Development, the  
397 Principals Academy and the School Building Authority to  
398 carry out the duties assigned to the office.

399 (5) In addition to other duties which may be assigned to  
400 it by the state board or by statute, the Office of Education  
401 Performance Audits also shall:

402 (A) Assure that all statewide assessments of student  
403 performance used as annual performance measures are secure  
404 as required in section one-a of this article;

405 (B) Administer all accountability measures as assigned  
406 by the state board, including, but not limited to, the  
407 following:

408 (i) Processes for the accreditation of schools and the  
409 approval of school systems; and

410 (ii) Recommendations to the state board on appropriate  
411 action, including, but not limited to, accreditation and  
412 approval action;

413 (C) Determine, in conjunction with the assessment and  
414 accountability processes, what capacity may be needed by  
415 schools and school systems to meet the standards established  
416 by the state board and recommend to the state board and the  
417 Process for Improving Education Council plans to establish  
418 those needed capacities;

419 (D) Determine, in conjunction with the assessment and  
420 accountability processes, whether statewide system  
421 deficiencies exist in the capacity of schools and school  
422 systems to meet the standards established by the state board,  
423 including the identification of trends and the need for  
424 continuing improvements in education, and report those  
425 deficiencies and trends to the state board and the Process for  
426 Improving Education Council;

427 (E) Determine, in conjunction with the assessment and  
428 accountability processes, staff development needs of schools  
429 and school systems to meet the standards established by the  
430 state board and make recommendations to the state board, the  
431 Process for Improving Education Council, the Center for  
432 Professional Development, the regional educational service

433 agencies, the Higher Education Policy Commission and the  
434 county boards;

435 (F) Identify, in conjunction with the assessment and  
436 accountability processes, exemplary schools and school  
437 systems and best practices that improve student, school and  
438 school system performance and make recommendations to  
439 the state board and the Process for Improving Education  
440 Council for recognizing and rewarding exemplary schools  
441 and school systems and promoting the use of best practices.  
442 The state board shall provide information on best practices to  
443 county school systems and shall use information identified  
444 through the assessment and accountability processes to select  
445 schools of excellence; and

446 (G) Develop reporting formats, such as check lists, which  
447 shall be used by the appropriate administrative personnel in  
448 schools and school systems to document compliance with  
449 various of the applicable laws, policies and process standards  
450 as considered appropriate and approved by the state board,  
451 including, but not limited to, the following:

452 (i) The use of a policy for the evaluation of all school  
453 personnel that meets the requirements of sections twelve and  
454 twelve-a, article two, chapter eighteen-a of this code;

455 (ii) The participation of students in appropriate physical  
456 assessments as determined by the state board, which  
457 assessment may not be used as a part of the assessment and  
458 accountability system;

459 (iii) The appropriate licensure of school personnel; and

460 (iv) The school provides multicultural activities.

461 Information contained in the reporting formats is subject  
462 to examination during an on-site review to determine

463 compliance with laws, policies and standards. Intentional  
464 and grossly negligent reporting of false information are  
465 grounds for dismissal.

466 (m) *On-site reviews.* --

467 (1) The system of education performance audits shall  
468 include on-site reviews of schools and school systems which  
469 shall be conducted only at the specific direction of the state  
470 board upon its determination that the performance and  
471 progress of the school or school system are persistently  
472 below standard or that other circumstances exist that warrant  
473 an on-site review. Any discussion by the state board of  
474 schools to be subject to an on-site review or dates for which  
475 on-site reviews will be conducted may be held in executive  
476 session and is not subject to the provisions of article nine-a,  
477 chapter six of this code relating to open governmental  
478 proceedings. An on-site review shall be conducted by the  
479 Office of Education Performance Audits of a school or  
480 school system for the purpose of investigating the reasons for  
481 performance and progress that are persistently below  
482 standard and making recommendations to the school and  
483 school system, as appropriate, and to the state board on such  
484 measures as it considers necessary to improve performance  
485 and progress to meet the standard. The investigation may  
486 include, but is not limited to, the following:

487 (A) Verifying data reported by the school or county  
488 board;

489 (B) Examining compliance with the laws and policies  
490 affecting student, school and school system performance and  
491 progress;

492 (C) Evaluating the effectiveness and implementation  
493 status of school and school system electronic strategic  
494 improvement plans;

495 (D) Investigating official complaints submitted to the  
496 state board that allege serious impairments in the quality of  
497 education in schools or school systems;

498 (E) Investigating official complaints submitted to the  
499 state board that allege that a school or county board is in  
500 violation of policies or laws under which schools and county  
501 boards operate; and

502 (F) Determining and reporting whether required reviews  
503 and inspections have been conducted by the appropriate  
504 agencies, including, but not limited to, the State Fire Marshal,  
505 the Health Department, the School Building Authority and  
506 the responsible divisions within the Department of Education,  
507 and whether noted deficiencies have been or are in the  
508 process of being corrected. The Office of Education  
509 Performance Audits may not conduct a duplicate review or  
510 inspection of any compliance reviews or inspections  
511 conducted by the department or its agents or other duly  
512 authorized agencies of the state, nor may it mandate more  
513 stringent compliance measures.

514 (2) The Director of the Office of Education Performance  
515 Audits shall notify the county superintendent of schools five  
516 school days prior to commencing an on-site review of the  
517 county school system and shall notify both the county  
518 superintendent and the principal five school days  
519 before commencing an on-site review of an individual  
520 school: *Provided*, That the state board may direct the Office  
521 of Education Performance Audits to conduct an unannounced  
522 on-site review of a school or school system if the state board  
523 believes circumstances warrant an unannounced on-site  
524 review.

525 (3) The Office of Education Performance Audits shall  
526 conduct on-site reviews which are limited in scope to specific  
527 areas in which performance and progress are persistently

528 below standard as determined by the state board unless  
529 specifically directed by the state board to conduct a review  
530 which covers additional areas.

531 (4) An on-site review of a school or school system shall  
532 include a person or persons from the Department of  
533 Education or a public education agency in the state who has  
534 expert knowledge and experience in the area or areas to be  
535 reviewed and who has been trained and designated by the  
536 state board to perform such functions. If the size of the  
537 school or school system and issues being reviewed  
538 necessitate the use of an on-site review team or teams, the  
539 person or persons designated by the state board shall advise  
540 and assist the director to appoint the team or teams. The  
541 person or persons designated by the state board shall be the  
542 team leaders.

543 The persons designated by the state board shall be  
544 responsible for completing the report on the findings and  
545 recommendations of the on-site review in their area of  
546 expertise. It is the intent of the Legislature that the persons  
547 designated by the state board participate in all on-site reviews  
548 that involve their area of expertise, to the extent practicable,  
549 so that the on-site review process will evaluate compliance  
550 with the standards in a uniform, consistent and expert  
551 manner.

552 (5) The Office of Education Performance Audits shall  
553 reimburse a county board for the costs of substitutes required  
554 to replace county board employees while they are serving on  
555 a review team.

556 (6) At the conclusion of an on-site review of a school  
557 system, the director and team leaders shall hold an exit  
558 conference with the superintendent and shall provide an  
559 opportunity for principals to be present for at least the portion  
560 of the conference pertaining to their respective schools. In



561 the case of an on-site review of a school, the exit conference  
562 shall be held with the principal and curriculum team of the  
563 school and the superintendent shall be provided the  
564 opportunity to be present. The purpose of the exit conference  
565 is to review the initial findings of the on-site review, clarify  
566 and correct any inaccuracies and allow the opportunity for  
567 dialogue between the reviewers and the school or school  
568 system to promote a better understanding of the findings.

569 (7) The Office of Education Performance Audits shall  
570 report the findings of an on-site review to the county  
571 superintendent and the principals whose schools were  
572 reviewed within thirty days following the conclusion of the  
573 on-site review. The Office of Education Performance Audits  
574 shall report the findings of the on-site review to the state  
575 board within forty-five days after the conclusion of the on-  
576 site review. A copy of the report shall be provided to the  
577 Process for Improving Education Council at its request. A  
578 school or county that believes one or more findings of a  
579 review are clearly inaccurate, incomplete or misleading,  
580 misrepresent or fail to reflect the true quality of education in  
581 the school or county or address issues unrelated to the health,  
582 safety and welfare of students and the quality of education,  
583 may appeal to the state board for removal of the findings.  
584 The state board shall establish a process for it to receive,  
585 review and act upon the appeals. The state board shall report  
586 to the Legislative Oversight Commission on Education  
587 Accountability during its July interim meetings, or as soon  
588 thereafter as practical, on each appeal during the preceding  
589 school year.

590 (8) The Legislature finds that the accountability and  
591 oversight of the following activities and programmatic areas  
592 in the public schools is controlled through other mechanisms  
593 and that additional accountability and oversight are not only  
594 unnecessary but counterproductive in distracting necessary  
595 resources from teaching and learning. Therefore,

596 notwithstanding any other provision of this section to the  
597 contrary, the following activities and programmatic areas are  
598 not subject to review by the Office of Education Performance  
599 Audits:

- 600 (A) Work-based learning;
- 601 (B) Use of advisory councils;
- 602 (C) Program accreditation and student credentials;
- 603 (D) Student transition plans;
- 604 (E) Graduate assessment form;
- 605 (F) Casual deficit;
- 606 (G) Accounting practices;
- 607 (H) Transportation services;
- 608 (I) Special education services;
- 609 (J) Safe, healthy and accessible facilities;
- 610 (K) Health services;
- 611 (L) Attendance director;
- 612 (M) Business/community partnerships;
- 613 (N) Pupil-teacher ratio/split grade classes;
- 614 (O) Local school improvement council, faculty senate,  
615 student assistance team and curriculum team;
- 616 (P) Planning and lunch periods;

- 617 (Q) Skill improvement program;
- 618 (R) Certificate of proficiency;
- 619 (S) Training of county board members;
- 620 (T) Excellence in job performance;
- 621 (U) Staff development; and
- 622 (V) Preventive discipline, character education and student  
623 and parental involvement.

624 (n) *School accreditation.* -- The state board annually shall  
625 review the information from the system of education  
626 performance audits submitted for each school and shall issue  
627 to every school one of the following approval levels:  
628 Exemplary accreditation status, distinction accreditation  
629 status, full accreditation status, temporary accreditation  
630 status, conditional accreditation status or low performing  
631 accreditation status.

632 (1) Full accreditation status shall be given to a school  
633 when the school's performance and progress meet or exceed  
634 the standards adopted by the state board pursuant to  
635 subsection (e) or (f), as applicable, of this section and it does  
636 not have any deficiencies which would endanger student  
637 health or safety or other extraordinary circumstances as  
638 defined by the state board. A school that meets or exceeds  
639 the performance and progress standards but has the other  
640 deficiencies shall remain on full accreditation status for the  
641 remainder of the accreditation period and shall have an  
642 opportunity to correct those deficiencies, notwithstanding  
643 other provisions of this subsection.

644 (2) Temporary accreditation status shall be given to a  
645 school when the school's performance and progress are

646 below the level required for full accreditation status.  
647 Whenever a school is given temporary accreditation status,  
648 the county board shall ensure that the school's electronic  
649 strategic improvement plan is revised in accordance with  
650 subsection (b) of this section to increase the performance and  
651 progress of the school to a full accreditation status level. The  
652 revised plan shall be submitted to the state board for  
653 approval.

654 (3) Conditional accreditation status shall be given to a  
655 school when the school's performance and progress are  
656 below the level required for full accreditation, but the  
657 school's electronic strategic improvement plan meets the  
658 following criteria:

659 (A) The plan has been revised to improve performance  
660 and progress on the standard or standards by a date or dates  
661 certain;

662 (B) The plan has been approved by the state board; and

663 (C) The school is meeting the objectives and time line  
664 specified in the revised plan.

665 (4) Exemplary accreditation status shall be given to a  
666 school when the school's performance and progress  
667 substantially exceed the standards adopted by the state board  
668 pursuant to subsections (f) and (g) of this section. The state  
669 board shall promulgate legislative rules in accordance with  
670 the provisions of article three-b, chapter twenty-nine-a of this  
671 code designated to establish standards of performance and  
672 progress to identify exemplary schools.

673 (5) Distinction accreditation status shall be given to a  
674 school when the school's performance and progress exceed  
675 the standards adopted by the state board. The state board  
676 shall promulgate legislative rules in accordance with the

677 provisions of article three-b, chapter twenty-nine-a of this  
678 code establishing standards of performance and progress to  
679 identify schools of distinction.

680 (6) Low-performing accreditation status shall be given to  
681 a school whenever extraordinary circumstances exist as  
682 defined by the state board.

683 (A) These circumstances shall include, but are not limited  
684 to, any one or more of the following:

685 (i) The failure of a school on temporary accreditation  
686 status to obtain approval of its revised electronic school  
687 strategic improvement plan within a reasonable time period  
688 as defined by the state board;

689 (ii) The failure of a school on conditional accreditation  
690 status to meet the objectives and time line of its revised  
691 electronic school strategic improvement plan;

692 (iii) The failure of a school to meet a standard by the date  
693 specified in the revised plan; and

694 (iv) The results of the most recent statewide assessment  
695 in reading and math or other multiple measures as determined  
696 by the state board that identify the school as low performing  
697 at its programmatic level in three of the last five years.

698 (B) Whenever the state board determines that the quality  
699 of education in a school is low performing, the state board  
700 shall appoint a team of improvement consultants from the  
701 West Virginia Department of Education State System of  
702 Support to make recommendations for correction of the low  
703 performance. These recommendations shall be communicated to  
704 the county board and a process shall be established in  
705 conjunction with the State System of Support to correct the  
706 identified deficiencies. If progress in correcting the low

707 performance as determined by the state board is not made  
708 within one year following the implementation of the  
709 measures adopted to correct the identified deficiencies or by  
710 a date certain established by the state board after at least one  
711 year of implementation, the state board shall place the county  
712 board on temporary approval status and provide consultation  
713 and assistance to the county board to assist it in the following  
714 areas:

715 (i) Improving personnel management;

716 (ii) Establishing more efficient financial management  
717 practices;

718 (iii) Improving instructional programs and rules; or

719 (iv) Making any other improvements that are necessary  
720 to correct the low performance.

721 (C) If the low performance is not corrected by a date  
722 certain as set by the state board:

723 (i) The state board shall appoint a monitor who shall be  
724 paid at county expense to cause improvements to be made at  
725 the school to bring it to full accreditation status within a  
726 reasonable time period as determined by the state board. The  
727 monitor's work location shall be at the school and the  
728 monitor shall work collaboratively with the principal. The  
729 monitor shall, at a minimum, report monthly to the state  
730 board on the measures being taken to improve the school's  
731 performance and the progress being made. The reports may  
732 include requests for additional assistance and  
733 recommendations required in the judgment of the monitor to  
734 improve the school's performance, including, but not limited  
735 to, the need for targeting resources strategically to eliminate  
736 deficiencies;

737           (ii) The state board may make a determination, in its sole  
738 judgment, that the improvements necessary to provide a  
739 thorough and efficient education to the students at the school  
740 cannot be made without additional targeted resources, in  
741 which case it shall establish a plan in consultation with the  
742 county board that includes targeted resources from sources  
743 under the control of the state board and the county board to  
744 accomplish the needed improvements. Nothing in this  
745 subsection shall be construed to allow a change in personnel  
746 at the school to improve school performance and progress,  
747 except as provided by law;

748           (iii) If the low performance is not corrected within one  
749 year after the appointment of a monitor, the state board may  
750 make a determination, in its sole judgment, that continuing a  
751 monitor arrangement is not sufficient to correct the low  
752 performance and may intervene in the operation of the school  
753 to cause improvements to be made that will provide  
754 assurances that a thorough and efficient system of schools  
755 will be provided. This intervention may include, but is not  
756 limited to, establishing instructional programs, taking such  
757 direct action as may be necessary to correct the low  
758 performance, declaring the position of principal is vacant and  
759 assigning a principal for the school who shall serve at the will  
760 and pleasure of and, under the sole supervision of, the state  
761 board: *Provided*, That prior to declaring that the position of  
762 the principal is vacant, the state board must make a  
763 determination that all other resources needed to correct the  
764 low performance are present at the school. If the principal  
765 who was removed elects not to remain an employee of the  
766 county board, then the principal assigned by the state board  
767 shall be paid by the county board. If the principal who was  
768 removed elects to remain an employee of the county board,  
769 then the following procedure applies:

770           (I) The principal assigned by the state board shall be paid  
771 by the state board until the next school term, at which time

772 the principal assigned by the state board shall be paid by the  
773 county board;

774 (II) The principal who was removed is eligible for all  
775 positions in the county, including teaching positions, for  
776 which the principal is certified, by either being placed on the  
777 transfer list in accordance with section seven, article two,  
778 chapter eighteen-a of this code, or by being placed on the  
779 preferred recall list in accordance with section seven-a,  
780 article four, chapter eighteen-a of this code; and

781 (III) The principal who was removed shall be paid by the  
782 county board and may be assigned to administrative duties,  
783 without the county board being required to post that position  
784 until the end of the school term.

785 (6) The county board shall take no action nor refuse any  
786 action if the effect would be to impair further the school in  
787 which the state board has intervened.

788 (7) The state board may appoint a monitor pursuant to the  
789 provisions of this subsection to assist the school principal  
790 after intervention in the operation of a school is completed.

791 (o) *Transfers from low-performing schools.* -- Whenever  
792 a school is determined to be low performing and fails to  
793 improve its status within one year, following state  
794 intervention in the operation of the school to correct the low  
795 performance, any student attending the school may transfer  
796 once to the nearest fully accredited school in the county,  
797 subject to approval of the fully accredited school and at the  
798 expense of the school from which the student transferred.

799 (p) *School system approval.* -- The state board annually  
800 shall review the information submitted for each school  
801 system from the system of education performance audits and  
802 issue one of the following approval levels to each county



803 board: Full approval, temporary approval, conditional  
804 approval or nonapproval.

805 (1) Full approval shall be given to a county board whose  
806 schools have all been given full, temporary or conditional  
807 accreditation status and which does not have any deficiencies  
808 which would endanger student health or safety or other  
809 extraordinary circumstances as defined by the state board. A  
810 fully approved school system in which other deficiencies are  
811 discovered shall remain on full accreditation status for the  
812 remainder of the approval period and shall have an  
813 opportunity to correct those deficiencies, notwithstanding  
814 other provisions of this subsection.

815 (2) Temporary approval shall be given to a county board  
816 whose education system is below the level required for full  
817 approval. Whenever a county board is given temporary  
818 approval status, the county board shall revise its electronic  
819 county strategic improvement plan in accordance with  
820 subsection (b) of this section to increase the performance and  
821 progress of the school system to a full approval status level.  
822 The revised plan shall be submitted to the state board for  
823 approval.

824 (3) Conditional approval shall be given to a county board  
825 whose education system is below the level required for full  
826 approval, but whose electronic county strategic improvement  
827 plan meets the following criteria:

828 (i) The plan has been revised in accordance with  
829 subsection (b) of this section;

830 (ii) The plan has been approved by the state board; and

831 (iii) The county board is meeting the objectives and time  
832 line specified in the revised plan.

833 (4) Nonapproval status shall be given to a county board  
834 which fails to submit and gain approval for its electronic  
835 county strategic improvement plan or revised electronic  
836 county strategic improvement plan within a reasonable time  
837 period as defined by the state board or which fails to meet the  
838 objectives and time line of its revised electronic county  
839 strategic improvement plan or fails to achieve full approval  
840 by the date specified in the revised plan.

841 (A) The state board shall establish and adopt additional  
842 standards to identify school systems in which the program  
843 may be nonapproved and the state board may issue  
844 nonapproval status whenever extraordinary circumstances  
845 exist as defined by the state board.

846 (B) Whenever a county board has more than a casual  
847 deficit, as defined in section one, article one of this chapter,  
848 the county board shall submit a plan to the state board  
849 specifying the county board's strategy for eliminating the  
850 casual deficit. The state board either shall approve or reject  
851 the plan. If the plan is rejected, the state board shall  
852 communicate to the county board the reason or reasons for  
853 the rejection of the plan. The county board may resubmit the  
854 plan any number of times. However, any county board that  
855 fails to submit a plan and gain approval for the plan from the  
856 state board before the end of the fiscal year after a deficit  
857 greater than a casual deficit occurred or any county board  
858 which, in the opinion of the state board, fails to comply with  
859 an approved plan may be designated as having nonapproval  
860 status.

861 (C) Whenever nonapproval status is given to a school  
862 system, the state board shall declare a state of emergency in  
863 the school system and shall appoint a team of improvement  
864 consultants to make recommendations within sixty days of  
865 appointment for correcting the emergency. When the state  
866 board approves the recommendations, they shall be

867 communicated to the county board. If progress in correcting  
868 the emergency, as determined by the state board, is not made  
869 within six months from the time the county board receives  
870 the recommendations, the state board shall intervene in the  
871 operation of the school system to cause improvements to be  
872 made that will provide assurances that a thorough and  
873 efficient system of schools will be provided. This  
874 intervention may include, but is not limited to, the following:

875 (i) Limiting the authority of the county superintendent  
876 and county board as to the expenditure of funds, the  
877 employment and dismissal of personnel, the establishment  
878 and operation of the school calendar, the establishment of  
879 instructional programs and rules and any other areas  
880 designated by the state board by rule, which may include  
881 delegating decision-making authority regarding these matters  
882 to the state superintendent;

883 (ii) Declaring that the office of the county superintendent  
884 is vacant;

885 (iii) Delegating to the state superintendent both the  
886 authority to conduct hearings on personnel matters and  
887 school closure or consolidation matters and, subsequently, to  
888 render the resulting decisions and the authority to appoint a  
889 designee for the limited purpose of conducting hearings while  
890 reserving to the state superintendent the authority to render  
891 the resulting decisions;

892 (iv) Functioning in lieu of the county board of education  
893 in a transfer, sale, purchase or other transaction regarding real  
894 property; and

895 (v) Taking any direct action necessary to correct the  
896 emergency including, but not limited to, the following:

897 (I) Delegating to the state superintendent the authority to  
898 replace administrators and principals in low performing

899 schools and to transfer them into alternate professional  
900 positions within the county at his or her discretion; and

901 (II) Delegating to the state superintendent the authority to  
902 fill positions of administrators and principals with individuals  
903 determined by the state superintendent to be the most  
904 qualified for the positions. Any authority related to  
905 intervention in the operation of a county board granted under  
906 this paragraph is not subject to the provisions of article four,  
907 chapter eighteen-a of this code;

908 (q) Notwithstanding any other provision of this section,  
909 the state board may intervene immediately in the operation of  
910 the county school system with all the powers, duties and  
911 responsibilities contained in subsection (p) of this section, if  
912 the state board finds the following:

913 (1) That the conditions precedent to intervention exist as  
914 provided in this section; and that delaying intervention for  
915 any period of time would not be in the best interests of the  
916 students of the county school system; or

917 (2) That the conditions precedent to intervention exist as  
918 provided in this section and that the state board had  
919 previously intervened in the operation of the same school  
920 system and had concluded that intervention within the  
921 preceding five years.

922 (r) *Capacity*. -- The process for improving education  
923 includes a process for targeting resources strategically to  
924 improve the teaching and learning process. Development of  
925 electronic school and school system strategic improvement  
926 plans, pursuant to subsection (b) of this section, is intended,  
927 in part, to provide mechanisms to target resources  
928 strategically to the teaching and learning process to improve  
929 student, school and school system performance. When  
930 deficiencies are detected through the assessment and  
931 accountability processes, the revision and approval of school

932 and school system electronic strategic improvement plans  
933 shall ensure that schools and school systems are efficiently  
934 using existing resources to correct the deficiencies. When the  
935 state board determines that schools and school systems do not  
936 have the capacity to correct deficiencies, the state board shall  
937 work with the county board to develop or secure the  
938 resources necessary to increase the capacity of schools and  
939 school systems to meet the standards and, when necessary,  
940 seek additional resources in consultation with the Legislature  
941 and the Governor.

942 The state board shall recommend to the appropriate body  
943 including, but not limited to, the Process for Improving  
944 Education Council, the Legislature, county boards, schools  
945 and communities methods for targeting resources  
946 strategically to eliminate deficiencies identified in the  
947 assessment and accountability processes. When making  
948 determinations on recommendations, the state board shall  
949 include, but is not limited to, the following methods:

950 (1) Examining reports and electronic strategic  
951 improvement plans regarding the performance and progress  
952 of students, schools and school systems relative to the  
953 standards and identifying the areas in which improvement is  
954 needed;

955 (2) Determining the areas of weakness and of  
956 ineffectiveness that appear to have contributed to the  
957 substandard performance and progress of students or the  
958 deficiencies of the school or school system and requiring the  
959 school or school system to work collaboratively with the  
960 West Virginia Department of Education State System of  
961 Support to correct the deficiencies;

962 (3) Determining the areas of strength that appear to have  
963 contributed to exceptional student, school and school system  
964 performance and progress and promoting their emulation  
965 throughout the system;

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966 (4) Requesting technical assistance from the School  
967 Building Authority in assessing or designing comprehensive  
968 educational facilities plans;

969 (5) Recommending priority funding from the School  
970 Building Authority based on identified needs;

971 (6) Requesting special staff development programs from  
972 the Center for Professional Development, the Principals  
973 Academy, higher education, regional educational service  
974 agencies and county boards based on identified needs;

975 (7) Submitting requests to the Legislature for  
976 appropriations to meet the identified needs for improving  
977 education;

978 (8) Directing county boards to target their funds  
979 strategically toward alleviating deficiencies;

980 (9) Ensuring that the need for facilities in counties with  
981 increased enrollment are appropriately reflected and  
982 recommended for funding;

983 (10) Ensuring that the appropriate person or entity is held  
984 accountable for eliminating deficiencies; and

985 (11) Ensuring that the needed capacity is available from  
986 the state and local level to assist the school or school system  
987 in achieving the standards and alleviating the deficiencies.

**ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.**

**§18-5A-6. Establishment of school curriculum teams; process  
for teacher collaboration to improve learning.**

1 (a) There shall be established at each school in the state  
2 a school curriculum team composed of the school principal,  
3 the counselor designated to serve that school and no fewer

4 than three teachers representative of the grades taught at the  
5 school and chosen by the faculty senate: *Provided*, That for  
6 a school curriculum team established at an elementary school  
7 or a combination elementary and middle school, when the  
8 counselor is not assigned to the school on at least a one-half  
9 time basis, the curriculum team may meet on days when the  
10 counselor is not at the school and the principal shall consult  
11 with the counselor on the issues relevant to the meeting  
12 agenda.

13 The school curriculum team shall establish the programs  
14 and methods for implementing a curriculum based on state-  
15 approved content standards based on the needs of the  
16 individual school with a focus on reading, composition,  
17 mathematics, science and technology. The curriculum thus  
18 established shall be submitted to the county board for  
19 approval or for return to the school for reconsideration.

20 The school curriculum team shall review the list of other  
21 non required testing and assessment instruments provided by  
22 the state board through the statewide assessment program as  
23 provided in section five, article two-e of this chapter and may  
24 select one or more of them that are applicable to the grade  
25 levels at the school for use at the school to improve student  
26 learning. The school has the discretion to use the  
27 assessments and implement the instructional strategies and  
28 programs, upon approval by the school curriculum team, that  
29 it determines best to promote student achievement at the  
30 school. The school curriculum team may apply for a waiver  
31 of any state or county policy requiring it to assess students  
32 using any specific assessment except the WESTEST2, the  
33 Alternative Performance Task Assessment, the Online  
34 Writing Assessment, and the National Assessment of  
35 Educational Progress (NAEP), or to employ any specific  
36 instructional strategy or program to achieve content standards  
37 for courses required by the state board. Attainment by the  
38 school of at least full accreditation status for the previous

39 year shall be the factor considered for granting the waiver  
40 request.

41 The school curriculum team also may apply for a waiver  
42 for instructional resources approved and adopted pursuant to  
43 article two-a of this chapter if, in the judgment of the team,  
44 the instructional resources necessary for the implementation  
45 of the instructional strategies and programs best suited to  
46 teach the school's curriculum are not available through the  
47 normal adoption process.

48 School curriculum teams may request waivers of non-  
49 state mandated tests listed in their county board policies. The  
50 determination of whether to grant the request shall be based  
51 on the school's accreditation status. Waivers are in effect for  
52 one year only. School curriculum teams may resubmit the  
53 same or additional waiver requests the following year.

54 The school team may apply for a grant from the state  
55 board for the development or implementation, or both, of  
56 remedial and accelerated programs to meet the needs of the  
57 students at the individual school.

58 (b) Each faculty senate with approval of the principal  
59 may, in addition to or as an alternative to the school  
60 curriculum team provided for in subsection (a) of this section,  
61 establish a process for teacher collaboration to improve  
62 instruction and learning. The mission of the collaboration  
63 process is to review student academic performance based on  
64 multiple measures, to identify strategies to improve student  
65 performance and make recommendations for improvement to  
66 be implemented subject to approval of the principal. The  
67 collaborative process shall include such members as  
68 determined necessary by the faculty senate to address the  
69 needed improvements in the academic performance of  
70 students at the school and, if applicable, may consist of  
71 multiple subject area subcommittees which may meet  
72 independently.



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## CHAPTER 59

**(S. B. 391 - By Senators Palumbo,  
Yost and Green)**

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[Passed February 22, 2010; in effect from passage.]  
[Approved by the Governor on March 3, 2010.]

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AN ACT to amend and reenact §18-5-1a of the Code of West Virginia, 1931, as amended, relating to county boards of education; modifying eligibility requirements for a candidate for membership on a board and for a member-elect of a board; and making technical corrections.

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

That §18-5-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

#### **§18-5-1a. Eligibility of members; training requirements.**

- 1           (a) A person who is a member of a county board:
  - 2           (1) Shall be a citizen and resident in the county in which
  - 3           he or she serves on the county board. Also, a person who is
  - 4           a candidate for membership on a county board or who is a
  - 5           member-elect of a county board shall be a citizen and
  - 6           resident in the county in which he or she seeks to serve on the
  - 7           county board;

8           (2) May not be employed by the county board on which  
9 he or she serves, including employment as a teacher or  
10 service person;

11           (3) May not engage in the following political activities:

12           (A) Become a candidate for or hold any other public  
13 office, other than to succeed him or herself as a member of a  
14 county board subject to the following:

15           (i) A candidate for a county board, who is not currently  
16 serving on a county board, may hold another public office  
17 while a candidate if he or she resigns from the other public  
18 office prior to taking the oath of office as a county board  
19 member.

20           (ii) The term “public office” as used in this section does  
21 not include service on any other board, elected or appointed,  
22 profit or nonprofit, under the following conditions:

23           (I) The person does not receive compensation; and

24           (II) The primary scope of the board is not related to  
25 public schools.

26           (B) Become a candidate for, or serve as, an elected  
27 member of any political party executive committee;

28           (C) Become a candidate for, or serve as, a delegate,  
29 alternate or proxy to a national political party convention;

30           (D) Solicit or receive political contributions to support  
31 the election of, or to retire the campaign debt of, any  
32 candidate for partisan office;

33           (4) May engage in any or all of the following political  
34 activities:

35 (A) Make campaign contributions to partisan or  
36 bipartisan candidates;

37 (B) Attend political fund raisers for partisan or bipartisan  
38 candidates;

39 (C) Serve as an unpaid volunteer on a partisan campaign;

40 (D) Politically endorse any candidate in a partisan or  
41 bipartisan election; or

42 (E) Attend a county, state or national political party  
43 convention.

44 (b) A member or member-elect of a county board, or a  
45 person desiring to become a member of a county board, may  
46 make a written request to the West Virginia Ethics  
47 Commission for an advisory opinion to determine if another  
48 elected or appointed position held or sought by the person is  
49 an office or public office which would bar service on a  
50 county board pursuant to subsection (a) of this section.

51 (1) Within thirty days of receipt of the request, the Ethics  
52 Commission shall issue a written advisory opinion in  
53 response to the request and also shall publish the opinion in  
54 a manner which, to the fullest extent possible, does not reveal  
55 the identity of the person making the request.

56 (2) A county board member who relies in good faith upon  
57 an advisory opinion issued by the West Virginia Ethics  
58 Commission to the effect that holding a particular office or  
59 public office is not a bar from membership on a county board  
60 and against whom proceedings are subsequently brought for  
61 removal from the county board on the basis of holding that  
62 office or offices is entitled to reimbursement by the county  
63 board for reasonable attorney's fees and court costs incurred  
64 by the member in defending against these proceedings,  
65 regardless of the outcome of the proceedings.

66           (3) A vote cast by the member at a meeting of the county  
67 board may not be invalidated due to a subsequent finding that  
68 holding the particular office or public office is a bar to  
69 membership on the county board.

70           (4) Good faith reliance on a written advisory opinion of  
71 the West Virginia Ethics Commission that a particular office  
72 or public office is not a bar to membership on a county board  
73 is an absolute defense to any civil suit or criminal prosecution  
74 arising from any proper action taken within the scope of  
75 membership on the county board, becoming a member-elect  
76 of the county board or seeking election to the county board.

77           (c) To be eligible for election or appointment as a  
78 member of a county board, a person shall possess at least a  
79 high school diploma or a general educational development  
80 (GED) diploma. This provision does not apply to members  
81 or members-elect who have taken office prior to May 5,  
82 1992, and who serve continuously from that date forward.

83           (d) A person elected to a county board after July 1, 1990,  
84 may not assume the duties of county board member unless he  
85 or she has first attended and completed a course of  
86 orientation relating to boardsmanship and governance  
87 effectiveness which shall be given between the date of  
88 election and the beginning of the member's term of office  
89 under the following conditions:

90           (1) A portion or portions of subsequent training such as  
91 that offered in orientation may be provided to members after  
92 they have commenced their term of office;

93           (2) Attendance at the session of orientation given  
94 between the date of election and the beginning of the  
95 member's term of office permits the member-elect to assume  
96 the duties of county board member, as specified in this  
97 section;

98           (3) Members appointed to the county board shall attend  
99           and complete the next orientation course offered following  
100           their appointment; and

101           (4) The provisions of this subsection relating to  
102           orientation do not apply to members who have taken office  
103           prior to July 1, 1988, and who serve continuously from that  
104           date forward.

105           (e) Annually, each member of a county board shall  
106           receive seven clock hours of training in areas relating to  
107           boardsmanship, governance effectiveness, and school  
108           performance issues including, but not limited to, pertinent  
109           state and federal statutes such as the “Process for Improving  
110           Education” set forth in section five, article two-e of this  
111           chapter and the “No Child Left Behind Act” and their  
112           respective administrative rules.

113           (1) The orientation and training shall be approved by the  
114           state board and conducted by the West Virginia School Board  
115           Association or other organization or organizations approved  
116           by the state board:

117           (A) The state board may exclude time spent in training on  
118           school performance issues from the requisite seven hours  
119           herein required; and

120           (B) If the state board elects to exclude time spent in  
121           training on school performance issues from the requisite  
122           seven hours, the state board shall limit the training to a  
123           feasible and practicable amount of time.

124           (2) Failure to attend and complete the approved course of  
125           orientation and training relating to boardsmanship and  
126           governance effectiveness without good cause as determined  
127           by the state board by duly promulgated legislative rules  
128           constitutes neglect of duty under section seven, article six,  
129           chapter six of this code.

130 (f) In the final year of any four-year term of office, a  
131 member shall satisfy the annual training requirement before  
132 January 1. Failure to comply with the training requirements  
133 of this section without good cause as defined by the state  
134 board by duly promulgated legislative rules constitutes  
135 neglect of duty under section seven, article six, chapter six of  
136 this code.

137 (g) The state board shall appoint a committee named the  
138 “county board member training standards review committee”  
139 whose members shall meet at least annually. Subject to state  
140 board approval, the committee shall determine which  
141 particular trainings and training organizations shall be  
142 approved and whether county board members have satisfied  
143 the annual training requirement. Members of the committee  
144 serve without compensation, but may be reimbursed by their  
145 agencies or employers for all reasonable and necessary  
146 expenses actually incurred in the performance of their duties  
147 under this subsection.

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## CHAPTER 60

**(H. B. 4040 - By Mr. Speaker,  
Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]**

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[Passed January 26, 2010; in effect July 1, 2010.]  
[Approved by the Governor on February 4, 2010.]

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AN ACT to amend amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, relating to requiring county boards to adopt contingency plans designed to guarantee one hundred eighty separate days of instruction for students; authorizing county boards of education to select the beginning

date and ending date of the instructional term of the school calendar; and making technical corrections.

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

That §18-5-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

### **§18-5-45. School calendar.**

1       (a) As used in this section, the following terms have the  
2 following meanings:

3       (1) “Instructional day” means a day within the  
4 instructional term which meets the following criteria:

5       (A) Instruction is offered to students for at least the  
6 minimum amounts of time provided by state board rule;

7       (B) Instructional time is used for instruction, cocurricular  
8 activities and approved extracurricular activities and, pursuant  
9 to the provisions of subdivision twelve, subsection (b), section  
10 five, article five-a of this chapter, faculty senates; and

11       (C) Such other criteria as the state board determines  
12 appropriate.

13       (2) “Accrued instructional time” means instructional time  
14 accruing during the instructional term from time added to the  
15 instructional day beyond the time required by state board rule  
16 for an instructional day. Accrued instructional time may be  
17 accumulated and used in larger blocks of time during the  
18 school year for instructional or noninstructional activities as  
19 further defined by the state board.

20 (3) "Extracurricular activities" are activities under the  
21 supervision of the school such as athletics, noninstructional  
22 assemblies, social programs, entertainment and other similar  
23 activities as further defined by the state board.

24 (4) "Cocurricular activities" are activities that are closely  
25 related to identifiable academic programs or areas of study  
26 that serve to complement academic curricula as further  
27 defined by the state board.

28 (b) *Findings.* --

29 (1) The primary purpose of the school system is to  
30 provide instruction for students.

31 (2) The school calendar, as defined in this section, is  
32 designed to define the school term both for employees and  
33 for instruction.

34 (3) The school calendar traditionally has provided for one  
35 hundred eighty actual days of instruction but numerous  
36 circumstances have combined to cause the actual number of  
37 instructional days to be less than one hundred eighty.

38 (4) The quality and amount of instruction offered during  
39 the instructional term is affected by the extracurricular and  
40 cocurricular activities allowed to occur during scheduled  
41 instructional time.

42 (5) Within reasonable guidelines, the school calendar  
43 should be designed at least to guarantee that one hundred  
44 eighty actual days of instruction are possible.

45 (c) The county board shall provide a school term for its  
46 schools that contains the following:

47 (1) An employment term for teachers of no less than two  
48 hundred days, exclusive of Saturdays and Sundays; and



49           (2) Within the employment term, an instructional term for  
50 students of no less than one hundred eighty separate  
51 instructional days, which shall include an icy conditions and  
52 emergencies plan designed to guarantee an instructional term  
53 for students of no less than one hundred eighty separate  
54 instructional days.

55           (d) The instructional term for students shall include one  
56 instructional day in each of the months of October,  
57 December, February, April and June which is an instructional  
58 support and enhancement day scheduled by the board to  
59 include both instructional activities for students and  
60 professional activities for teachers to improve student  
61 instruction. Instructional support and enhancement days are  
62 subject to the following provisions:

63           (1) Two hours of the instructional support and  
64 enhancement day shall be used for instructional activities for  
65 students. The instructional activities for students are subject  
66 to the following provisions:

67           (A) The instructional activities for students require the  
68 direct supervision or involvement by teachers;

69           (B) The instructional activities for students shall be  
70 limited to two hours;

71           (C) The instructional activities for students shall be  
72 determined and scheduled at the local school level;

73           (D) The instructional activities for students may include, but  
74 are not limited to, both in-school and outside of school activities  
75 such as student mentoring, tutoring, counseling, student research  
76 and other projects or activities of an instructional nature,  
77 community service, career exploration, parent and teacher  
78 conferences, visits to the homes of students, college and  
79 financial aid workshops and college visits;

80 (E) To ensure that the students who attend are properly  
81 supervised, the instructional activities for students shall be  
82 arranged by appointment with the individual school through  
83 the principal, a teacher or other professional personnel at the  
84 school; and

85 (F) Each school shall establish a policy relating to the use  
86 of the two-hour block scheduled for instructional activities  
87 for students;

88 (2) The instructional support and enhancement day shall  
89 include a two-hour block of time for professional activities  
90 for teachers during which the faculty senate shall have the  
91 opportunity to meet;

92 (3) All time remaining in the school day after meeting the  
93 requirements of subdivisions (1) and (2) of this subsection,  
94 not including the duty-free lunch period, shall be used for  
95 other professional activities for teachers to improve student  
96 instruction which may include, but are not limited to,  
97 professional staff development, curriculum team meetings,  
98 individualized education plan meetings and other meetings  
99 between teachers, principals, aides and paraprofessionals to  
100 improve student instruction as determined and scheduled at  
101 the local school level;

102 (4) Notwithstanding any other provision of law or policy  
103 to the contrary, the presence of any specific number of  
104 students in attendance at the school for any specific period of  
105 time shall not be required on instructional support and  
106 enhancement days and the transportation of students to the  
107 school shall not be required;

108 (5) Instructional support and enhancement days are also  
109 a scheduled work day for all service personnel and shall be  
110 used for training or other tasks related to their job  
111 classification if their normal duties are not required; and

112 (6) Nothing in this section may be construed to require  
113 that the instructional activities for students, faculty senate  
114 meetings and other professional activities for teachers be  
115 scheduled in any certain order.

116 (e) The instructional term shall commence on a date  
117 selected by the county board and terminate on a date selected  
118 by the county board.

119 (f) Noninstructional days shall total twenty and shall be  
120 comprised of the following:

121 (1) Seven holidays as specified in section two, article  
122 five, chapter eighteen-a of this code;

123 (2) Election day as specified in section two, article five,  
124 chapter eighteen-a of this code;

125 (3) Six days to be designated by the county board to be  
126 used by the employees outside the school environment; and

127 (4) Six days to be designated by the county board for any  
128 of the following purposes:

129 (A) Curriculum development;

130 (B) Preparation for opening and closing school;

131 (C) Professional development;

132 (D) Teacher-pupil-parent conferences;

133 (E) Professional meetings; and

134 (F) Making up days when instruction was scheduled but  
135 not conducted.

136 (g) Three of the days described in subdivision (4),  
137 subsection (f) of this section shall be scheduled prior to the  
138 commencement of the instructional term for the purposes of  
139 preparing for the opening of school and staff development.

140 (h) At least one of the days described in subdivision (4),  
141 subsection (f) of this section shall be scheduled after the  
142 termination of the instructional term for the purpose of  
143 preparing for the closing of school.

144 (i) At least four of the days described in subdivision  
145 (3), subsection (f) of this section shall be scheduled after  
146 March 1.

147 (j) At least two of the days described in subdivision (4),  
148 subsection (f) of this section will be scheduled for  
149 professional development. The professional development  
150 conducted on these days will be consistent with the goals  
151 established by the state board pursuant to the provisions of  
152 section twenty-three-a, article two of this chapter.

153 (k) Subject to the provisions of subsection (h) of this  
154 section, all noninstructional days will be scheduled prior to  
155 the termination of the instructional term.

156 (l) The state board may not schedule the primary  
157 statewide assessment program prior to May 15 of the  
158 instructional year unless the state board determines that the  
159 nature of the test mandates an earlier testing date.

160 (m) If, on or after March 1, the county board determines  
161 that it is not possible to complete one hundred eighty separate  
162 days of instruction, the county board shall schedule  
163 instruction on any available noninstructional day, regardless  
164 of the purpose for which the day originally was scheduled,  
165 and the day will be used for instruction, subject to the  
166 following:

167 (1) The noninstructional days scheduled for professional  
168 development shall be the last available noninstructional days  
169 to be rescheduled as instructional days;

170 (2) On or after March 1, the county board also may  
171 require additional minutes of instruction in the school day to  
172 make up for lost instructional days in excess of the days  
173 available through rescheduling and, if in its judgment it is  
174 reasonable and necessary to improve student performance, to  
175 avoid scheduling instruction on noninstructional days  
176 previously scheduled for professional development; and

177 (3) The provisions of this subsection do not apply to:

178 (1) Holidays; and

179 (2) Election day.

180 (n) The following applies to accrued instructional time:

181 (1) Except as provided in subsection (m) of this section,  
182 accrued instructional time may not be used to avoid one  
183 hundred eighty separate days of instruction;

184 (2) Accrued instructional time may not be used to  
185 lengthen the time provided in law for faculty senates;

186 (3) The use of accrued instructional time for  
187 extracurricular activities will be limited by the state board;

188 (4) Accrued instructional time may be used by schools  
189 and counties to provide additional time for professional staff  
190 development and continuing education as may be needed to  
191 improve student performance and meet the requirements of  
192 the federal mandates affecting elementary and secondary

193 education. The amount of accrued instructional time used for  
194 this purpose may not exceed three instructional days; and

195 (5) Other requirements or restrictions the state board may  
196 provide in the rule required to be promulgated by this section.

197 (o) The following applies to cocurricular activities:

198 (1) The state board shall determine what activities may be  
199 considered cocurricular;

200 (2) The state board shall determine the amount of  
201 instructional time that may be consumed by cocurricular  
202 activities; and

203 (3) Other requirements or restrictions the state board may  
204 provide in the rule required to be promulgated by this section.

205 (p) The following applies to extracurricular activities:

206 (1) Except as provided by subdivision (3) of this  
207 subsection, extracurricular activities may not be scheduled  
208 during instructional time;

209 (2) The use of accrued instructional time for  
210 extracurricular activities will be limited by the state board;  
211 and

212 (3) The state board shall provide for the attendance by  
213 students of certain activities sanctioned by the Secondary  
214 School Activities Commission when those activities are  
215 related to statewide tournaments or playoffs or are programs  
216 required for Secondary School Activities Commission  
217 approval.

218 (q) Noninstructional interruptions to the instructional day  
219 shall be minimized to allow the classroom teacher to teach.

220 (r) Nothing in this section prohibits establishing year-  
221 round schools in accordance with rules to be established by  
222 the state board.

223 (s) Prior to implementing the school calendar, the county  
224 board shall secure approval of its proposed calendar from the  
225 state board or, if so designated by the state board, from the  
226 state superintendent.

227 (t) The county board may contract with all or part of the  
228 personnel for a longer term.

229 (u) The minimum instructional term may be decreased by  
230 order of the state superintendent in any county declared a  
231 federal disaster area and where the event causing the  
232 declaration is substantially related to a reduction of  
233 instructional days.

234 (v) Where the employment term overlaps a teacher's or  
235 service personnel's participation in a summer institute or  
236 institution of higher education for the purpose of  
237 advancement or professional growth, the teacher or service  
238 personnel may substitute, with the approval of the county  
239 superintendent, the participation for up to five of the  
240 noninstructional days of the employment term.

241 (w) The state board shall promulgate a rule in accordance  
242 with the provisions of article three-b, chapter twenty-nine-a  
243 of this code for the purpose of implementing the provisions  
244 of this section.

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## CHAPTER 61

**(H. B. 4669 - By Delegates Shaver,  
D. Walker, Lawrence, Canterbury,  
Shott, Sumner, Smith, Stowers,  
Rodighiero, Ireland and Rowan)**

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[Passed March 11, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 19, 2010.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5B-10, relating to granting exceptions to certain statutes to innovation zone plans approved by state board; specifying scope, limitations and conditions on exceptions granted.

*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 §18-5B-10, to read as follows:

### **ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.**

#### **§18-5B-10. Exceptions to statutes granted to innovation zones; limitations.**

- 1 (a) The Legislature hereby grants an exception to the
- 2 statute or statutes indicated for the following schools
- 3 pursuant to and for the purposes enumerated in their
- 4 innovation zone plans approved by the state board at its
- 5 meeting on the date specified. The grant of an exception to



6 a statute means that the school or schools granted the  
7 exception may implement the actions as specifically  
8 described in their approved innovation zone plan  
9 notwithstanding the provisions of the statute from which they  
10 are specifically excepted. These exceptions are limited to the  
11 purposes as specifically described in the plan approved on the  
12 date indicated and are expressly repealed for any plan  
13 modification or plan implementation which changes those  
14 purposes. However, nothing in this section prohibits a school  
15 or schools with an approved innovation zone plan from  
16 requesting plan modifications, subject to approval of the state  
17 board, and if the modifications change the purposes for which  
18 an exception to a statute was granted, the state board shall  
19 request an exception to achieve the new purposes in the  
20 manner provided in section five of this article for requesting  
21 exceptions to a statute. If the approved innovation zone plan  
22 of a school or schools is withdrawn by the state board, or the  
23 innovation zone designation of a school or schools is revoked  
24 by the state board, the exception granted to that school or  
25 those schools is expressly repealed.

26 (b) The following exceptions are granted:

27 (1) Piedmont Elementary School, Kanawha County, is  
28 excepted from subsection (3), section fourteen, article four,  
29 chapter eighteen-a of this code for the purpose of allowing  
30 specialist teachers to take their planning period before and  
31 after school totaling one hour, three days per week, and from  
32 section eighteen-a, article five of this chapter for the purpose  
33 of permitting a number of students in music and physical  
34 education classes in excess of the class size limits to provide  
35 the time and structure for teams to meet in professional  
36 learning communities, which purposes are as more  
37 specifically described in the school's innovation zone plan  
38 approved by the state board on January 13, 2010;

39           (2) Putnam County High Schools Consortium comprised  
40 of Buffalo High School, Hurricane High School, Poca High  
41 School, Winfield High School and Putnam Career &  
42 Technical Center, Putnam County, is excepted from section  
43 forty-five, article five of this chapter only to the extent  
44 necessary for the purpose of establishing a structured  
45 transition program for freshman only one day prior to the  
46 beginning of the regular instructional term, and for the  
47 purpose of permitting the creation of not more than three  
48 hours each month during the school term of structured,  
49 regularly scheduled time for all teachers to work in  
50 professional learning communities, which purposes are as  
51 more specifically described in the schools' innovation zone  
52 plan approved by the state board on January 13, 2010;

53           (3) Nellis Elementary School, Boone County, is excepted  
54 from subsection (a), section two, article five-a of this chapter,  
55 for the purpose of expanding the membership of its local  
56 school improvement council, which purpose is as more  
57 specifically described in the school's innovation zone plan  
58 approved by the state board on January 13, 2010; and

59           (4) Cabell County Secondary School Consortium  
60 comprised of Cabell County Career Technical Center, Cabell  
61 Midland High School and Huntington High School, Cabell  
62 County, is excepted from sections one and one-a, article  
63 eight of this chapter for the purpose of raising the  
64 compulsory school attendance age to eighteen years old, and  
65 from section two-b, article three, chapter eighteen-a of this  
66 code for the purpose of providing a customized high quality  
67 beginning teacher induction program developed at the county  
68 level, which purposes are as more specifically described in  
69 the schools' innovation zone plan approved by the state board  
70 on January 13, 2010.

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## CHAPTER 62

**(S. B. 553 - By Senators Foster,  
White, Browning and Plymale)**

[Passed March 5, 2010; in effect from passage.]  
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §18-7D-6 of the Code of West Virginia, 1931, as amended, relating to the State Teachers Retirement System; and extending the time for certain members to purchase additional service credit for service in the Teachers' Defined Contribution Retirement System.

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

That §18-7D-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7D. VOLUNTARY TRANSFER FROM  
TEACHERS' DEFINED  
CONTRIBUTION RETIREMENT  
SYSTEM TO STATE TEACHERS  
RETIREMENT SYSTEM.**

**§18-7D-6. Service credit in State Teachers Retirement System  
following transfer; conversion of assets;  
adjustments.**

- 1 (a) Any member who has affirmatively elected to transfer
- 2 to the State Teachers Retirement System within the period
- 3 provided in section seven of this article whose assets have

4 been transferred from the Teachers' Defined Contribution  
5 Retirement System to the State Teachers Retirement System  
6 pursuant to the provisions of this article and who has not  
7 made any withdrawals or cash-outs from his or her assets is,  
8 depending upon the percentage of actively contributing  
9 members affirmatively electing to transfer, entitled to service  
10 credit in the State Teachers Retirement System in accordance  
11 with the provisions of subsection (c) of this section.

12 (b) Any member who has made withdrawals or cash-outs  
13 will receive service credit based upon the amounts  
14 transferred. The board shall make the appropriate adjustment  
15 to the service credit the member will receive.

16 (c) More than seventy-five percent of actively  
17 contributing members of the Teachers' Defined Contribution  
18 Retirement System affirmatively elected to transfer to the  
19 State Teachers Retirement System within the period provided  
20 in section seven of this article. Therefore, any member of the  
21 Defined Contribution Retirement System who decides to  
22 transfer to the State Teachers Retirement System, calculates  
23 his or her service credit in the State Teachers Retirement  
24 System as follows:

25 (1) For any member affirmatively electing to transfer, the  
26 member's State Teachers Retirement System credit shall be  
27 seventy-five percent of the member's Teachers' Defined  
28 Contribution Retirement System service credit, less any  
29 service previously withdrawn by the member or due to a  
30 qualified domestic relations order and not repaid;

31 (2) To receive full credit in the State Teachers Retirement  
32 System for service in the Teachers' Defined Contribution  
33 Retirement System for which assets are transferred, members  
34 who affirmatively elected to transfer and who provided to the  
35 board a signed verification of cost for service credit purchase  
36 form by the effective date of the amendments to this section

37 enacted in the 2009 regular legislative session shall pay into  
38 the State Teachers Retirement System a one and one-half  
39 percent contribution by no later than June 30, 2009, or no  
40 later than ninety days after the postmarked date on a final and  
41 definitive contribution calculation from the board, whichever  
42 is later. This contribution shall be calculated as one and one-  
43 half percent of the member's estimated total earnings for  
44 which assets are transferred, plus interest of four percent per  
45 annum accumulated from the date of the member's initial  
46 participation in the Defined Contribution Retirement System  
47 through June 30, 2009: *Provided*, That any member who  
48 transferred and provided to the board a signed verification of  
49 cost for service credit purchase form by June 30, 2009 but  
50 was unable to complete the purchase of the one and one-half  
51 percent contribution, or any member who did not request a  
52 verification of cost letter but attempted to purchase the one  
53 and one-half percent contribution and was denied in writing  
54 by the board on or before December 31, 2009, may request  
55 the board on or before April 15, 2010, to recalculate the  
56 contribution for 2010. To receive full credit, the member  
57 shall pay into the State Teachers Retirement System the  
58 recalculated purchase amount by June 30, 2010, or no later  
59 than sixty days after the postmarked date on a contribution  
60 recalculation from the board, whichever is later. The  
61 recalculated contribution shall include the interest loss at the  
62 actuarial rate of seven and one-half percent. The board's  
63 executive director may correct clerical errors.

64 (A) For a member contributing to the Defined  
65 Contribution Retirement System at any time during the 2008  
66 fiscal year and commencing membership in the State  
67 Teachers Retirement System on July 1, 2008, or August 1,  
68 2008, as the case may be:

69 (i) The estimated total earnings shall be calculated based  
70 on the member's salary and the member's age nearest  
71 birthday on June 30, 2008;

72           (ii) This calculation shall apply both an annual backward  
73 salary scale from that date for prior years' salaries and a  
74 forward salary scale for the salary for the 2008 fiscal year.

75           (B) The calculations in paragraph (A) of this subdivision  
76 are based upon the salary scale assumption applied in the  
77 West Virginia Teachers Retirement System actuarial  
78 valuation as of July 1, 2007, prepared for the Consolidated  
79 Public Retirement Board. This salary scale shall be applied  
80 regardless of breaks in service.

81           (d) All service previously transferred from the State  
82 Teachers Retirement System to the Teachers' Defined  
83 Contribution Retirement System is considered Teachers'  
84 Defined Contribution Retirement System service for the  
85 purposes of this article.

86           (e) Notwithstanding any provision of this code to the  
87 contrary, the retirement of a member who becomes eligible  
88 to retire after the member's assets are transferred to the State  
89 Teachers Retirement System pursuant to the provisions of  
90 this article may not commence before September 1, 2008:  
91 *Provided*, That the Consolidated Public Retirement Board  
92 may not retire any member who is eligible to retire during the  
93 calendar year 2008 unless the member has provided a written  
94 notice to his or her county board of education by July 1,  
95 2008, of his or her intent to retire.

96           (f) The provisions of section twenty-eight-e, article  
97 seven-a of this chapter do not apply to the amendments to  
98 this section enacted during the 2009 regular legislative  
99 session.

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## CHAPTER 63

**(H. B. 4593 - By Delegates Stowers,  
Perry, M. Poling, Paxton,  
D. Walker and Duke)**

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[Passed March 13, 2010; in effect July 1, 2010.]  
[Approved by the Governor on March 26, 2010.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-8-6; to amend and reenact §18-8-1, §18-8-1a and §18-8-4 of said code; to amend and reenact §18-9A-21 of said code; and to amend and reenact §62-15-4 of said code, all relating to improving student participation, success and high school graduation rates; increasing the minimum age for ending compulsory school attendance; reducing the number of days of unexcused absences at which proceedings to enforce attendance begin; establishing the “High School Graduation Improvement Act”; establishing legislative findings and intent; requiring county board of education plan for improving student retention and increasing graduation rate; requiring state board of education to develop, expand and assist certain programs; requiring certain state superintendent reports to Legislative Oversight Commission on Education Accountability; increasing funding for alternative education programs; and authorizing establishment of additional juvenile drug courts.

*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 §18-8-6; that §18-8-1, §18-8-1a and §18-8-4 of said code be amended and reenacted; that

§18-9A-21 of said code be amended and reenacted; and that §62-15-4 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 18. Education.**
- 62. Criminal Procedure.**

**CHAPTER 18. EDUCATION.**

**Article**

- 8. Compulsory School Attendance.**
- 9A. Public School Support.**

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

- §18-8-1. Compulsory school attendance; exemptions.
- §18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.
- §18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.
- §18-8-6. The High School Graduation Improvement Act.

**§18-8-1. Compulsory school attendance; exemptions.**

1           (a) Exemption from the requirements of compulsory  
 2 public school attendance established in section one-a of this  
 3 article shall be made on behalf of any child for the causes or  
 4 conditions set forth in this section. Each cause or condition  
 5 set forth in this section is subject to confirmation by the  
 6 attendance authority of the county.

7           (b) A child is exempt from the compulsory school  
 8 attendance requirement set forth in section one-a of this  
 9 article if the requirements of this subsection, relating to  
 10 instruction in a private, parochial or other approved school,  
 11 are met. The instruction shall be in a school approved by the  
 12 county board and for a time equal to the instructional term set  
 13 forth in section forty-five, article five of this chapter. In all  
 14 private, parochial or other schools approved pursuant to this  
 15 subsection it is the duty of the principal or other person in  
 16 control, upon the request of the county superintendent, to



17 furnish to the county board such information and records as  
18 may be required with respect to attendance, instruction and  
19 progress of students enrolled.

20 (c) A child is exempt from the compulsory school  
21 attendance requirement set forth in section one-a of this  
22 article if the requirements of either subdivision (1) or  
23 subdivision (2) of this subsection, both relating to home  
24 instruction, are met.

25 (1) The instruction shall be in the home of the child or  
26 children or at some other place approved by the county board  
27 and for a time equal to the instructional term set forth in  
28 section forty-five, article five of this chapter. If the request  
29 for home instruction is denied by the county board, good and  
30 reasonable justification for the denial shall be furnished in  
31 writing to the applicant by the county board. The instruction  
32 shall be conducted by a person or persons who, in the  
33 judgment of the county superintendent and county board, are  
34 qualified to give instruction in subjects required to be taught  
35 in public elementary schools in the state. The person or  
36 persons providing the instruction, upon request of the county  
37 superintendent, shall furnish to the county board information  
38 and records as may be required periodically with respect to  
39 attendance, instruction and progress of students receiving the  
40 instruction. The state board shall develop guidelines for the  
41 home schooling of special education students including  
42 alternative assessment measures to assure that satisfactory  
43 academic progress is achieved.

44 (2) The child meets the requirements set forth in this  
45 subdivision: *Provided*, That the county superintendent may  
46 seek from the circuit court of the county an order denying  
47 home instruction of the child. The order may be granted  
48 upon a showing of clear and convincing evidence that the  
49 child will suffer neglect in his or her education or that there  
50 are other compelling reasons to deny home instruction.

51 (A) Annually, the person or persons providing home  
52 instruction shall present to the county superintendent or  
53 county board a notice of intent to provide home instruction  
54 and the name, address, age and grade level of any child of  
55 compulsory school age to be instructed: *Provided*, That if a  
56 child is enrolled in a public school, notice of intent to provide  
57 home instruction shall be given at least two weeks prior to  
58 withdrawing the child from public school;

59 (B) The person or persons providing home instruction  
60 shall submit satisfactory evidence of a high school diploma  
61 or equivalent;

62 (C) The person or persons providing home instruction  
63 shall outline a plan of instruction for the ensuing school year;  
64 and

65 (D) On or before June 30 annually, the person or persons  
66 providing home instruction shall obtain an academic  
67 assessment of the child for the previous school year and  
68 submit the results to the county superintendent. When the  
69 academic assessment takes place outside of a public school,  
70 the parent or legal guardian shall pay the cost. The  
71 requirement of an academic assessment is satisfied in one of  
72 the following ways:

73 (i) The child receiving home instruction takes a nationally  
74 normed standardized achievement test to be administered  
75 under standardized conditions as set forth by the published  
76 instructions of the selected test in the subjects of reading,  
77 language, mathematics, science and social studies. The  
78 child's parent or legal guardian may not administer the test in  
79 any event. The publication date of the chosen test may not be  
80 more than ten years from the date the test is administered.  
81 The child is considered to have made acceptable progress  
82 when the mean of the child's test results in the required  
83 subject areas for any single year meets or exceeds the fiftieth

84 percentile or, if below the fiftieth percentile, shows  
85 improvement from the previous year's results;

86 (ii) The child participates in the testing program currently  
87 in use in the state's public schools. The test shall be  
88 administered to the child at a public school in the county of  
89 residence. Determination of acceptable progress shall be  
90 based on current guidelines of the state testing program;

91 (iii) The county superintendent is provided with a written  
92 narrative indicating that a portfolio of samples of the child's  
93 work has been reviewed and that the child's academic  
94 progress for the year is in accordance with the child's  
95 abilities. If the narrative indicates that the child's academic  
96 progress for the year is in accordance with the child's  
97 abilities, the child is considered to have made acceptable  
98 progress. This narrative shall be prepared by a certified  
99 teacher whose certification number shall be provided. The  
100 narrative shall include a statement about the child's progress  
101 in the areas of reading, language, mathematics, science and  
102 social studies and shall note any areas which, in the  
103 professional opinion of the reviewer, show need for  
104 improvement or remediation; or

105 (iv) The child completes an alternative academic  
106 assessment of proficiency that is mutually agreed upon by the  
107 parent or legal guardian and the county superintendent.  
108 Criteria for acceptable progress shall be mutually agreed  
109 upon by the same parties; and

110 (E) When the annual assessment fails to show acceptable  
111 progress as defined under the appropriate assessment option  
112 set forth in paragraph (D) of this subdivision, the person or  
113 persons providing home instruction shall initiate a remedial  
114 program to foster acceptable progress. The county board  
115 shall notify the parents or legal guardian of the child, in  
116 writing, of the services available to assist in the assessment

117 of the child's eligibility for special education services.  
118 Identification of a disability does not preclude the  
119 continuation of home schooling. In the event that the child  
120 does not achieve acceptable progress as defined under the  
121 appropriate assessment option set forth in paragraph (D) of  
122 this subdivision for a second consecutive year, the person or  
123 persons providing instruction shall submit to the county  
124 superintendent additional evidence that appropriate instruction is  
125 being provided.

126 (3) This subdivision applies to both home instruction  
127 exemptions set forth in subdivisions (1) and (2) of this  
128 subsection. The county superintendent or a designee shall  
129 offer such assistance, including textbooks, other teaching  
130 materials and available resources, all subject to availability,  
131 as may assist the person or persons providing home  
132 instruction. Any child receiving home instruction may upon  
133 approval of the county board exercise the option to attend any  
134 class offered by the county board as the person or persons  
135 providing home instruction may consider appropriate subject  
136 to normal registration and attendance requirements.

137 (d) A child is exempt from the compulsory school  
138 attendance requirement set forth in section one-a of this  
139 article if the requirements of this subsection, relating to  
140 physical or mental incapacity, are met. Physical or mental  
141 incapacity consists of incapacity for school attendance and  
142 the performance of school work. In all cases of prolonged  
143 absence from school due to incapacity of the child to attend,  
144 the written statement of a licensed physician or authorized  
145 school nurse is required., Incapacity shall be narrowly  
146 defined and in any case the provisions of this article may not  
147 allow for the exclusion of the mentally, physically,  
148 emotionally or behaviorally handicapped child otherwise  
149 entitled to a free appropriate education.

150           (e) A child is exempt from the compulsory school  
151 attendance requirement set forth in section one-a of this  
152 article if conditions rendering school attendance impossible  
153 or hazardous to the life, health or safety of the child exist.

154           (f) A child is exempt from the compulsory school  
155 attendance requirement set forth in section one-a of this  
156 article upon regular graduation from a standard senior high  
157 school or alternate secondary program completion as  
158 determined by the state board.

159           (g) A child is exempt from the compulsory school  
160 attendance requirement set forth in section one-a of this  
161 article if the child is granted a work permit pursuant to the  
162 subsection. After due investigation the county superintendent  
163 may grant work permits to youths under the termination age  
164 designated in section one-a of this article, subject to state and  
165 federal labor laws and regulations. A work permit may not be  
166 granted on behalf of any youth who has not completed the  
167 eighth grade of school.

168           (h) A child is exempt from the compulsory school  
169 attendance requirement set forth in section one-a of this  
170 article if a serious illness or death in the immediate family of  
171 the child has occurred. It is expected that the county  
172 attendance director will ascertain the facts in all cases of such  
173 absences about which information is inadequate and report  
174 the facts to the county superintendent.

175           (i) A child is exempt from the compulsory school  
176 attendance requirement set forth in section one-a of this  
177 article if the requirements of this subsection, relating to  
178 destitution in the home, are met. Exemption based on a  
179 condition of extreme destitution in the home may be granted  
180 only upon the written recommendation of the county  
181 attendance director to the county superintendent following  
182 careful investigation of the case. A copy of the report

183 confirming the condition and school exemption shall be  
184 placed with the county director of public assistance. This  
185 enactment contemplates every reasonable effort that may  
186 properly be taken on the part of both school and public  
187 assistance authorities for the relief of home conditions  
188 officially recognized as being so destitute as to deprive  
189 children of the privilege of school attendance. Exemption for  
190 this cause is not allowed when the destitution is relieved  
191 through public or private means.

192 (j) A child is exempt from the compulsory school  
193 attendance requirement set forth in section one-a of this  
194 article if the requirements of this subsection, relating to  
195 church ordinances and observances of regular church  
196 ordinances, are met. The county board may approve  
197 exemption for religious instruction upon written request of  
198 the person having legal or actual charge of a child or  
199 children. This exemption is subject to the rules prescribed by  
200 the county superintendent and approved by the county board.

201 (k) A child is exempt from the compulsory school  
202 attendance requirement set forth in section one-a of this  
203 article if the requirements of this subsection, relating to  
204 alternative private, parochial, church or religious school  
205 instruction, are met. Exemption shall be made for any child  
206 attending any private school, parochial school, church school,  
207 school operated by a religious order or other nonpublic  
208 school which elects to comply with the provisions of article  
209 twenty-eight of this chapter.

210 (l) Completion of the eighth grade does not exempt any  
211 child under the termination age designated in section one-a of  
212 this article from the compulsory attendance provision of this  
213 article.

**§18-8-1a. Commencement and termination of compulsory school  
attendance; public school entrance requirements;  
exceptions.**

1           (a) Notwithstanding the provisions of section one of this  
2 article, compulsory school attendance begins with the school  
3 year in which the sixth birthday is reached prior to September  
4 1 of such year or upon enrolling in a publicly supported  
5 kindergarten program and, subject to subdivision (3) of this  
6 subsection, continues to the sixteenth birthday or for as long  
7 as the student continues to be enrolled in a school system  
8 after the sixteenth birthday.

9           (1) A child may be removed from such kindergarten  
10 program when the principal, teacher and parent or guardian  
11 concur that the best interest of the child would not be served  
12 by requiring further attendance: *Provided*, That the principal  
13 shall make the final determination with regard to compulsory  
14 school attendance in a publicly supported kindergarten  
15 program.

16           (2) The compulsory school attendance provision of this  
17 article shall be enforced against a person eighteen years of  
18 age or older for as long as the person continues to be enrolled  
19 in a school system, and may not be enforced against the  
20 parent, guardian, or custodian of the person.

21           (3) Beginning with the 2011-2012 high school freshman  
22 cohort class of students, and notwithstanding the provisions  
23 of section one of this article, compulsory school attendance  
24 begins with the school year in which the sixth birthday is  
25 reached prior to September 1 of such year or upon enrolling  
26 in a publicly supported kindergarten program and continues  
27 to the seventeenth birthday or for as long as the student  
28 continues to be enrolled in a school system after the  
29 seventeenth birthday.

30           (4) Beginning with the December 2010 interim meeting  
31 period, and semiannually thereafter, the state superintendent  
32 shall report to the Legislative Oversight Commission on  
33 Education Accountability on the impact of the increased age

34 requirement of subdivision (3) of this subsection, and the  
35 progress of the state board and the county boards in  
36 implementing the requirements of section six of this article.

37 (b) Attendance at a state-approved or Montessori  
38 kindergarten, as provided in section eighteen, article five of  
39 this chapter, is deemed school attendance for purposes of this  
40 section. Prior to entrance into the first grade in accordance  
41 with section five, article two of this chapter, each child must  
42 have either:

43 (1) Successfully completed such publicly or privately  
44 supported, state-approved kindergarten program or  
45 Montessori kindergarten program; or

46 (2) Successfully completed an entrance test of basic  
47 readiness skills approved by the county in which the school  
48 is located. The test may be administered in lieu of kindergarten  
49 attendance only under extraordinary circumstances to be  
50 determined by the county board.

51 (c) Notwithstanding the provisions of this section and of  
52 section five, article two of this chapter and section eighteen,  
53 article five of this chapter, a county board may provide for  
54 advanced entrance or placement under policies adopted by  
55 said board for any child who has demonstrated sufficient  
56 mental and physical competency for such entrance or  
57 placement.

58 (d) This section does not prevent a student from another  
59 state from enrolling in the same grade in a public school in  
60 West Virginia as the student was enrolled at the school from  
61 which the student transferred.

**§18-8-4. Duties of attendance director and assistant directors;  
complaints, warrants and hearings.**



1 (a) The county attendance director and the assistants shall  
2 diligently promote regular school attendance. The director  
3 and assistants shall:

4 (1) Ascertain reasons for inexcusable absences from  
5 school of students of compulsory school age and students  
6 who remain enrolled beyond the compulsory school age as  
7 defined under section one-a of this article; and

8 (2) Take such steps as are, in their discretion, best  
9 calculated to correct attitudes of parents and students which  
10 result in absences from school even though not clearly in  
11 violation of law.

12 (b) In the case of five total unexcused absences of a  
13 student during a school year, the attendance director or  
14 assistant shall:

15 (1) Serve written notice to the parent, guardian or  
16 custodian of the student that the attendance of the student at  
17 school is required and that within ten days of receipt of the  
18 notice the parent, guardian or custodian, accompanied by the  
19 student, shall report in person to the school the student  
20 attends for a conference with the principal or other  
21 designated representative of the school in order to discuss  
22 and correct the circumstances causing the inexcusable  
23 absences of the student; and if the parent, guardian or  
24 custodian does not comply with the provisions of this article,  
25 then the attendance director or assistant shall make complaint  
26 against the parent, guardian or custodian before a magistrate  
27 of the county. If it appears from the complaint that there is  
28 probable cause to believe that an offense has been committed  
29 and that the accused has committed it, a summons or a  
30 warrant for the arrest of the accused shall issue to any officer  
31 authorized by law to serve the summons or to arrest persons  
32 charged with offenses against the state. More than one  
33 parent, guardian or custodian may be charged in a complaint.

34 Initial service of a summons or warrant issued pursuant to the  
35 provisions of this section shall be attempted within ten  
36 calendar days of receipt of the summons or warrant and  
37 subsequent attempts at service shall continue until the  
38 summons or warrant is executed or until the end of the school  
39 term during which the complaint is made, whichever is later.

40 (c) The magistrate court clerk, or the clerk of the circuit  
41 court performing the duties of the magistrate court as  
42 authorized in section eight, article one, chapter fifty of this  
43 code, shall assign the case to a magistrate within ten days of  
44 execution of the summons or warrant. The hearing shall be  
45 held within twenty days of the assignment to the magistrate,  
46 subject to lawful continuance. The magistrate shall provide  
47 to the accused at least ten days' advance notice of the date,  
48 time and place of the hearing.

49 (d) When any doubt exists as to the age of a student  
50 absent from school, the attendance director has authority to  
51 require a properly attested birth certificate or an affidavit  
52 from the parent, guardian or custodian of the student, stating  
53 age of the student. In the performance of his or her duties,  
54 the county attendance director has authority to take without  
55 warrant any student absent from school in violation of the  
56 provisions of this article and to place the student in the school  
57 in which he or she is or should be enrolled.

58 (e) The county attendance director shall devote such time  
59 as is required by section three of this article to the duties of  
60 attendance director in accordance with this section during the  
61 instructional term and at such other times as the duties of an  
62 attendance director are required. All attendance directors  
63 hired for more than two hundred days may be assigned other  
64 duties determined by the superintendent during the period in  
65 excess of two hundred days. The county attendance director  
66 is responsible under direction of the county superintendent  
67 for efficiently administering school attendance in the county.

68 (f) In addition to those duties directly relating to the  
69 administration of attendance, the county attendance director  
70 and assistant directors also shall perform the following  
71 duties:

72 (1) Assist in directing the taking of the school census to  
73 see that it is taken at the time and in the manner provided by  
74 law;

75 (2) Confer with principals and teachers on the  
76 comparison of school census and enrollment for the detection  
77 of possible nonenrollees;

78 (3) Cooperate with existing state and federal agencies  
79 charged with enforcing child labor laws;

80 (4) Prepare a report for submission by the county  
81 superintendent to the State Superintendent of Schools on  
82 school attendance, at such times and in such detail as may be  
83 required. The state board shall promulgate a legislative rule  
84 pursuant to article three-b, chapter twenty-nine-a of this code  
85 that sets forth student absences that are excluded for  
86 accountability purposes. The absences that are excluded by  
87 the rule include, but are not be limited to, excused student  
88 absences, students not in attendance due to disciplinary  
89 measures and absent students for whom the attendance  
90 director has pursued judicial remedies to compel attendance  
91 to the extent of his or her authority. The attendance director  
92 shall file with the county superintendent and county board at  
93 the close of each month a report showing activities of the  
94 school attendance office and the status of attendance in the  
95 county at the time;

96 (5) Promote attendance in the county by compiling data for  
97 schools and by furnishing suggestions and recommendations for  
98 publication through school bulletins and the press, or in such  
99 manner as the county superintendent may direct;

100 (6) Participate in school teachers' conferences with  
101 parents and students;

102 (7) Assist in such other ways as the county  
103 superintendent may direct for improving school attendance;

104 (8) Make home visits of students who have excessive  
105 unexcused absences, as provided above, or if requested by  
106 the chief administrator, principal or assistant principal; and

107 (9) Serve as the liaison for homeless children and youth.

**§18-8-6. The High School Graduation Improvement Act.**

1 (a) This section is known and may be cited as "The High  
2 School Graduation Improvement Act."

3 (b) The Legislature makes the following findings:

4 (1) West Virginia has a dire need to implement a  
5 comprehensive approach to addressing the high school drop-  
6 out crisis, and to develop policies and strategies that  
7 successfully assist at-risk students to stay in school, earn a  
8 high school diploma, and ultimately become productively  
9 contributing members of society;

10 (2) The current demands for a highly skilled workforce  
11 require a high school diploma at the very minimum;

12 (3) The state has several dynamic programs that are  
13 capable of actively engaging students in learning, providing  
14 students with a sense of relevancy in academics, and  
15 motivating students to succeed in school and ultimately earn  
16 a high school diploma;

17           (4) Raising the compulsory school attendance age alone  
18 will neither increase the graduation rate nor decrease the  
19 drop-out rate. It is imperative that the state shift the focus  
20 from merely compelling students to attend school to instead  
21 providing vibrant and engaging programs that allow students  
22 to recognize the value of a high school diploma or workforce  
23 credential and inspire students to graduate from high school,  
24 especially those students who are at risk of dropping out of  
25 school;

26           (5) Investing financially in this focus shift will result in  
27 the need for fewer resources to be committed to enforcing  
28 compulsory attendance laws and fewer incidents of disruptive  
29 student behavior;

30           (6) Absenteeism is proven to be the highest predictor of  
31 course failure. Truant students face low self-confidence in  
32 their ability to succeed in school because their absences cause  
33 them to fall behind their classmates, and the students find  
34 dropping out easier than catching up;

35           (7) There is a strong relationship between truancy and  
36 dropping out of high school. Frequent absences are one of  
37 the most common indicators that a student is disengaging  
38 from the learning process and likely to drop out of school  
39 early. Intervention after fewer absences is likely to have a  
40 positive impact on a student's persistence to graduation;

41           (8) Students cite many reasons for dropping out of  
42 school, some of which include engaging in drug culture, lack  
43 of positive influence, role model or parental involvement,  
44 absence of boundaries and direction, lack of a positive home  
45 environment, peer pressure, and poor community  
46 expectations;

47           (9) Dropping out of school has a profound negative  
48 impact on an individual's future, resulting in limited job

49 choices, substantially lower wages and less earned over a  
50 life-time than high school graduates, and a greater likelihood  
51 of depending on public assistance and engaging in criminal  
52 activity;

53 (10) Career-technical education is a dynamic system in  
54 West Virginia which offers numerous concentrations that  
55 provide students with industry-recognized credentials, while  
56 also preparing them for post-secondary education;

57 (11) All career-technical education students in the state  
58 have an opportunity to earn free college credit through the  
59 Earn a Degree-Graduate Early (EDGE) program;

60 (12) The current high school graduation rate for  
61 secondary career-technical education completers is  
62 significantly higher than the state graduation rate;

63 (13) Students involved in career-technical education learn  
64 a marketable skill, are likely to find jobs, and become  
65 prepared for post-secondary education;

66 (14) A significant number of students who could benefit  
67 from participating in a career-technical program are denied  
68 access due to a number of factors, such as dropping out of  
69 high school prior to enrolling in career-technical education,  
70 requirements that students repeat academic courses that they  
71 have failed, and scheduling conflicts with the high schools;

72 (15) There has been a dramatic change over the years  
73 from vocational education, which was very basic and lacked  
74 high level skills, to the career-technical programs of today  
75 which are computer based, require national tests and  
76 certification, and often result in jobs with high salaries;

77           (16) West Virginia’s employers and technical education  
78 job placement rates show that the state needs graduates with  
79 technical skills to compete in the current and future job  
80 markets;

81           (17) The job placement rate for students graduating from  
82 career-technical programs statewide is greater than ninety-  
83 five percent;

84           (18) Among the reasons students cite for dropping out of  
85 school are feelings of hopelessness when they have failed  
86 classes and can not recover credits in order to graduate;

87           (19) The state offers full-day programs consisting of  
88 credit recovery, hands on experiences in career-technical  
89 programs and basic education, which are valuable resources  
90 for re-engaging students who have dropped out of school, or  
91 have a potential for or are at risk of dropping out;

92           (20) A student is significantly more likely to graduate  
93 from high school if he or she completes four units of training  
94 in technical education;

95           (21) Learning is increased and retained at a higher level  
96 if the content is taught through a relevant and applied  
97 experience, and students who are able to experience  
98 academics through real life projects have a higher probability  
99 of mastering the appropriate concepts;

100           (22) Programs such as “GED Option” and  
101 “Techademics” are valuable resources for providing relevant  
102 and applied experience for students;

103           (23) The Techademics programs administered by the  
104 department of education has embedded math competencies in  
105 career-technical program curricula whereby students

106 simultaneously earn credit for mastery of math competencies  
107 and career-technical courses;

108 (24) Students would greatly benefit if West Virginia were  
109 designated as a “GED Option” state. Currently a student is  
110 ineligible to take the General Educational Development  
111 (GED) exam if he or she is enrolled in school, which requires  
112 the student to drop out of high school in order to participate  
113 in a GED preparation program or take the exam, even if the  
114 student desires to remain enrolled;

115 (25) A GED Option state designation by the American  
116 Council on Education would allow students in this state to  
117 remain enrolled in school and continue acquiring academic  
118 and career-technical credits while pursuing a GED diploma.  
119 The GED Option would be blended with the West Virginia  
120 virtual schools or a career-technical education pathway.  
121 Upon completion, rather than being a dropout, the student  
122 would have a GED diploma and a certification in the chosen  
123 career-technical or virtual school pathway;

124 (26) The Mountaineer Challenge Academy is a positive  
125 option for students at risk of dropping out of school, as it  
126 provides students with structure, stability, and a focus on  
127 positive change, all in an environment where negative  
128 influences and distractions can be left behind;

129 (27) Students attending the Mountaineer Challenge  
130 Academy would greatly benefit if the GED Option were  
131 implemented at the Academy;

132 (28) The Health Sciences and Technology Academy  
133 (HSTA) program prepares rural, minority and economically  
134 disadvantaged students for college and careers in the health  
135 sciences, and demonstrates tremendous success in its high  
136 percentage of students who graduate from high school and  
137 participate in post-secondary education.



138       (29) The West Virginia GEAR UP (Gaining Early  
139 Awareness and Readiness for Undergraduate Programs)  
140 program is aimed at increasing the academic performance  
141 and rigorous preparation of students, increasing the number  
142 of high-poverty, at-risk students who are prepared to enter  
143 and succeed in post-secondary education, and increasing the  
144 high school graduation rate;

145       (30) The GEAR UP program successfully aids students  
146 in planning, applying and paying for education and training  
147 beyond high school;

148       (31) Each dropout involved in drugs or crime or  
149 dependent on public assistance creates a huge fiscal burden  
150 on society;

151       (32) The intense treatment and individual monitoring  
152 provided through the state's juvenile drug courts have proven  
153 to be highly effective in treating drug addictions, and  
154 rehabilitating drug addicted youth and improving their  
155 educational outcomes;

156       (33) Services provided by juvenile drug courts include  
157 substance abuse treatment, intervention, assessment, juvenile  
158 and family counseling, heavy supervision by probation  
159 officers including school-based probation officers who  
160 provide early intervention and diversion services, and  
161 addressing some of the underlying reasons why students are  
162 not successful in school;

163       (34) School participation and attendance are required for  
164 students participating in juvenile drug courts, and along with  
165 academic progress are closely monitored by the courts;

166       (35) Juvenile drug courts are an important strategy to  
167 improve substance abuse treatment outcomes, and serve to

168 save the state significant cost on incarceration of the  
169 juveniles, along with the future costs to society of individuals  
170 who remain substance abusers;

171 (36) Juvenile drug courts produce greater cost benefits  
172 than other strategies that address criminal activity related to  
173 substance abuse and addiction that bring individuals into the  
174 criminal justice system;

175 (37) Funding for the increased number of students  
176 enrolled in school during the 2010-2011 school year due to  
177 the compulsory school attendance age increase established by  
178 this act will not be reflected in the state aid formula allocation  
179 until the 2011-2012 school year, which will require  
180 additional funds to be provided to county boards for the  
181 2010-2011 school year to accommodate the increased  
182 enrollment;

183 (38) The state will benefit both fiscally and through  
184 improved quality of life if scarce state resources are targeted  
185 toward programs that result in providing a competitive  
186 advantage as adults for those students who are at risk of  
187 dropping out of school;

188 (39) Funds invested toward education and ensuring that  
189 students complete high school pay tremendous dividends  
190 through the moneys saved on incarceration, unemployment  
191 and underemployment as those students reach adulthood; and

192 (40) Increasing the compulsory school attendance age  
193 will have little effect in aiding students to complete high  
194 school if additional resources, both fiscal and programmatic,  
195 are not dedicated to supporting student achievement,  
196 providing real-life relevancy in curriculum, and engaging  
197 students in learning, particularly for those students who have  
198 become so disengaged from school and learning that they are  
199 at risk of dropping out of school.

200 (c) The Legislature intends as follows:

201 (1) The state will continue to explore diverse instructional  
202 delivery strategies to accommodate various learning styles  
203 and will focus on a state-wide dropout intervention and  
204 prevention program to provide support for students having  
205 academic difficulty;

206 (2) A general credit recovery program shall be  
207 implemented statewide, including delivery through West  
208 Virginia virtual schools;

209 (3) The state board will continue to improve the way  
210 career-technical education is offered, including expansion of  
211 the Techademics program;

212 (4) Up to five additional juvenile drug courts shall be  
213 established by January 1, 2012;

214 (5) The state will invest additional state funds and other  
215 resources in strategies and programs that engage  
216 disconnected and discouraged students in a positive learning  
217 environment as a critical first step to ensuring that students  
218 persist and graduate; and

219 (6) County boards will develop plans to demonstrate how  
220 they will use available funds to implement the intent of this  
221 section.

222 (d) Each county board shall include in its alternative  
223 education program plan required by section six, article two,  
224 of this chapter a plan to improve student retention and  
225 increase the graduation rate in the county. The plan is subject  
226 to approval of the state board, and shall include strategies the  
227 county board will implement to achieve the following goals:

- 228           (1) Increasing the graduation rate for the county;
- 229           (2) Identifying at the earliest age possible those students  
230 who are at risk of dropping out of school prior to graduation;  
231 and
- 232           (3) Providing additional options for delivering to at-risk  
233 students academic credentials and career-technical training if  
234 appropriate or desired by the student. The options may  
235 include such programs as Techademics, Earn a Degree-  
236 Graduate Early (EDGE), Health Sciences and Technology  
237 Academy (HSTA), Gaining Early Awareness and Readiness  
238 for Undergraduate Programs (GEAR UP), truancy diversion,  
239 early intervention, dropout prevention, prevention resource  
240 officers, GED option, credit recovery, alternative learning  
241 environments, or any other program or strategy approved by  
242 the state board.
- 243           (e) As soon as is practicable the state superintendent or  
244 his or her designee shall pursue designation of West Virginia  
245 as a “GED Option” state by the American Council on  
246 Education. If so designated, the state board shall:
- 247           (1) Develop and implement a program whereby a student  
248 may pursue a GED diploma while remaining enrolled in high  
249 school; and
- 250           (2) Ensure that the GED Option is offered to students  
251 attending the Mountaineer Challenge Academy.
- 252           (f) The state board shall continue to expand:
- 253           (1) The Techademics program to include each major  
254 academic subject and increase the academic credit available  
255 through the program to students; and

256           (2) The Health Sciences and Technology Academy to  
257 ensure that the program is available for any school containing  
258 any of the grade levels of eligible students.

259           (g) The state board shall ensure that the dropout  
260 information required by section twenty-four, article one-b,  
261 chapter fifteen of this code is provided annually to the  
262 Mountaineer Challenge Academy.

263           (h) Some career and technical education programs only  
264 except students in certain upper high school grade levels due  
265 to lack of capacity to accept the students in the lower high  
266 school grade levels. This can be detrimental to efforts to keep  
267 students identified as at risk of dropping out of school prior  
268 to graduation in school. Therefore, those career and technical  
269 education programs that only students in certain upper high  
270 school grade levels to enroll may make exceptions for those  
271 at risk students and enroll any of those at risk students who  
272 are in grades nine and above.

## **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

### **§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 \$18 per student in  
7 net enrollment, subject to appropriation by the Legislature.  
8 The state board shall distribute ninety-eight percent of the  
9 total appropriation to the county boards proportionate to each  
10 county's net enrollment. The remaining two percent of the  
11 appropriation shall be retained by the state department to  
12 support the provision of services to the county boards in

13 administering programs established in accordance with  
14 policies and procedures adopted by the state board under  
15 section six, article two of this chapter.

16 (b) Nothing in this section may be construed to require  
17 any specific level of funding by the Legislature.

18 (c) The increase from \$12 per student in net enrollment  
19 to \$18 per student in net enrollment pursuant to the  
20 amendment and enactment of this section during the 2010  
21 regular session of the Legislature is not subject to the  
22 provisions of section three-a.

## **CHAPTER 62. CRIMINAL PROCEDURE.**

### **ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.**

#### **§62-15-4. Court authorization and structure.**

1 (a) Each judicial circuit or two or more adjoining judicial  
2 circuits may establish a drug court or regional drug court  
3 program under which drug offenders will be processed to  
4 address appropriately, the identified substance abuse problem  
5 as a condition of pretrial release, probation, incarceration,  
6 parole or other release from a correctional facility.

7 (b) The structure, method, and operation of each drug  
8 court program may differ and should be based upon the  
9 specific needs of and resources available to the judicial  
10 circuit or circuits where the drug court program is located.

11 (c) A drug court program may be preadjudication or post-  
12 adjudication for an adult offender.

13           (d) Participation in drug court, with the consent of the  
14 prosecution and the court, shall be pursuant to a written  
15 agreement.

16           (e) A drug court may grant reasonable incentives under  
17 the written agreement if it finds that the drug offender:

18           (1) Is performing satisfactorily in drug court;

19           (2) Is benefitting from education, treatment and  
20 rehabilitation;

21           (3) Has not engaged in criminal conduct; or

22           (4) Has not violated the terms and conditions of the  
23 agreement.

24           (f) A drug court may impose reasonable sanctions on the  
25 drug offender, including incarceration for the underlying  
26 offense or expulsion from the program, pursuant to the  
27 written agreement, if it finds that the drug offender:

28           (1) Is not performing satisfactorily in drug court;

29           (2) Is not benefitting from education, treatment or  
30 rehabilitation;

31           (3) Has engaged in conduct rendering him or her  
32 unsuitable for the program;

33           (4) Has otherwise violated the terms and conditions of the  
34 agreement; or

35           (5) Is for any reason unable to participate.

36 (g) Upon successful completion of drug court, a drug  
37 offender's case shall be disposed of by the judge in the manner  
38 prescribed by the agreement and by the applicable policies and  
39 procedures adopted by the drug court. This may include, but is  
40 not limited to, withholding criminal charges, dismissal of  
41 charges, probation, deferred sentencing, suspended sentencing,  
42 split sentencing, or a reduced period of incarceration.

43 (h) Drug court shall include the Ten Key Components  
44 and the drug court team shall act to ensure compliance with  
45 them.

46 (i) Nothing contained in this article confers a right or an  
47 expectation of a right to participate in a drug court nor does  
48 it obligate a drug court to accept every drug offender.

49 (j) Neither the establishment of a drug court nor anything  
50 herein may be construed as limiting the discretion of the  
51 jurisdiction's prosecutor to act on any criminal case which he  
52 or she deems advisable to prosecute.

53 (k) Each drug court judge may establish rules and may make  
54 special orders as necessary that do not conflict with rules and  
55 orders promulgated by the Supreme Court of Appeals which has  
56 administrative authority over the courts. The Supreme Court of  
57 Appeals shall provide uniform referral, procedure and order  
58 forms that shall be used in all drug courts in this state.

59 (l) In addition to the number of juvenile drug courts  
60 operating on the effective date of this section, up to five  
61 additional juvenile drug courts or regional juvenile drug court  
62 programs may be established by January 1, 2012, as determined  
63 by the Supreme Court of Appeals.



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**CHAPTER 64**

**(Com. Sub. for H. B. 4031 - By Mr. Speaker,  
Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]**

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[Passed March 13, 2010; in effect July 1, 2010.]  
[Approved by the Governor on March 31, 2010.]

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AN ACT to amend and reenact §18-9A-8a of the Code of West Virginia, 1931, as amended, relating to the maximum foundation allowance for regional education service agencies.

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

That §18-9A-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

**§18-9A-8a. Foundation allowance for regional education service agencies.**

1 For the fiscal year beginning on July 1, 2006, and for  
2 each fiscal year thereafter, the foundation allowance for  
3 regional education service agencies shall be equal to sixty-  
4 three one-hundredths percent of the allocation for  
5 professional educators as determined in section four of this  
6 article, but not more than \$3,990,000 million. The allowance  
7 shall be distributed to the regional education service agencies  
8 in accordance with rules adopted by the state board. The  
9 allowance for regional education service agencies shall be  
10 excluded from the computation of total basic state aid as  
11 provided in section twelve of this article.

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**CHAPTER 65**

**(Com. Sub. for H. B. 4211 - By Delegates  
Lawrence, M. Poling, Perry, Shaver,  
Phillips, Stowers and Duke)**

[Passed March 11, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 19, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-9A-22, relating to providing supplemental funding for providing alternative programs for limited English proficient students; and granting the State Board of Education rule-making authority.

*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 §18-9A-22, to read as follows:

**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

**§18-9A-22. Supplemental funding for the provision of programs required for Limited English Proficient (LEP) students.**

- 1 Any funds appropriated by the Legislature to the
- 2 Department of Education for distribution to the county boards
- 3 of education to supplement programs required for Limited
- 4 English Proficient students as defined by state board policy

5 in accordance with federal law shall be used to supplement a  
6 program when the cost of the program exceeds the capacity  
7 of a county board to provide the program with funds  
8 available. Any appropriation made pursuant to this section  
9 shall be distributed to the county boards in a manner that  
10 takes into account the varying proficiency levels of the  
11 students and the capacity of the county board to deliver the  
12 needed programs. In order to receive the funding, a county  
13 board must apply to the state superintendent. The state board  
14 shall promulgate a rule in accordance with the provisions of  
15 article three-b, chapter twenty-nine-a of this code that sets  
16 forth the manner in which county boards apply for the  
17 funding and to implement the other provisions of this section.

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## CHAPTER 66

**(Com. Sub. for S. B. 229 - By Senators  
Tomblin (Mr. President) and Caruth)  
[By Request of the Executive]**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on March 31, 2010.]

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AN ACT to amend and reenact §18-9D-4b, §18-9D-6 and §18-9D-8 of the Code of West Virginia, 1931, as amended, all relating to authorizing the School Building Authority to issue bonds in the maximum aggregate amount of \$500 million outstanding at any time; authorizing the School Building Authority to receive and expend federal subsidies received with respect to bonds issued by the School Building Authority; authorizing the expenditure of surpluses in certain debt service funds; requiring that copies of resolutions authorizing revenue bonds be provided to the Governor, the President of the Senate and the Speaker of the

House of Delegates; changing the persons required to sign the bonds; and removing obsolete provisions.

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

That §18-9D-4b, §18-9D-6 and §18-9D-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### **ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

§18-9D-4b. School Building Authority authorized to issue bonds and pay debt service on bonds with funds distributed from State Excess Lottery 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.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

#### **§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 and any  
7   federal subsidies received by the School Building Authority  
8   and deposited into the Excess Lottery School Building Debt  
9   Service Fund with respect to bonds authorized by this  
10   section.

#### **§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 July 20, 1993, or revenue bonds issued to refund  
13 revenue bonds issued prior to that date, including the  
14 payment of principal of, interest and redemption premium, if  
15 any, on the revenue bonds and the establishing and  
16 maintaining of a reserve fund or funds for the payment of the  
17 principal of, interest and redemption premium, if any, on the  
18 revenue bond issue or issues when other moneys pledged  
19 may be insufficient for the payment of the principal, interest  
20 and redemption premium, including any additional protective  
21 pledge of revenues that the authority in its discretion has  
22 provided by resolution authorizing the issuance of the bonds  
23 or in any trust agreement made in connection with the bond  
24 issue. Additionally, the authority may provide in the  
25 resolution and in the trust agreement for priorities on the  
26 revenues paid into the School Building Capital Improvements  
27 Fund that are necessary for the protection of the prior rights  
28 of the holders of bonds issued at different times under the  
29 provisions of this article.

30 Any balance remaining in the School Building Capital  
31 Improvements Fund after the authority has issued bonds  
32 authorized by this article and after the requirements of all  
33 funds, including reserve funds established in connection with  
34 the bonds issued prior to July 20, 1993, pursuant to this  
35 article have been satisfied may be used for the redemption of  
36 any of the outstanding bonds issued under this article which  
37 by their terms are then redeemable, or for the purchase of the  
38 bonds at the market price, but not exceeding the price, if any,  
39 at which the bonds are in the same year redeemable and all  
40 bonds redeemed or purchased shall immediately be canceled  
41 and shall not again be issued.

42 The School Building Authority, in its discretion, may use  
43 the moneys in the School Building Capital Improvements  
44 Fund to finance the cost of projects authorized in accordance  
45 with the provisions of section sixteen of this article on a cash  
46 basis. Any pledge of moneys in the fund for revenue bonds  
47 issued prior to July 20, 1993, is a prior and superior charge  
48 on the fund over the use of any of the moneys in the fund to  
49 pay for the cost of any project on a cash basis: *Provided*, That  
50 any expenditures from the fund, other than for the retirement  
51 of revenue bonds, may only be made by the authority in  
52 accordance with the provisions of this article.

53 (b) There is continued in the State Treasury a special  
54 revenue fund named the School Building Debt Service Fund  
55 into which shall be deposited the amounts specified in section  
56 eighteen, article twenty-two, chapter twenty-nine of this code  
57 together with any federal subsidies received by the authority  
58 with respect to bonds authorized by this article for which  
59 moneys deposited in the School Building Debt Service Fund  
60 have been pledged. If the amounts deposited in the School  
61 Building Debt Service Fund exceed the amount which the  
62 authority is authorized to expend, the excess shall be set aside

63 in a special surplus fund for the authority. Expenditures from  
64 this special surplus fund shall be made only in accordance  
65 with the procedures established in section eighteen, article  
66 two, chapter eleven-b. All amounts deposited in the fund  
67 shall be pledged to the repayment of the principal, interest  
68 and redemption premium, if any, on any revenue bonds or  
69 refunding revenue bonds authorized by this article for which  
70 moneys deposited in the School Building Debt Service Fund  
71 have been pledged by the authority: *Provided*, That deposited  
72 moneys may not be pledged to the repayment of any revenue  
73 bonds issued prior to January 1, 1994, or with respect to  
74 revenue bonds issued for the purpose of refunding revenue  
75 bonds issued prior to January 1, 1994. Additionally, the  
76 authority may provide in the resolution and in the trust  
77 agreement for priorities on the revenues paid into the School  
78 Building Debt Service Fund that are necessary for the  
79 protection of the prior rights of the holders of bonds issued at  
80 different times under the provisions of this article. On or  
81 prior to May 1 of each year, the authority shall certify to the  
82 State Lottery Director the principal and interest and coverage  
83 ratio requirements for the following fiscal year on any  
84 revenue bonds issued on or after January 1, 1994, and for  
85 which moneys deposited in the School Building Debt Service  
86 Fund have been pledged, or will be pledged, for repayment  
87 pursuant to this section.

88 After the authority has issued bonds authorized by this  
89 article for which moneys deposited in the School Building  
90 Debt Service Fund have been pledged and after the  
91 requirements of all funds have been satisfied, including  
92 coverage and reserve funds established in connection with the  
93 bonds issued pursuant to this article, any balance remaining  
94 in the School Building Debt Service Fund may be used for  
95 the redemption of any of the outstanding bonds issued under  
96 this article, for which moneys deposited in the School

97 Building Debt Service Fund have been pledged, which, by  
98 their terms, are then redeemable or for the purchase of the  
99 outstanding bonds at the market price, but not to exceed the  
100 price, if any, at which the bonds are redeemable and all bonds  
101 redeemed or purchased shall be immediately canceled and  
102 shall not again be issued: *Provided*, That after the authority  
103 has issued bonds authorized by this article and after the  
104 requirements of debt service and all associated funds have  
105 been satisfied for the fiscal year for which moneys deposited  
106 in the School Building Debt Service Fund have been pledged,  
107 including coverage and reserve funds established in  
108 connection with the bonds issued pursuant to this article, any  
109 remaining balance in the School Building Debt Service Fund  
110 may be transferred to the School Construction Fund created  
111 in subsection (c) of this section and used by the School  
112 Building Authority in its discretion to finance the cost of  
113 school construction or improvement projects authorized in  
114 accordance with the provisions of section sixteen of this  
115 article on a cash basis.

116 (c) There is continued in the State Treasury a special  
117 revenue fund named the School Construction Fund into  
118 which shall be deposited the amounts specified in section  
119 thirty, article fifteen, chapter eleven of this code, together  
120 with any moneys appropriated to the fund by the Legislature.

121 Expenditures from the School Construction Fund shall be  
122 for the purposes set forth in this article, including lease-  
123 purchase payments under agreements made pursuant to  
124 subsection (e), section fifteen of this article and section nine,  
125 article five of this chapter and are authorized from collections  
126 in accordance with the provisions of article three, chapter  
127 twelve of this code and from other revenues annually  
128 appropriated by the Legislature from lottery revenues as  
129 authorized by section eighteen, article twenty-two, chapter  
130 twenty-nine of this code pursuant to the provisions set forth



131 in article two, chapter five-a of this code. Amounts collected  
132 which are found, from time to time, to exceed the funds  
133 needed for purposes set forth in this article may be  
134 transferred to other accounts or funds and redesignated for  
135 other purposes by appropriation of the Legislature. The  
136 School Construction Fund shall be an interest-bearing  
137 account, with the interest credited to and deposited in the  
138 School Construction Fund and expended in accordance with  
139 the provisions of this article. Deposits to and expenditures  
140 from the School Construction Fund are subject to the  
141 provisions of subsection (k), section fifteen of this article.

142 (d) There is continued in the State Treasury a special  
143 revenue fund named the School Major Improvement Fund  
144 into which shall be deposited the amounts specified in section  
145 thirty, article fifteen, chapter eleven of this code, together  
146 with any moneys appropriated to the fund by the Legislature.  
147 Expenditures from the School Major Improvement Fund shall  
148 be for the purposes set forth in this article and are authorized  
149 from collections in accordance with the provisions of article  
150 three, chapter twelve of this code and from other revenues  
151 annually appropriated by the Legislature from lottery  
152 revenues as authorized by section eighteen, article  
153 twenty-two, chapter twenty-nine of this code pursuant to the  
154 provisions set forth in article two, chapter five-a of this code.  
155 Amounts collected which are found, from time to time, to  
156 exceed the funds needed for purposes set forth in this article  
157 may be transferred to other accounts or funds and  
158 redesignated for other purposes by appropriation of the  
159 Legislature. The School Major Improvement Fund shall be  
160 an interest-bearing account, with interest being credited to  
161 and deposited in the School Major Improvement Fund and  
162 expended in accordance with the provisions of this article.

163 (e) There is created in the State Treasury a special  
164 revenue fund named the Excess Lottery School Building  
165 Debt Service Fund into which shall be deposited the amounts  
166 specified in section eighteen-a, article twenty-two, chapter

167 twenty-nine of this code, together with any federal subsidies  
168 received by the authority with respect to bonds authorized by  
169 section four-b, article nine-d, chapter eighteen of this code.  
170 If the amounts deposited in the Excess Lottery School  
171 Building Debt Service Fund exceed the amount which the  
172 authority is authorized to expend, the excess shall be set aside  
173 in a special surplus fund for the authority. Expenditures from  
174 this special surplus fund shall be made only in accordance  
175 with the procedures established in section eighteen, article  
176 two, chapter eleven-b. All amounts deposited in the fund  
177 shall be pledged, as designated by the authority, to the  
178 repayment of the principal, interest and redemption premium,  
179 if any, on revenue bonds or refunding revenue bonds  
180 authorized by section four-b of this article. On or prior to  
181 May 1 of each year, the authority shall certify to the State  
182 Lottery Director the principal and interest and coverage ratio  
183 requirements for the following fiscal year on any revenue  
184 bonds issued for which moneys deposited in the Excess  
185 Lottery School Building Debt Service Fund have been  
186 pledged, or will be pledged, for repayment pursuant to this  
187 section.

188       After the authority has issued bonds authorized by this  
189 article for which moneys deposited in the Excess Lottery  
190 School Building Debt Service Fund have been pledged and  
191 after the requirements of all funds have been satisfied,  
192 including coverage and reserve funds established in  
193 connection with the bonds issued pursuant to this article, any  
194 balance remaining in the Excess Lottery School Building  
195 Debt Service Fund may be used for the redemption of any of  
196 the outstanding bonds issued under this article, for which  
197 moneys deposited in the Excess Lottery School Building  
198 Debt Service Fund have been pledged, which, by their terms,  
199 are then redeemable or for the purchase of the outstanding  
200 bonds at the market price, but not to exceed the price, if any,  
201 at which the bonds are redeemable and all bonds redeemed or  
202 purchased shall be immediately canceled and shall not again

203 be issued: *Provided*, That after the authority has issued bonds  
204 authorized by this article and after the requirements of debt  
205 service and all associated funds have been satisfied for the  
206 fiscal year, including coverage and reserve funds established  
207 in connection with the bonds issued pursuant to this article  
208 for which moneys deposited in the Excess Lottery School  
209 Building Debt Service Fund have been pledged, any  
210 remaining balance in the Excess Lottery School Building  
211 Debt Service Fund may be transferred to the School  
212 Construction Fund created in subsection (c) of this section  
213 and used by the School Building Authority in its discretion to  
214 finance the cost of school construction or improvement  
215 projects authorized in accordance with the provisions of  
216 section sixteen of this article on a cash basis.

217 (f) The Legislature finds and declares that the Supreme  
218 Court of Appeals of West Virginia has held that the issuance  
219 of additional revenue bonds authorized under the School  
220 Building Authority Act, as enacted in this article prior to July  
221 12, 1993, constituted an indebtedness of the state in violation  
222 of section four, article X of the Constitution of West Virginia,  
223 but that revenue bonds issued under this article prior to July  
224 12, 1993, are not invalid.

225 The Legislature further finds and declares that the  
226 financial capacity of a county to construct, lease and improve  
227 school facilities depends upon the county's bonding capacity  
228 (local property wealth), voter willingness to pass bond issues  
229 and the county's ability to reallocate other available county  
230 funds instead of criteria related to educational needs or upon  
231 the ability of the School Building Authority created in this  
232 article to issue bonds that comply with the holding of the  
233 West Virginia Supreme Court of Appeals or otherwise assist  
234 counties with the financing of facilities construction and  
235 improvement. The Legislature further finds and declares that  
236 this section, as well as section eighteen, article twenty-two,

237 chapter twenty-nine of this code, had been reenacted during  
238 the first extraordinary session of the West Virginia  
239 Legislature in the year 1994 in an attempt to comply with the  
240 holding of the Supreme 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 January 1, 1994, the  
247 proceeds of which will be used for the construction and  
248 improvement of school building facilities. The Legislature  
249 further finds and declares that it intends, through the  
250 reenactment of this section and section thirty, article fifteen,  
251 chapter eleven of this code and section eighteen, article  
252 twenty-two, chapter twenty-nine of this code, to appropriate  
253 revenues to two special revenue funds for the purposes of  
254 construction and improvement of school building facilities.  
255 Furthermore, the Legislature intends to encourage county  
256 boards to maintain existing levels of county funding for  
257 construction, improvement and maintenance of school  
258 building facilities and to generate additional county funds for  
259 those purposes through bonds and special levies whenever  
260 possible. The Legislature further encourages the School  
261 Building Authority, the state board and county boards to  
262 propose uniform project specifications for comparable  
263 projects whenever possible to meet county needs at the  
264 lowest possible cost.

265 The Legislature further finds and declares that it intends,  
266 through the reenactment of this section and section eighteen,  
267 article twenty-two, chapter twenty-nine of this code, to  
268 comply with the provisions of sections four and six, article X  
269 of the Constitution of West Virginia; and section one, article  
270 XII of said constitution.

**§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.**

1 (a) The maximum aggregate amount of bonds  
2 outstanding at any time, for which the moneys in the School  
3 Building Debt Service Fund or the Excess Lottery School  
4 Building Debt Service Fund are to be pledged, is \$500  
5 million; however, any amount of bonds for which moneys  
6 have been deposited in a sinking fund, reserve fund or other  
7 fund established to provide payment of principal or interest  
8 on the bonds shall be excluded from the calculation of the  
9 maximum aggregate amount of bonds outstanding at any  
10 time. The issuance of revenue bonds under the provisions of  
11 this article shall be authorized, from time to time, by  
12 resolution or resolutions of the School Building Authority,  
13 copies of which shall be provided to the Governor, the  
14 President of the Senate and the Speaker of the House of  
15 Delegates within five days of their approval, which shall set  
16 forth the proposed projects authorized in accordance with the  
17 provisions of section sixteen of this article and provide for  
18 the issuance of bonds in amounts sufficient, when sold as  
19 provided in this section, to provide moneys considered  
20 sufficient by the authority to pay the costs, less the amounts  
21 of any other funds available for the costs or from any  
22 appropriation, grant or gift for the costs: *Provided*, That bond  
23 issues from which bond revenues are to be distributed in  
24 accordance with section fifteen of this article for projects  
25 authorized pursuant to the provisions of section sixteen of  
26 this article are not required to set forth the proposed projects  
27 in the resolution. The resolution shall prescribe the rights  
28 and duties of the bondholders and the School Building  
29 Authority and, for that purpose, may prescribe the form of the  
30 trust agreement referred to in this section. The bonds may be  
31 issued, from time to time, in such amounts; shall be of such  
32 series; bear such date or dates; mature at such time or times  
33 not exceeding forty years from their respective dates; bear  
34 interest at such rate or rates; be in such denominations; be in  
35 such form, either coupon or registered, carrying such  
36 registration, exchangeability and interchangeability

37 privileges; be payable in such medium of payment and at  
38 such place or places within or without the state; be subject to  
39 such terms of redemption at such prices not exceeding one  
40 hundred five percent of the principal amount of the bonds;  
41 and be entitled to such priorities on the revenues paid into the  
42 fund pledged for repayment of the bonds as may be provided  
43 in the resolution authorizing the issuance of the bonds or in  
44 any trust agreement made in connection with the bonds:  
45 *Provided, however,* That revenue bonds issued on or after  
46 January 1, 1994, and prior to January 1, 2008, which are  
47 secured by lottery proceeds from section eighteen, article  
48 twenty-two, chapter twenty-nine of this code shall mature at  
49 such time or times not exceeding ten years from their  
50 respective dates: *Provided further,* That revenue bonds issued  
51 on or after January 1, 2008, which are secured by lottery  
52 proceeds from section eighteen or eighteen-a, article twenty-  
53 two, chapter twenty-nine of this code, shall mature at such  
54 time or times not exceeding twenty years from their  
55 respective dates.

56 (b) The bonds shall be signed by the Governor, his or her  
57 designee or the vice chair of the authority, under the great  
58 seal of the state, attested by the Secretary of State, and the  
59 coupons attached to the bonds shall bear the facsimile  
60 signature of the Governor, his or her designee or the vice  
61 chair of the authority. In case any of the officers whose  
62 signatures appear on the bonds or coupons cease to be  
63 officers before the delivery of the bonds, the signatures shall  
64 nevertheless be valid and sufficient for all purposes the same  
65 as if the officers had remained in office until the delivery.  
66 The revenue bonds shall be sold in the manner determined by  
67 the authority to be for the best interests of the state.

68 (c) Any pledge of revenues made by the School Building  
69 Authority for revenue bonds issued prior to July 20, 1993,  
70 pursuant to this article is valid and binding between the  
71 parties from the time the pledge is made; and the revenues

72 pledged shall immediately be subject to the lien of the pledge  
73 without any further physical delivery of the revenues pledged  
74 or further act. The lien of the pledge is valid and binding  
75 against all parties having claims of any kind in tort, contract  
76 or otherwise, irrespective of whether the parties have notice  
77 of the lien of the pledge and the pledge shall be a prior and  
78 superior charge over any other use of the revenues pledged.

79 (d) The proceeds of any bonds shall be used solely for the  
80 purpose or purposes as may be generally or specifically set  
81 forth in the resolution authorizing those bonds and shall be  
82 disbursed in the manner and with the restrictions, if any, that  
83 the authority provides in the resolution authorizing the  
84 issuance of the bonds or in the trust agreement referred to in  
85 this section securing the bonds. If the proceeds of the bonds,  
86 by error in calculations or otherwise, are less than the cost of  
87 any projects specifically set forth in the resolution, additional  
88 bonds may in like manner be issued to provide the amount of  
89 the deficiency; and unless otherwise provided for in the  
90 resolution or trust agreement hereinafter mentioned, the  
91 additional bonds shall be considered to be of the same issue  
92 and are entitled to payment from the same fund, without  
93 preference or priority, as the bonds before issued for the  
94 projects. If the proceeds of bonds issued for the projects  
95 specifically set forth in the resolution authorizing the bonds  
96 issued by the authority exceed the cost of the bonds, the  
97 surplus may be used for any other projects authorized in  
98 accordance with the provisions of section sixteen of this  
99 article or in any other manner that the resolution authorizing  
100 the bonds provides. Prior to the preparation of definitive  
101 bonds, the authority may, under like restrictions, issue  
102 temporary bonds with or without coupons, exchangeable for  
103 definitive bonds upon the issuance of the definitive bonds.

104 (e) After the issuance of any revenue bonds, the revenues  
105 pledged for the revenue bonds shall not be reduced as long as  
106 any of the revenue bonds are outstanding and unpaid except  
107 under the terms, provisions and conditions that are contained

108 in the resolution, trust agreement or other proceedings under  
109 which the revenue bonds were issued.

110 (f) The revenue bonds and the revenue refunding bonds  
111 and bonds issued for combined purposes, together with the  
112 interest on the bonds, are exempt from all taxation by the  
113 State of West Virginia, or by any county, school district,  
114 municipality or political subdivision thereof.

115 (g) To meet the operational costs of the School Building  
116 Authority, the School Building Authority may transfer to a  
117 special revenue account in the State Treasury interest on any  
118 debt service reserve funds created within any resolution  
119 authorizing the issue of bonds or any trust agreement made  
120 in connection with the bonds for expenditure in accordance  
121 with legislative appropriation or allocation of appropriation.

122 (h) Any school construction bonds issued under this  
123 section shall be issued on parity with any existing School  
124 Building Authority bonds previously issued under this article.

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## CHAPTER 67

**(Com. Sub. for H. B. 4512 - By Delegates  
Caputo, Paxton, Perry, Fragale and D. Walker)**

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[Passed March 13, 2010; in effect July 1, 2010.]

[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §18A-4-8, §18A-4-8b and §18A-4-8e of the Code of West Virginia, 1931, as amended, all relating to school service personnel; limiting assignments of director or coordinator of services; requiring school bus supervisor to be certified to operate a bus or previously certified to operate a bus;



requiring supervisor of transportation and multiclassification position that includes this title first employed after certain date to have five years of experience working in transportation department and defining experience; defining itinerant status, assignments, posting, limit on positions, and exclusions; requiring additional content of notice of a job vacancy generally and aide classification category specifically; and modifying test frequency for re-certifying a bus operators.

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

That §18A-4-8, §18A-4-8b and §18A-4-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

#### **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

§18A-4-8. Employment term and class titles of service personnel; definitions.

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

§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.

#### **§18A-4-8. Employment term and class titles of service personnel; definitions.**

1 (a) The purpose of this section is to establish an  
2 employment term and class titles for service personnel. The  
3 employment term for service personnel may not be less than  
4 ten months. A month is defined as twenty employment days.  
5 The county board may contract with all or part of these  
6 service personnel for a longer term. The beginning and  
7 closing dates of the ten-month employment term may not  
8 exceed forty-three weeks.

9 (b) Service personnel employed on a yearly or twelve-  
10 month basis may be employed by calendar months.  
11 Whenever there is a change in job assignment during the  
12 school year, the minimum pay scale and any county  
13 supplement are applicable.

14 (c) Service personnel employed in the same classification  
15 for more than the two hundred-day minimum employment  
16 term shall be paid for additional employment at a daily rate  
17 of not less than the daily rate paid for the two hundred-day  
18 minimum employment term.

19 (d) A service person may not be required to report for  
20 work more than five days per week without his or her  
21 agreement, and no part of any working day may be  
22 accumulated by the employer for future work assignments,  
23 unless the employee agrees thereto.

24 (e) If a service person whose regular work week is  
25 scheduled from Monday through Friday agrees to perform  
26 any work assignments on a Saturday or Sunday, the service  
27 person shall be paid for at least one-half day of work for each  
28 day he or she reports for work. If the service person works  
29 more than three and one-half hours on any Saturday or  
30 Sunday, he or she shall be paid for at least a full day of work  
31 for each day.

32 (f) A custodian, aide, maintenance, office and school  
33 lunch service person required to work a daily work schedule  
34 that is interrupted shall be paid additional compensation in  
35 accordance with this subsection.

36 (1) A maintenance person means a person who holds a  
37 classification title other than in a custodial, aide, school  
38 lunch, office or transportation category as provided in section  
39 one, article one of this chapter.

40 (2) A service person's schedule is considered to be  
41 interrupted if he or she does not work a continuous period in  
42 one day. Aides are not regarded as working an interrupted  
43 schedule when engaged exclusively in the duties of  
44 transporting students;

45       (3) The additional compensation provided for in this  
46 subsection:

47       (A) Is equal to at least one-eighth of a service person's  
48 total salary as provided by the state minimum pay scale and  
49 any county pay supplement; and

50       (B) Is payable entirely from county board funds.

51       (g) When there is a change in classification or when a  
52 service person meets the requirements of an advanced  
53 classification, his or her salary shall be made to comply with  
54 the requirements of this article and any county salary  
55 schedule in excess of the minimum requirements of this  
56 article, based upon the service person's advanced  
57 classification and allowable years of employment.

58       (h) A service person's contract, as provided in section  
59 five, article two of this chapter, shall state the appropriate  
60 monthly salary the employee is to be paid, based on the class  
61 title as provided in this article and on any county salary  
62 schedule in excess of the minimum requirements of this  
63 article.

64       (i) The column heads of the state minimum pay scale and  
65 class titles, set forth in section eight-a of this article, are  
66 defined as follows:

67       (1) "Pay grade" means the monthly salary applicable to  
68 class titles of service personnel;

69       (2) "Years of employment" means the number of years  
70 which an employee classified as a service person has been  
71 employed by a county board in any position prior to or  
72 subsequent to the effective date of this section and includes  
73 service in the Armed Forces of the United States, if the  
74 employee was employed at the time of his or her induction.

75 For the purpose of section eight-a of this article, years of  
76 employment is limited to the number of years shown and  
77 allowed under the state minimum pay scale as set forth in  
78 section eight-a of this article;

79 (3) "Class title" means the name of the position or job  
80 held by a service person;

81 (4) "Accountant I" means a person employed to maintain  
82 payroll records and reports and perform one or more  
83 operations relating to a phase of the total payroll;

84 (5) "Accountant II" means a person employed to maintain  
85 accounting records and to be responsible for the accounting  
86 process associated with billing, budgets, purchasing and  
87 related operations;

88 (6) "Accountant III" means a person employed in the  
89 county board office to manage and supervise accounts  
90 payable, payroll procedures, or both;

91 (7) "Accounts payable supervisor" means a person  
92 employed in the county board office who has primary  
93 responsibility for the accounts payable function and who  
94 either has completed twelve college hours of accounting  
95 courses from an accredited institution of higher education or  
96 has at least eight years of experience performing  
97 progressively difficult accounting tasks. Responsibilities of  
98 this class title may include supervision of other personnel;

99 (8) "Aide I" means a person selected and trained for a  
100 teacher-aide classification such as monitor aide, clerical aide,  
101 classroom aide or general aide;

102 (9) "Aide II" means a service person referred to in the  
103 "Aide I" classification who has completed a training program  
104 approved by the state board, or who holds a high school

105 diploma or has received a general educational development  
106 certificate. Only a person classified in an Aide II class title  
107 may be employed as an aide in any special education  
108 program;

109 (10) "Aide III" means a service person referred to in the  
110 "Aide I" classification who holds a high school diploma or a  
111 general educational development certificate; and

112 (A) Has completed six semester hours of college credit at  
113 an institution of higher education; or

114 (B) Is employed as an aide in a special education program  
115 and has one year's experience as an aide in special education;

116 (11) "Aide IV" means a service person referred to in the  
117 "Aide I" classification who holds a high school diploma or a  
118 general educational development certificate; and

119 (A) Has completed eighteen hours of state board-approved  
120 college credit at a regionally accredited institution of higher  
121 education; or

122 (B) Has completed fifteen hours of state board-approved  
123 college credit at a regionally accredited institution of higher  
124 education; and has successfully completed an in-service  
125 training program determined by the state board to be the  
126 equivalent of three hours of college credit;

127 (12) "Audiovisual technician" means a person employed  
128 to perform minor maintenance on audiovisual equipment,  
129 films, and supplies and who fills requests for equipment;

130 (13) "Auditor" means a person employed to examine and  
131 verify accounts of individual schools and to assist schools  
132 and school personnel in maintaining complete and accurate  
133 records of their accounts;

134 (14) “Autism mentor” means a person who works with  
135 autistic students and who meets standards and experience to  
136 be determined by the state board. A person who has held or  
137 holds an aide title and becomes employed as an autism  
138 mentor shall hold a multiclassification status that includes  
139 both aide and autism mentor titles, in accordance with section  
140 eight-b of this article;

141 (15) “Braille or sign language specialist” means a person  
142 employed to provide braille and/or sign language assistance  
143 to students. A service person who has held or holds an aide  
144 title and becomes employed as a braille or sign language  
145 specialist shall hold a multiclassification status that includes  
146 both aide and braille or sign language specialist title, in  
147 accordance with section eight-b of this article;

148 (16) “Bus operator” means a person employed to operate  
149 school buses and other school transportation vehicles as  
150 provided by the state board;

151 (17) “Buyer” means a person employed to review and  
152 write specifications, negotiate purchase bids and recommend  
153 purchase agreements for materials and services that meet  
154 predetermined specifications at the lowest available costs;

155 (18) “Cabinetmaker” means a person employed to  
156 construct cabinets, tables, bookcases and other furniture;

157 (19) “Cafeteria manager” means a person employed to  
158 direct the operation of a food services program in a school,  
159 including assigning duties to employees, approving  
160 requisitions for supplies and repairs, keeping inventories,  
161 inspecting areas to maintain high standards of sanitation,  
162 preparing financial reports and keeping records pertinent to  
163 food services of a school;

164 (20) “Carpenter I” means a person classified as a  
165 carpenter’s helper;

166       (21) “Carpenter II” means a person classified as a  
167       journeyman carpenter;

168       (22) “Chief mechanic” means a person employed to be  
169       responsible for directing activities which ensure that student  
170       transportation or other county board-owned vehicles are  
171       properly and safely maintained;

172       (23) “Clerk I” means a person employed to perform  
173       clerical tasks;

174       (24) “Clerk II” means a person employed to perform  
175       general clerical tasks, prepare reports and tabulations and  
176       operate office machines;

177       (25) “Computer operator” means a qualified person  
178       employed to operate computers;

179       (26) “Cook I” means a person employed as a cook’s  
180       helper;

181       (27) “Cook II” means a person employed to interpret  
182       menus and to prepare and serve meals in a food service  
183       program of a school. This definition includes a service  
184       person who has been employed as a “Cook I” for a period of  
185       four years;

186       (28) “Cook III” means a person employed to prepare and  
187       serve meals, make reports, prepare requisitions for supplies,  
188       order equipment and repairs for a food service program of a  
189       school system;

190       (29) “Crew leader” means a person employed to organize  
191       the work for a crew of maintenance employees to carry out  
192       assigned projects;

193       (30) “Custodian I” means a person employed to keep  
194       buildings clean and free of refuse;

195           (31) “Custodian II” means a person employed as a  
196 watchman or groundsman;

197           (32) “Custodian III” means a person employed to keep  
198 buildings clean and free of refuse, to operate the heating or  
199 cooling systems and to make minor repairs;

200           (33) “Custodian IV” means a person employed as head  
201 custodians. In addition to providing services as defined in  
202 “custodian III,” duties may include supervising other  
203 custodian personnel;

204           (34) “Director or coordinator of services” means an  
205 employee of a county board who is assigned to direct a  
206 department or division.

207           (A) Nothing in this subdivision prohibits a professional  
208 person or a professional educator from holding this class title;

209           (B) Professional personnel holding this class title may not  
210 be defined or classified as service personnel unless the  
211 professional person held a service personnel title under this  
212 section prior to holding the class title of “director or  
213 coordinator of services.”

214           (C) The director or coordinator of services shall be  
215 classified either as a professional person or a service person  
216 for state aid formula funding purposes;

217           (D) Funding for the position of director or coordinator of  
218 services is based upon the employment status of the director  
219 or coordinator either as a professional person or a service  
220 person; and

221           (E) A person employed under the class title “director or  
222 coordinator of services” may not be exclusively assigned to  
223 perform the duties ascribed to any other class title as defined



224 in this subsection: *Provided*, That nothing in this paragraph  
225 prohibits a person in this position from being multiclassified;

226 (35) “Draftsman” means a person employed to plan,  
227 design and produce detailed architectural/engineering  
228 drawings;

229 (36) “Electrician I” means a person employed as an  
230 apprentice electrician helper or one who holds an electrician  
231 helper license issued by the State Fire Marshal;

232 (37) “Electrician II” means a person employed as an  
233 electrician journeyman or one who holds a journeyman  
234 electrician license issued by the State Fire Marshal;

235 (38) “Electronic technician I” means a person employed  
236 at the apprentice level to repair and maintain electronic  
237 equipment;

238 (39) “Electronic technician II” means a person employed  
239 at the journeyman level to repair and maintain electronic  
240 equipment;

241 (40) “Executive secretary” means a person employed as  
242 secretary to the county school superintendent or as a  
243 secretary who is assigned to a position characterized by  
244 significant administrative duties;

245 (41) “Food services supervisor” means a qualified person  
246 who is not a professional person or professional educator as  
247 defined in section one, article one of this chapter. The food  
248 services supervisor is employed to manage and supervise a  
249 county school system’s food service program. The duties  
250 include preparing in-service training programs for cooks and  
251 food service employees, instructing personnel in the areas of  
252 quantity cooking with economy and efficiency and keeping  
253 aggregate records and reports;

254           (42) “Foreman” means a skilled person employed to  
255 supervise personnel who work in the areas of repair and  
256 maintenance of school property and equipment;

257           (43) “General maintenance” means a person employed as  
258 a helper to skilled maintenance employees and to perform  
259 minor repairs to equipment and buildings of a county school  
260 system;

261           (44) “Glazier” means a person employed to replace glass  
262 or other materials in windows and doors and to do minor  
263 carpentry tasks;

264           (45) “Graphic artist” means a person employed to prepare  
265 graphic illustrations;

266           (46) “Groundsman” means a person employed to perform  
267 duties that relate to the appearance, repair and general care of  
268 school grounds in a county school system. Additional  
269 assignments may include the operation of a small heating  
270 plant and routine cleaning duties in buildings;

271           (47) “Handyman” means a person employed to perform  
272 routine manual tasks in any operation of the county school  
273 system;

274           (48) “Heating and air conditioning mechanic I” means a  
275 person employed at the apprentice level to install, repair and  
276 maintain heating and air conditioning plants and related  
277 electrical equipment;

278           (49) “Heating and air conditioning mechanic II” means  
279 a person employed at the journeyman level to install, repair  
280 and maintain heating and air conditioning plants and related  
281 electrical equipment;

282           (50) “Heavy equipment operator” means a person  
283 employed to operate heavy equipment;

284 (51) "Inventory supervisor" means a person employed to  
285 supervise or maintain operations in the receipt, storage,  
286 inventory and issuance of materials and supplies;

287 (52) "Key punch operator" means a qualified person  
288 employed to operate key punch machines or verifying  
289 machines;

290 (53) "Licensed practical nurse" means a nurse, licensed  
291 by the West Virginia Board of Examiners for Licensed  
292 Practical Nurses, employed to work in a public school under  
293 the supervision of a school nurse;

294 (54) "Locksmith" means a person employed to repair and  
295 maintain locks and safes;

296 (55) "Lubrication man" means a person employed to  
297 lubricate and service gasoline or diesel-powered equipment  
298 of a county school system;

299 (56) "Machinist" means a person employed to perform  
300 machinist tasks which include the ability to operate a lathe,  
301 planer, shaper, threading machine and wheel press. A person  
302 holding this class title also should have the ability to work  
303 from blueprints and drawings;

304 (57) "Mail clerk" means a person employed to receive,  
305 sort, dispatch, deliver or otherwise handle letters, parcels and  
306 other mail;

307 (58) "Maintenance clerk" means a person employed to  
308 maintain and control a stocking facility to keep adequate  
309 tools and supplies on hand for daily withdrawal for all school  
310 maintenance crafts;

311 (59) "Mason" means a person employed to perform tasks  
312 connected with brick and block laying and carpentry tasks  
313 related to these activities;

314           (60) “Mechanic” means a person employed to perform  
315 skilled duties independently in the maintenance and repair of  
316 automobiles, school buses and other mechanical and mobile  
317 equipment to use in a county school system;

318           (61) “Mechanic assistant” means a person employed as  
319 a mechanic apprentice and helper;

320           (62) “Multiclassification” means a person employed to  
321 perform tasks that involve the combination of two or more  
322 class titles in this section. In these instances the minimum  
323 salary scale shall be the higher pay grade of the class titles  
324 involved;

325           (63) “Office equipment repairman I” means a person  
326 employed as an office equipment repairman apprentice or  
327 helper;

328           (64) “Office equipment repairman II” means a person  
329 responsible for servicing and repairing all office machines  
330 and equipment. A person holding this class title is  
331 responsible for the purchase of parts necessary for the proper  
332 operation of a program of continuous maintenance and repair;

333           (65) “Painter” means a person employed to perform  
334 duties painting, finishing and decorating wood, metal and  
335 concrete surfaces of buildings, other structures, equipment,  
336 machinery and furnishings of a county school system;

337           (66) “Paraprofessional” means a person certified pursuant  
338 to section two-a, article three of this chapter to perform duties  
339 in a support capacity including, but not limited to, facilitating  
340 in the instruction and direct or indirect supervision of  
341 students under the direction of a principal, a teacher or  
342 another designated professional educator.

343           (A) A person employed on the effective date of this  
344 section in the position of an aide may not be subject to a

345 reduction in force or transferred to create a vacancy for the  
346 employment of a paraprofessional;

347 (B) A person who has held or holds an aide title and  
348 becomes employed as a paraprofessional shall hold a  
349 multiclassification status that includes both aide and  
350 paraprofessional titles in accordance with section eight-b of  
351 this article; and

352 (C) When a service person who holds an aide title  
353 becomes certified as a paraprofessional and is required to  
354 perform duties that may not be performed by an aide without  
355 paraprofessional certification, he or she shall receive the  
356 paraprofessional title pay grade;

357 (67) "Payroll supervisor" means a person employed in  
358 the county board office who has primary responsibility for  
359 the payroll function and who either has completed twelve  
360 college hours of accounting from an accredited institution of  
361 higher education or has at least eight years of experience  
362 performing progressively difficult accounting tasks.  
363 Responsibilities of this class title may include supervision of  
364 other personnel;

365 (68) "Plumber I" means a person employed as an  
366 apprentice plumber and helper;

367 (69) "Plumber II" means a person employed as a  
368 journeyman plumber;

369 (70) "Printing operator" means a person employed to  
370 operate duplication equipment, and to cut, collate, staple,  
371 bind and shelve materials as required;

372 (71) "Printing supervisor" means a person employed to  
373 supervise the operation of a print shop;

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374 (72) “Programmer” means a person employed to design  
375 and prepare programs for computer operation;

376 (73) “Roofing/sheet metal mechanic” means a person  
377 employed to install, repair, fabricate and maintain roofs,  
378 gutters, flashing and duct work for heating and ventilation;

379 (74) “Sanitation plant operator” means a person  
380 employed to operate and maintain a water or sewage  
381 treatment plant to ensure the safety of the plant’s effluent for  
382 human consumption or environmental protection;

383 (75) “School bus supervisor” means a qualified person:

384 (A) Employed to assist in selecting school bus operators  
385 and routing and scheduling school buses, operate a bus when  
386 needed, relay instructions to bus operators, plan emergency  
387 routing of buses and promote good relationships with parents,  
388 students, bus operators and other employees; and

389 (B) Certified to operate a bus or previously certified to  
390 operate a bus;

391 (76) “Secretary I” means a person employed to transcribe  
392 from notes or mechanical equipment, receive callers, perform  
393 clerical tasks, prepare reports and operate office machines;

394 (77) “Secretary II” means a person employed in any  
395 elementary, secondary, kindergarten, nursery, special education,  
396 vocational or any other school as a secretary. The duties may  
397 include performing general clerical tasks; transcribing from  
398 notes, stenotype, mechanical equipment or a sound-producing  
399 machine; preparing reports; receiving callers and referring them  
400 to proper persons; operating office machines; keeping records  
401 and handling routine correspondence. Nothing in this  
402 subdivision prevents a service person from holding or being  
403 elevated to a higher classification;

404           (78) “Secretary III” means a person assigned to the  
405 county board office administrators in charge of various  
406 instructional, maintenance, transportation, food services,  
407 operations and health departments, federal programs or  
408 departments with particular responsibilities in purchasing and  
409 financial control or any person who has served for eight years  
410 in a position which meets the definition of “secretary II” or  
411 “secretary III”;

412           (79) “Supervisor of maintenance” means a skilled person  
413 who is not a professional person or professional educator as  
414 defined in section one, article one of this chapter. The  
415 responsibilities include directing the upkeep of buildings and  
416 shops, and issuing instructions to subordinates relating to  
417 cleaning, repairs and maintenance of all structures and  
418 mechanical and electrical equipment of a county board;

419           (80) “Supervisor of transportation” means a qualified  
420 person employed to direct school transportation activities  
421 properly and safely, and to supervise the maintenance and  
422 repair of vehicles, buses and other mechanical and mobile  
423 equipment used by the county school system. After July 1,  
424 2010, all persons employed for the first time in a position  
425 with this classification title or in a multi-classification  
426 position that includes this title shall have five years of  
427 experience working in the transportation department of a  
428 county board. Experience working in the transportation  
429 department shall consist of serving as a bus operator, bus  
430 aide, assistant mechanic, mechanic, chief mechanic or in a  
431 clerical position within the transportation department;

432           (81) “Switchboard operator-receptionist” means a person  
433 employed to refer incoming calls, to assume contact with the  
434 public, to direct and to give instructions as necessary, to  
435 operate switchboard equipment and to provide clerical  
436 assistance;

437 (82) "Truck driver" means a person employed to operate  
438 light or heavy duty gasoline and diesel-powered vehicles;

439 (83) "Warehouse clerk" means a person employed to be  
440 responsible for receiving, storing, packing and shipping  
441 goods;

442 (84) "Watchman" means a person employed to protect  
443 school property against damage or theft. Additional assignments  
444 may include operation of a small heating plant and routine  
445 cleaning duties;

446 (85) "Welder" means a person employed to provide  
447 acetylene or electric welding services for a school system;  
448 and

449 (86) "WVEIS data entry and administrative clerk" means  
450 a person employed to work under the direction of a school  
451 principal to assist the school counselor or counselors in the  
452 performance of administrative duties, to perform data entry  
453 tasks on the West Virginia Education Information System,  
454 and to perform other administrative duties assigned by the  
455 principal.

456 (j) Notwithstanding any provision in this code to the  
457 contrary, and in addition to the compensation provided for  
458 service personnel in section eight-a of this article, each  
459 service person is entitled to all service personnel employee  
460 rights, privileges and benefits provided under this or any  
461 other chapter of this code without regard to the employee's  
462 hours of employment or the methods or sources of  
463 compensation.

464 (k) A service person whose years of employment exceeds  
465 the number of years shown and provided for under the state  
466 minimum pay scale set forth in section eight-a of this article  
467 may not be paid less than the amount shown for the



468 maximum years of employment shown and provided for in  
469 the classification in which he or she is employed.

470 (l) Each county board shall review each service person's  
471 job classification annually and shall reclassify all service  
472 persons as required by the job classifications. The state  
473 superintendent may withhold state funds appropriated  
474 pursuant to this article for salaries for service personnel who  
475 are improperly classified by the county boards. Further, the  
476 state superintendent shall order a county board to correct  
477 immediately any improper classification matter and, with the  
478 assistance of the Attorney General, shall take any legal action  
479 necessary against any county board to enforce the order.

480 (m) Without his or her written consent, a service person  
481 may not be:

482 (1) Reclassified by class title; or

483 (2) Relegated to any condition of employment which  
484 would result in a reduction of his or her salary, rate of pay,  
485 compensation or benefits earned during the current fiscal  
486 year; or for which he or she would qualify by continuing in  
487 the same job position and classification held during that fiscal  
488 year and subsequent years.

489 (n) Any county board failing to comply with the  
490 provisions of this article may be compelled to do so by  
491 mandamus and is liable to any party prevailing against the  
492 board for court costs and the prevailing party's reasonable  
493 attorney fee, as determined and established by the court.

494 (o) Notwithstanding any provision of this code to the  
495 contrary, a service person who holds a continuing contract in  
496 a specific job classification and who is physically unable to  
497 perform the job's duties as confirmed by a physician chosen  
498 by the employee, shall be given priority status over any

499 employee not holding a continuing contract in filling other  
500 service personnel job vacancies if the service person is  
501 qualified as provided in section eight-e of this article.

502 (p) Any person employed in an aide position on the  
503 effective date of this section may not be transferred or subject  
504 to a reduction in force for the purpose of creating a vacancy  
505 for the employment of a licensed practical nurse.

506 (q) Without the written consent of the service person, a  
507 county board may not establish the beginning work station  
508 for a bus operator or transportation aide at any site other than  
509 a county board-owned facility with available parking. The  
510 workday of the bus operator or transportation aide  
511 commences at the bus at the designated beginning work  
512 station and ends when the employee is able to leave the bus  
513 at the designated beginning work station, unless he or she  
514 agrees otherwise in writing. The application or acceptance of  
515 a posted position may not be construed as the written consent  
516 referred to in this subsection.

517 (r) Itinerant status means a service person who does not  
518 have a fixed work site and may be involuntarily reassigned to  
519 another work site. A service person is considered to hold  
520 itinerant status if he or she has bid upon a position posted as  
521 itinerant or has agreed to accept this status. A county board  
522 may establish positions with itinerant status only within the  
523 aide and autism mentor classification categories and only  
524 when the job duties involve exceptional students. A service  
525 person with itinerant status may be assigned to a different  
526 work site upon written notice ten days prior to the  
527 reassignment without the consent of the employee and  
528 without posting the vacancy. A service person with itinerant  
529 status may be involuntarily reassigned no more than twice  
530 during the school year. At the conclusion of each school  
531 year, the county board shall post and fill, pursuant to section  
532 eight-b of this article, all positions that have been filled

533 without posting by a service person with itinerant status. A  
534 service person who is assigned to a beginning and ending  
535 work site and travels at the expense of the county board to  
536 other work sites during the daily schedule, shall not be  
537 considered to hold itinerant status.

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

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

7 (b) Qualifications means the applicant holds a  
8 classification title in his or her category of employment as  
9 provided in this section and is given first opportunity for  
10 promotion and filling vacancies. Other employees then shall  
11 be considered and shall qualify by meeting the definition of  
12 the job title that relates to the promotion or vacancy, as  
13 defined in section eight of this article. If requested by the  
14 employee, the county board shall show valid cause why a  
15 service person with the most seniority is not promoted or  
16 employed in the position for which he or she applies.  
17 Qualified applicants shall be considered in the following  
18 order:

19 (1) Regularly employed service personnel who hold a  
20 classification title within the classification category of the  
21 vacancy;

22 (2) Service personnel who have held a classification title  
23 within the classification category of the vacancy whose  
24 employment has been discontinued in accordance with this  
25 section;

26 (3) Regularly employed service personnel who do not  
27 hold a classification title within the classification category of  
28 vacancy;

29 (4) Service personnel who have not held a classification  
30 title within the classification category of the vacancy and  
31 whose employment has been discontinued in accordance with  
32 this section;

33 (5) Substitute service personnel who hold a classification  
34 title within the classification category of the vacancy;

35 (6) Substitute service personnel who do not hold a  
36 classification title within the classification category of the  
37 vacancy; and

38 (7) New service personnel.

39 (c) The county board may not prohibit a service person  
40 from retaining or continuing his or her employment in any  
41 positions or jobs held prior to the effective date of this  
42 section and thereafter.

43 (d) A promotion means any change in employment that  
44 the service person considers to improve his or her working  
45 circumstance within the classification category of  
46 employment.

47 (1) A promotion includes a transfer to another  
48 classification category or place of employment if the position  
49 is not filled by an employee who holds a title within that  
50 classification category of employment.

51 (2) Each class title listed in section eight of this article is  
52 considered a separate classification category of employment  
53 for service personnel, except for those class titles having  
54 Roman numeral designations, which are considered a single  
55 classification of employment:

56 (A) The cafeteria manager class title is included in the  
57 same classification category as cooks;

58 (B) The executive secretary class title is included in the  
59 same classification category as secretaries;

60 (C) Paraprofessional, autism mentor and braille or sign  
61 language specialist class titles are included in the same  
62 classification category as aides; and

63 (D) The mechanic assistant and chief mechanic class  
64 titles are included in the same classification category as  
65 mechanics.

66 (3) The assignment of an aide to a particular position  
67 within a school is based on seniority within the aide  
68 classification category if the aide is qualified for the position.

69 (4) Assignment of a custodian to work shifts in a school  
70 or work site is based on seniority within the custodian  
71 classification category.

72 (e) For purposes of determining seniority under this  
73 section a service person's seniority begins on the date that he  
74 or she enters into the assigned duties.

75 (f) *Extra-duty assignments.* --

76 (1) For the purpose of this section, "extra-duty  
77 assignment" means an irregular job that occurs periodically  
78 or occasionally such as, but not limited to, field trips, athletic  
79 events, proms, banquets and band festival trips.

80 (2) Notwithstanding any other provisions of this chapter  
81 to the contrary, decisions affecting service personnel with  
82 respect to extra-duty assignments are made in the following  
83 manner:

84 (A) A service person with the greatest length of service  
85 time in a particular category of employment is given priority  
86 in accepting extra duty assignments, followed by other fellow  
87 employees on a rotating basis according to the length of their  
88 service time until all employees have had an opportunity to  
89 perform similar assignments. The cycle then is repeated.

90 (B) An alternative procedure for making extra-duty  
91 assignments within a particular classification category of  
92 employment may be used if the alternative procedure is  
93 approved both by the county board and by an affirmative vote  
94 of two-thirds of the employees within that classification  
95 category of employment.

96 (g) County boards shall post and date notices of all job  
97 vacancies of existing or newly created positions in  
98 conspicuous places for all school service personnel to  
99 observe for at least five working days.

100 (1) Posting locations include any website maintained by  
101 or available for the use of the county board.

102 (2) Notice of a job vacancy shall include the job  
103 description, the period of employment, the work site, the  
104 starting and ending time of the daily shift, the amount of pay  
105 and any benefits and other information that is helpful to  
106 prospective applicants to understand the particulars of the  
107 job. The notice of a job vacancy in the aide classification  
108 categories shall include the program or primary assignment  
109 of the position. Job postings for vacancies made pursuant to  
110 this section shall be written to ensure that the largest possible  
111 pool of qualified applicants may apply. Job postings may not  
112 require criteria which are not necessary for the successful  
113 performance of the job and may not be written with the intent  
114 to favor a specific applicant.

115 (3) After the five-day minimum posting period, all  
116 vacancies shall be filled within twenty working days from the

117 posting date notice of any job vacancies of existing or newly  
118 created positions.

119 (4) The county board shall notify any person who has  
120 applied for a job posted pursuant to this section of the status  
121 of his or her application as soon as possible after the county  
122 board makes a hiring decision regarding the posted position.

123 (h) All decisions by county boards concerning reduction  
124 in work force of service personnel shall be made on the basis  
125 of seniority, as provided in this section.

126 (i) The seniority of a service person is determined on the  
127 basis of the length of time the employee has been employed  
128 by the county board within a particular job classification. For  
129 the purpose of establishing seniority for a preferred recall list  
130 as provided in this section, a service person who has been  
131 employed in one or more classifications retains the seniority  
132 accrued in each previous classification.

133 (j) If a county board is required to reduce the number of  
134 service personnel within a particular job classification, the  
135 following conditions apply:

136 (1) The employee with the least amount of seniority  
137 within that classification or grades of classification is  
138 properly released and employed in a different grade of that  
139 classification if there is a job vacancy;

140 (2) If there is no job vacancy for employment within that  
141 classification or grades of classification, the service person is  
142 employed in any other job classification which he or she  
143 previously held with the county board if there is a vacancy  
144 and retains any seniority accrued in the job classification or  
145 grade of classification.

146 (k) After a reduction in force or transfer is approved, but  
147 prior to August 1, a county board in its sole and exclusive

148 judgment may determine that the reason for any particular  
149 reduction in force or transfer no longer exists.

150 (1) If the board makes this determination, it shall rescind  
151 the reduction in force or transfer and notify the affected  
152 employee in writing of the right to be restored to his or her  
153 former position of employment.

154 (2) The affected employee shall notify the county board  
155 of his or her intent to return to the former position of  
156 employment within five days of being notified or lose the  
157 right to be restored to the former position.

158 (3) The county board may not rescind the reduction in  
159 force of an employee until all service personnel with more  
160 seniority in the classification category on the preferred recall  
161 list have been offered the opportunity for recall to regular  
162 employment as provided in this section.

163 (4) If there are insufficient vacant positions to permit  
164 reemployment of all more senior employees on the preferred  
165 recall list within the classification category of the service  
166 person who was subject to reduction in force, the position of  
167 the released service person shall be posted and filled in  
168 accordance with this section.

169 (l) If two or more service persons accumulate identical  
170 seniority, the priority is determined by a random selection  
171 system established by the employees and approved by the  
172 county board.

173 (m) All service personnel whose seniority with the county  
174 board is insufficient to allow their retention by the county  
175 board during a reduction in work force are placed upon a  
176 preferred recall list and shall be recalled to employment by  
177 the county board on the basis of seniority.



178 (n) A service person placed upon the preferred recall list  
179 shall be recalled to any position openings by the county board  
180 within the classification(s) where he or she had previously  
181 been employed, to any lateral position for which the service  
182 person is qualified or to a lateral area for which a service  
183 person has certification and/or licensure.

184 (o) A service person on the preferred recall list does not  
185 forfeit the right to recall by the county board if compelling  
186 reasons require him or her to refuse an offer of reemployment  
187 by the county board.

188 (p) The county board shall notify all service personnel on  
189 the preferred recall list of all position openings that exist  
190 from time to time. The notice shall be sent by certified mail  
191 to the last known address of the service person. Each service  
192 person shall notify the county board of any change of  
193 address.

194 (q) No position openings may be filled by the county  
195 board, whether temporary or permanent, until all service  
196 personnel on the preferred recall list have been properly  
197 notified of existing vacancies and have been given an  
198 opportunity to accept reemployment.

199 (r) A service person released from employment for lack  
200 of need as provided in sections six and eight-a, article two of  
201 this chapter is accorded preferred recall status on July 1 of  
202 the succeeding school year if he or she has not been  
203 reemployed as a regular employee.

204 (s) A county board failing to comply with the provisions  
205 of this article may be compelled to do so by mandamus and  
206 is liable to any party prevailing against the board for court  
207 costs and the prevailing party's reasonable attorney fee, as  
208 determined and established by the court.

209 (1) A service person denied promotion or employment in  
210 violation of this section shall be awarded the job, pay and any  
211 applicable benefits retroactively to the date of the violation  
212 and shall be paid entirely from local funds.

213 (2) The county board is liable to any party prevailing  
214 against the board for any court reporter costs including copies  
215 of transcripts.

**§18A-4-8e. Competency testing for service personnel; and  
recertification testing for bus operators.**

1 (a) The State Board of Education shall develop and make  
2 available competency tests for all of the classification titles  
3 defined in section eight of this article and listed in section  
4 eight-a of this article for service personnel. Each  
5 classification title defined and listed is considered a separate  
6 classification category of employment for service personnel  
7 and has a separate competency test, except for those class  
8 titles having Roman numeral designations, which are  
9 considered a single classification of employment and have a  
10 single competency test.

11 (1) The cafeteria manager class title is included in the  
12 same classification category as cooks and has the same  
13 competency test.

14 (2) The executive secretary class title is included in the  
15 same classification category as secretaries and has the same  
16 competency test.

17 (3) The classification titles of chief mechanic, mechanic  
18 and assistant mechanic are included in one classification title  
19 and have the same competency test.

20 (b) The purpose of these tests is to provide county boards  
21 a uniform means of determining whether school service

22 personnel who do not hold a classification title in a particular  
23 category of employment meet the definition of the  
24 classification title in another category of employment as  
25 defined in section eight of this article. Competency tests may  
26 not be used to evaluate employees who hold the classification  
27 title in the category of their employment.

28 (c) The competency test consists of an objective written  
29 or performance test, or both. Applicants may take the written  
30 test orally if requested. Oral tests are recorded mechanically  
31 and kept on file. The oral test is administered by persons  
32 who do not know the applicant personally.

33 (1) The performance test for all classifications and  
34 categories other than bus operator is administered by an  
35 employee of the county board or an employee of a  
36 multicounty vocational school that serves the county at a  
37 location designated by the superintendent and approved by  
38 the board. The location may be a vocational school that  
39 serves the county.

40 (2) A standard passing score is established by the state  
41 Department of Education for each test and is used by county  
42 boards.

43 (3) The subject matter of each competency test is  
44 commensurate with the requirements of the definitions of the  
45 classification titles as provided in section eight of this article.  
46 The subject matter of each competency test is designed in  
47 such a manner that achieving a passing grade does not require  
48 knowledge and skill in excess of the requirements of the  
49 definitions of the classification titles. Achieving a passing  
50 score conclusively demonstrates the qualification of an  
51 applicant for a classification title.

52 (4) Once an employee passes the competency test of a  
53 classification title, the applicant is fully qualified to fill  
54 vacancies in that classification category of employment as  
55 provided in section eight-b of this article and may not be  
56 required to take the competency test again.

57 (d) An applicant who fails to achieve a passing score is  
58 given other opportunities to pass the competency test when  
59 making application for another vacancy within the  
60 classification category.

61 (e) Competency tests are administered to applicants in a  
62 uniform manner under uniform testing conditions. County  
63 boards are responsible for scheduling competency tests,  
64 notifying applicants of the date and time of the one day of  
65 training prior to taking the test, and the date and time of the  
66 test. County boards may not use a competency test other than  
67 the test authorized by this section.

68 (f) When scheduling of the competency test conflicts with  
69 the work schedule of a school employee who has applied for  
70 a vacancy, the employee is excused from work to take the  
71 competency test without loss of pay.

72 (g) A minimum of one day of appropriate in-service  
73 training is provided to employees to assist them in preparing  
74 to take the competency tests.

75 (h) Competency tests are used to determine the  
76 qualification of new applicants seeking initial employment in  
77 a particular classification title as either a regular or substitute  
78 employee.

79 (i) Notwithstanding any provisions in this code to the  
80 contrary, once an employee holds or has held a classification  
81 title in a category of employment, that employee is

82 considered qualified for the classification title even though  
83 that employee no longer holds that classification.

84 (j) The requirements of this section do not alter the  
85 definitions of class titles as provided in section eight of this  
86 article or the procedure and requirements of section eight-b  
87 of this article.

88 (k) Notwithstanding any other provision of this code to  
89 the contrary and notwithstanding any rules of the school  
90 board concerning school bus operator certification in effect  
91 on the effective date of this section, the certification test for  
92 school bus operators shall be required as follows, and school  
93 bus operators shall not be required to take the certification  
94 test more frequently:

95 (1) For substitute school bus operators and for school bus  
96 operators with regular employee status but on a probationary  
97 contract, the certification test shall be administered annually;

98 (2) For school bus operators with regular employee status  
99 and continuing contract status, the certification test shall be  
100 administered triennially; and

101 (3) For substitute school bus operators who are retired  
102 from a county board and who at the time of retirement had  
103 ten years of experience as a regular full-time bus operator,  
104 the certification test shall be administered triennially.

105 The state board shall promulgate in accordance with  
106 article three-b, chapter twenty-nine-a of this code, revised  
107 rules in compliance with this subsection.



## CHAPTER 68

**(S. B. 611 - By Senators Helmick,  
McCabe, Bowman, Edgell, Facemire,  
Fanning, Green, Prezioso, Unger, Wells,  
Boley, Facemyer, Guills and Sypolt)**

[Passed March 12, 2010; in effect from passage.]  
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §18B-1B-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-2B-6 of said code; and to amend and reenact §18B-4-1 of said code, all relating to the location of the offices of the Higher Education Policy Commission, the Vice Chancellor for Administration, the West Virginia Council for Community and Technical College Education, and WVNET.

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

That §18B-1B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-2B-6 of said code be amended and reenacted; and that §18B-4-1 of said code be amended and reenacted, all to read as follows:

**Article**

- 1B. High Education Policy Commission.**
- 2B. West Virginia Council for Community and Technical College Education.**
- 4. General Administration.**

**ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

**\*§18B-1B-4. Powers and duties of Higher Education Policy Commission.**

1       (a) The primary responsibility of the commission is to  
2       develop, establish and implement policy that will achieve the  
3       goals and objectives found in section one-a, article one of this  
4       chapter. The commission shall exercise its authority and  
5       carry out its responsibilities in a manner that is consistent and  
6       not in conflict with the powers and duties assigned by law to  
7       the West Virginia Council for Community and Technical  
8       College Education and the powers and duties assigned to the  
9       governing boards of Marshall University and West Virginia  
10      University, respectively. To that end, the commission has the  
11      following powers and duties relating to the institutions under  
12      its jurisdiction:

13       (1) Develop, oversee and advance the public policy  
14      agenda pursuant to section one, article one-a of this chapter  
15      to address major challenges facing the state, including, but  
16      not limited to, the goals and objectives found in section one-  
17      a, article one of this chapter and including specifically those  
18      goals and objectives pertaining to the compacts created  
19      pursuant to section two, article one-a of this chapter and to  
20      develop and implement the master plan described in section  
21      nine of this article for the purpose of accomplishing the  
22      mandates of this section;

23       (2) Develop, oversee and advance the implementation  
24      jointly with the council of a financing policy for higher  
25      education in West Virginia. The policy shall meet the  
26      following criteria:

27       (A) Provide an adequate level of education and general  
28      funding for institutions pursuant to section five, article one-a  
29      of this chapter;

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\*CLERK'S NOTE: This section was also amended by H. B. 4026 (Chapter 56)  
which passed prior to this act.

30 (B) Serve to maintain institutional assets, including, but  
31 not limited to, human and physical resources and deferred  
32 maintenance;

33 (C) Invest and provide incentives for achieving the  
34 priority goals in the public policy agenda, including, but not  
35 limited to, those found in section one-a, article one of this  
36 chapter; and

37 (D) Incorporate the plan for strategic funding to  
38 strengthen capacity for support of community and technical  
39 college education established by the West Virginia Council  
40 for Community and Technical College Education pursuant to  
41 the provisions of section six, article two-b of this chapter;

42 (3) In collaboration with the council, create a policy  
43 leadership structure capable of the following actions:

44 (A) Developing, building public consensus around and  
45 sustaining attention to a long-range public policy agenda. In  
46 developing the agenda, the commission and council shall  
47 seek input from the Legislature and the Governor and  
48 specifically from the State Board of Education and local  
49 school districts in order to create the necessary linkages to  
50 assure smooth, effective and seamless movement of students  
51 through the public education and post-secondary education  
52 systems and to ensure that the needs of public school courses  
53 and programs can be fulfilled by the graduates produced and  
54 the programs offered;

55 (B) Ensuring that the governing boards carry out their  
56 duty effectively to govern the individual institutions of higher  
57 education; and

58 (C) Holding the higher education institutions and the  
59 higher education systems as a whole accountable for  
60 accomplishing their missions and implementing the  
61 provisions of the compacts;



- 62           (4) Develop and adopt each institutional compact;
- 63           (5) Review and adopt the annual updates of the  
64 institutional compacts;
- 65           (6) Serve as the accountability point to:
- 66           (A) The Governor for implementation of the public  
67 policy agenda; and
- 68           (B) The Legislature by maintaining a close working  
69 relationship with the legislative leadership and the  
70 Legislative Oversight Commission on Education  
71 Accountability;
- 72           (7) Jointly with the council, promulgate legislative rules  
73 pursuant to article three-a, chapter twenty-nine-a of this code  
74 to fulfill the purposes of section five, article one-a of this  
75 chapter;
- 76           (8) Establish and implement a peer group for each  
77 institution as described in section three, article one-a of this  
78 chapter;
- 79           (9) Establish and implement the benchmarks and  
80 performance indicators necessary to measure institutional  
81 achievement towards state policy priorities and institutional  
82 missions pursuant to section two, article one-a of this chapter;
- 83           (10) Annually report to the Legislature and to the  
84 Legislative Oversight Commission on Education  
85 Accountability during the January interim meetings on a date  
86 and at a time and location to be determined by the President  
87 of the Senate and the Speaker of the House of Delegates.  
88 The report shall address at least the following:

89           (A) The performance of its system of higher education  
90 during the previous fiscal year, including, but not limited to,  
91 progress in meeting goals stated in the compacts and progress  
92 of the institutions and the higher education system as a whole  
93 in meeting the goals and objectives set forth in section one-a,  
94 article one of this chapter;

95           (B) An analysis of enrollment data collected pursuant to  
96 section one, article ten of this chapter and recommendations  
97 for any changes necessary to assure access to high-quality,  
98 high-demand education programs for West Virginia  
99 residents;

100           (C) The priorities established for capital investment needs  
101 pursuant to subdivision (11) of this subsection and the  
102 justification for such priority;

103           (D) Recommendations of the commission for statutory  
104 changes needed to further the goals and objectives set forth  
105 in section one-a, article one of this chapter;

106           (11) Establish a formal process for identifying needs for  
107 capital investments and for determining priorities for these  
108 investments for consideration by the Governor and the  
109 Legislature as part of the appropriation request process. It is  
110 the responsibility of the commission to assure a fair  
111 distribution of funds for capital projects between the  
112 commission and the council. To that end the commission  
113 shall take the following steps:

114           (A) Receive the list of priorities developed by the council  
115 for capital investment for the institutions under the council's  
116 jurisdiction pursuant to subsection (b), section six, article  
117 two-b of this chapter;

118           (B) Place the ranked list of projects on the agenda for  
119 action within sixty days of the date on which the list was  
120 received;

121 (C) Select a minimum of three projects from the list  
122 submitted by the council to be included on the ranked list  
123 established by the commission. At least one of the three  
124 projects selected must come from the top two priorities  
125 established by the council;

126 (12) Maintain guidelines for institutions to follow  
127 concerning extensive capital project management except the  
128 governing boards of Marshall University and West Virginia  
129 University are not subject to the provisions of this  
130 subdivision as it relates to the state institutions of higher  
131 education known as Marshall University and West Virginia  
132 University. The guidelines shall provide a process for  
133 developing capital projects, including, but not limited to, the  
134 notification by an institution to the commission of any  
135 proposed capital project which has the potential to exceed \$1  
136 million in cost. Such a project may not be pursued by an  
137 institution without the approval of the commission. An  
138 institution may not participate directly or indirectly with any  
139 public or private entity in any capital project which has the  
140 potential to exceed \$1 million in cost;

141 (13) Acquire legal services as are considered necessary,  
142 including representation of the commission, its institutions,  
143 employees and officers before any court or administrative  
144 body, notwithstanding any other provision of this code to the  
145 contrary. The counsel may be employed either on a salaried  
146 basis or on a reasonable fee basis. In addition, the  
147 commission may, but is not required to, call upon the  
148 Attorney General for legal assistance and representation as  
149 provided by law;

150 (14) Employ a Chancellor for Higher Education pursuant  
151 to section five of this article;

152 (15) Employ other staff as necessary and appropriate to  
153 carry out the duties and responsibilities of the commission

154 and the council, in accordance with the provisions of article  
155 four of this chapter;

156 (16) Provide suitable offices in Kanawha County for the  
157 chancellor, vice chancellors and other staff;

158 (17) Advise and consent in the appointment of the  
159 presidents of the institutions of higher education under its  
160 jurisdiction pursuant to section six of this article. The role of  
161 the commission in approving an institutional president is to  
162 assure through personal interview that the person selected  
163 understands and is committed to achieving the goals and  
164 objectives as set forth in the institutional compact and in  
165 section one-a, article one of this chapter;

166 (18) Approve the total compensation package from all  
167 sources for presidents of institutions under its jurisdiction, as  
168 proposed by the governing boards. The governing boards  
169 must obtain approval from the commission of the total  
170 compensation package both when institutional presidents are  
171 employed initially and afterward when any change is made in  
172 the amount of the total compensation package;

173 (19) Establish and implement the policy of the state to  
174 assure that parents and students have sufficient information  
175 at the earliest possible age on which to base academic  
176 decisions about what is required for students to be successful  
177 in college, other post-secondary education and careers  
178 related, as far as possible, to results from current assessment  
179 tools in use in West Virginia;

180 (20) Approve and implement a uniform standard jointly  
181 with the council to determine which students shall be placed  
182 in remedial or developmental courses. The standard shall be  
183 aligned with college admission tests and assessment tools  
184 used in West Virginia and shall be applied uniformly by the  
185 governing boards throughout the public higher education

186 system. The chancellors shall develop a clear, concise  
187 explanation of the standard which they shall communicate to  
188 the State Board of Education and the State Superintendent of  
189 Schools;

190 (21) Review and approve or disapprove capital projects  
191 as described in subdivision (11) of this subsection;

192 (22) Jointly with the council, develop and implement an  
193 oversight plan to manage systemwide technology such as the  
194 following:

195 (A) Expanding distance learning and technology  
196 networks to enhance teaching and learning, promote access  
197 to quality educational offerings with minimum duplication of  
198 effort; and

199 (B) Increasing the delivery of instruction to  
200 nontraditional students, to provide services to business and  
201 industry and increase the management capabilities of the  
202 higher education system.

203 (C) Notwithstanding any other provision of law or this  
204 code to the contrary, the council, commission and state  
205 institutions of higher education are not subject to the  
206 jurisdiction of the Chief Technology Officer for any purpose;

207 (23) Establish and implement policies and procedures to  
208 ensure that students may transfer and apply toward the  
209 requirements for a bachelor's degree the maximum number  
210 of credits earned at any regionally accredited in-state or out-  
211 of-state community and technical college with as few  
212 requirements to repeat courses or to incur additional costs as  
213 is consistent with sound academic policy;

214 (24) Establish and implement policies and procedures to  
215 ensure that students may transfer and apply toward the

216 requirements for a degree the maximum number of credits  
217 earned at any regionally accredited in-state or out-of-state  
218 higher education institution with as few requirements to  
219 repeat courses or to incur additional costs as is consistent  
220 with sound academic policy;

221       (25) Establish and implement policies and procedures to  
222 ensure that students may transfer and apply toward the  
223 requirements for a master's degree the maximum number of  
224 credits earned at any regionally accredited in-state or out-of-  
225 state higher education institution with as few requirements to  
226 repeat courses or to incur additional costs as is consistent  
227 with sound academic policy;

228       (26) Establish and implement policies and programs, in  
229 cooperation with the council and the institutions of higher  
230 education, through which students who have gained  
231 knowledge and skills through employment, participation in  
232 education and training at vocational schools or other  
233 education institutions, or internet-based education programs,  
234 may demonstrate by competency-based assessment that they  
235 have the necessary knowledge and skills to be granted  
236 academic credit or advanced placement standing toward the  
237 requirements of an associate degree or a bachelor's degree at  
238 a state institution of higher education;

239       (27) Seek out and attend regional, national and  
240 international meetings and forums on education and  
241 workforce development-related topics, as in the  
242 commission's discretion is critical for the performance of  
243 their duties as members, for the purpose of keeping abreast  
244 of education trends and policies to aid it in developing the  
245 policies for this state to meet the established education goals  
246 and objectives pursuant to section one-a, article one of this  
247 chapter;

248       (28) Develop, establish and implement a rule for higher  
249 education governing boards and institutions to follow when

250 considering capital projects. The guidelines shall assure that  
251 the governing boards and institutions do not approve or  
252 promote capital projects involving private sector businesses  
253 which would have the effect of reducing property taxes on  
254 existing properties or avoiding, in whole or in part, the full  
255 amount of taxes which would be due on newly developed or  
256 future properties;

257 (29) Consider and submit to the appropriate agencies of  
258 the executive and legislative branches of state government a  
259 budget that reflects recommended appropriations from the  
260 commission and the institutions under its jurisdiction. The  
261 commission shall submit as part of its budget proposal the  
262 separate recommended appropriations it received from the  
263 council, both for the council and the institutions under the  
264 council's jurisdiction. The commission annually shall submit  
265 the proposed institutional allocations based on each  
266 institution's progress toward meeting the goals of its  
267 institutional compact;

268 (30) The commission has the authority to assess  
269 institutions under its jurisdiction, including the state  
270 institutions of higher education known as Marshall  
271 University and West Virginia University, for the payment of  
272 expenses of the commission or for the funding of statewide  
273 higher education services, obligations or initiatives related to  
274 the goals set forth for the provision of public higher  
275 education in the state;

276 (31) Promulgate rules allocating reimbursement of  
277 appropriations, if made available by the Legislature, to  
278 institutions of higher education for qualifying noncapital  
279 expenditures incurred in the provision of services to students  
280 with physical, learning or severe sensory disabilities;

281 (32) Make appointments to boards and commissions  
282 where this code requires appointments from the State College

283 System Board of Directors or the University of West Virginia  
284 System Board of Trustees which were abolished effective  
285 June 30, 2000, except in those cases where the required  
286 appointment has a specific and direct connection to the  
287 provision of community and technical college education, the  
288 appointment shall be made by the council. Notwithstanding  
289 any provisions of this code to the contrary, the commission  
290 or the council may appoint one of its own members or any  
291 other citizen of the state as its designee. The commission and  
292 council shall appoint the total number of persons in the  
293 aggregate required to be appointed by these previous  
294 governing boards;

295 (33) Pursuant to the provisions of article three-a, chapter  
296 twenty-nine-a of this code and section six, article one of this  
297 chapter, promulgate rules as necessary or expedient to fulfill  
298 the purposes of this chapter. The commission and the council  
299 shall promulgate a uniform joint legislative rule for the  
300 purpose of standardizing, as much as possible, the  
301 administration of personnel matters among the institutions of  
302 higher education;

303 (34) Determine when a joint rule among the governing  
304 boards of the institutions under its jurisdiction is necessary or  
305 required by law and, in those instances, in consultation with  
306 the governing boards of all the institutions under its  
307 jurisdiction, promulgate the joint rule;

308 (35) In consultation with the governing boards of  
309 Marshall University and West Virginia University,  
310 implement a policy jointly with the council whereby course  
311 credit earned at a community and technical college transfers  
312 for program credit at any other state institution of higher  
313 education and is not limited to fulfilling a general education  
314 requirement;

315 (36) Promulgate a joint rule with the council establishing  
316 tuition and fee policy for all institutions of higher education,



317 other than state institutions of higher education known as  
318 Marshall University and West Virginia University which are  
319 subject to the provisions of section one, article ten of this  
320 chapter. The rule shall include, but is not limited to, the  
321 following:

322 (A) Comparisons with peer institutions;

323 (B) Differences among institutional missions;

324 (C) Strategies for promoting student access;

325 (D) Consideration of charges to out-of-state students; and

326 (E) Such other policies as the commission and council  
327 consider appropriate;

328 (37) Implement general disease awareness initiatives to  
329 educate parents and students, particularly dormitory  
330 residents, about meningococcal meningitis; the potentially  
331 life-threatening dangers of contracting the infection;  
332 behaviors and activities that can increase risks; measures that  
333 can be taken to prevent contact or infection; and potential  
334 benefits of vaccination. The commission shall encourage  
335 institutions that provide medical care to students to provide  
336 access to the vaccine for those who wish to receive it; and

337 (38) Notwithstanding any other provision of this code to  
338 the contrary, sell, lease, convey or otherwise dispose of all or  
339 part of any real property which it may own, either by contract  
340 or at public auction, and to retain the proceeds of any such  
341 sale or lease: *Provided*, That:

342 (A) The commission may not sell, lease, convey or  
343 otherwise dispose of any real property without first:

344 (i) Providing notice to the public in the county in which  
345 the real property is located by a Class II legal advertisement

346 pursuant to section two, article three, chapter fifty-nine of  
347 this code;

348 (ii) Holding a public hearing on the issue in the county in  
349 which the real property is located; and

350 (iii) Providing notice to the Joint Committee on  
351 Government and Finance; and

352 (B) Any proceeds from the sale, lease, conveyance or  
353 other disposal of real property that is used jointly by  
354 institutions or for statewide programs under the jurisdiction  
355 of the commission or the council shall be transferred to the  
356 General Revenue Fund of the state.

357 (b) In addition to the powers and duties listed in  
358 subsection (a) of this section, the commission has the  
359 following general powers and duties related to its role in  
360 developing, articulating and overseeing the implementation  
361 of the public policy agenda:

362 (1) Planning and policy leadership, including a distinct  
363 and visible role in setting the state's policy agenda and in  
364 serving as an agent of change;

365 (2) Policy analysis and research focused on issues  
366 affecting the system as a whole or a geographical region  
367 thereof;

368 (3) Development and implementation of institutional  
369 mission definitions, including use of incentive funds to  
370 influence institutional behavior in ways that are consistent  
371 with public priorities;

372 (4) Academic program review and approval for  
373 institutions under its jurisdiction, including the use of  
374 institutional missions as a template to judge the

375 appropriateness of both new and existing programs and the  
376 authority to implement needed changes. The commission's  
377 authority to review and approve academic programs for either  
378 the state institution of higher education known as Marshall  
379 University or West Virginia University is limited to programs  
380 that are proposed to be offered at a new location not presently  
381 served by that institution;

382 (5) Distribution of funds appropriated to the commission,  
383 including incentive and performance-based funding;

384 (6) Administration of state and federal student aid  
385 programs under the supervision of the vice chancellor for  
386 administration, including promulgation of any rules  
387 necessary to administer those programs;

388 (7) Serving as the agent to receive and disburse public  
389 funds when a governmental entity requires designation of a  
390 statewide higher education agency for this purpose;

391 (8) Development, establishment and implementation of  
392 information, assessment and accountability systems,  
393 including maintenance of statewide data systems that  
394 facilitate long-term planning and accurate measurement of  
395 strategic outcomes and performance indicators;

396 (9) Jointly with the council, developing, establishing and  
397 implementing policies for licensing and oversight for both  
398 public and private degree-granting and nondegree-granting  
399 institutions that provide post-secondary education courses or  
400 programs in the state pursuant to the findings and policy  
401 recommendations required by section eleven of this article;

402 (10) Development, implementation and oversight of  
403 statewide and regionwide projects and initiatives related to  
404 providing post-secondary education at the baccalaureate level  
405 and above such as those using funds from federal categorical

406 programs or those using incentive and performance-based  
407 funding from any source; and

408 (11) Quality assurance that intersects with all other duties  
409 of the commission particularly in the areas of research, data  
410 collection and analysis, planning, policy analysis, program  
411 review and approval, budgeting and information and  
412 accountability systems.

413 (c) In addition to the powers and duties provided in  
414 subsections (a) and (b) of this section and any other powers  
415 and duties as may be assigned to it by law, the commission  
416 has such other powers and duties as may be necessary or  
417 expedient to accomplish the purposes of this article.

418 (d) The commission is authorized to withdraw specific  
419 powers of any governing board of an institution under its  
420 jurisdiction for a period not to exceed two years, if the  
421 commission makes a determination that:

422 (1) The governing board has failed for two consecutive  
423 years to develop an institutional compact as required in  
424 article one of this chapter;

425 (2) The commission has received information,  
426 substantiated by independent audit, of significant  
427 mismanagement or failure to carry out the powers and duties  
428 of the board of governors according to state law; or

429 (3) Other circumstances which, in the view of the  
430 commission, severely limit the capacity of the board of  
431 governors to carry out its duties and responsibilities.

432 The period of withdrawal of specific powers may not  
433 exceed two years during which time the commission is  
434 authorized to take steps necessary to reestablish the  
435 conditions for restoration of sound, stable and responsible  
436 institutional governance.

**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 education  
3 and community and technical college education in the state.  
4 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 October 1, 2008. Nothing in  
25 this subsection requires other rules of the council to be

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\*CLERK'S NOTE: This section was also amended by H. B. 4026 (Chapter 56)  
which passed prior to this act.

26 promulgated again under the procedure set forth in article  
27 three-a, chapter twenty-nine-a of this code unless such rules  
28 are rescinded, revised, altered or amended; and

29 (3) The Legislature finds that an emergency exists and,  
30 therefore, the council shall propose an emergency rule or  
31 rules to implement the provisions of this section relating to  
32 the financing policy and benchmarks and indicators in  
33 accordance with section six, article one of this chapter and  
34 article three-a, chapter twenty-nine-a of this code by October  
35 1, 2008. The emergency rule or rules may not be  
36 implemented without prior approval of the Legislative  
37 Oversight Commission on Education Accountability.

38 (c) The council has the following powers and duties  
39 relating to the authority established in subsection (a) of this  
40 section:

41 (1) Develop, oversee and advance the public policy  
42 agenda for community and technical college education for the  
43 purpose of accomplishing the mandates of this section,  
44 including, but not limited to, the following:

45 (A) Achieving the goals and objectives established in  
46 articles one and one-d of this chapter;

47 (B) Addressing the goals and objectives contained in the  
48 institutional compacts created pursuant to section seven,  
49 article one-d of this chapter; and

50 (C) Developing and implementing the master plan  
51 described in section five, article one-d of this chapter;

52 (2) Propose a legislative rule pursuant to subsection (b)  
53 of this section and article three-a, chapter twenty-nine-a of  
54 this code to develop and implement a financing policy for  
55 community and technical college education in West Virginia.  
56 The rule shall meet the following criteria:

57 (A) Provide an adequate level of education and general  
58 funding for institutions pursuant to section five, article one-a  
59 of this chapter;

60 (B) Serve to maintain institutional assets, including, but  
61 not limited to, human and physical resources and deferred  
62 maintenance;

63 (C) Establish a plan for strategic funding to strengthen  
64 capacity for support of community and technical college  
65 education; and

66 (D) Establish a plan that measures progress and provides  
67 performance-based funding to institutions which make  
68 significant progress in the following specific areas:

69 (i) Achieving the objectives and priorities established in  
70 article one-d of this chapter;

71 (ii) Serving targeted populations, especially working age  
72 adults twenty-five years of age and over;

73 (iii) Providing access to high cost, high demand technical  
74 programs in every region of the state;

75 (iv) Increasing the percentage of functionally literate  
76 adults in every region of the state; and

77 (v) Providing high quality community and technical  
78 college education services to residents of every region of the  
79 state.

80 (3) Create a policy leadership structure relating to  
81 community and technical college education capable of the  
82 following actions:

83 (A) Developing, building public consensus around and  
84 sustaining attention to a long-range public policy agenda. In

85 developing the agenda, the council shall seek input from the  
86 Legislature and the Governor and specifically from the State  
87 Board of Education and local school districts in order to  
88 create the necessary linkages to assure smooth, effective and  
89 seamless movement of students through the public education  
90 and post-secondary education systems and to ensure that the  
91 needs of public school courses and programs can be fulfilled  
92 by the graduates produced and the programs offered;

93 (B) Ensuring that the governing boards of the institutions  
94 under the council's jurisdiction carry out their duty  
95 effectively to govern the individual institutions of higher  
96 education; and

97 (C) Holding each community and technical college and  
98 the statewide network of independently accredited  
99 community and technical colleges as a whole accountable for  
100 accomplishing their missions and achieving the goals and  
101 objectives established in articles one, one-d, and three-c of  
102 this chapter;

103 (4) Develop for inclusion in the statewide public agenda,  
104 a plan for raising education attainment, increasing adult  
105 literacy, promoting workforce and economic development  
106 and ensuring access to advanced education for the citizens of  
107 West Virginia;

108 (5) Provide statewide leadership, coordination, support,  
109 and technical assistance to the community and technical  
110 colleges and to provide a focal point for visible and effective  
111 advocacy for their work and for the public policy agendas  
112 approved by the commission and council;

113 (6) Review and adopt annually all institutional compacts  
114 for the community and technical colleges pursuant to the  
115 provisions of section seven, article one-d of this chapter;



116 (7) Fulfill the mandates of the accountability system  
117 established in article one-d of this chapter and report on  
118 progress in meeting established goals, objectives, and  
119 priorities to the elected leadership of the state;

120 (8) Propose a legislative rule pursuant to subsection (b)  
121 of this section and article three-a, chapter twenty-nine-a of  
122 this code to establish benchmarks and indicators in  
123 accordance with the provisions of this subsection;

124 (9) Establish and implement the benchmarks and  
125 performance indicators necessary to measure institutional  
126 progress:

127 (A) In meeting state goals, objectives, and priorities  
128 established in articles one and one-d of this chapter;

129 (B) In carrying out institutional missions; and

130 (C) In meeting the essential conditions established in  
131 article three-c of this chapter;

132 (10) Collect and analyze data relating to the performance  
133 of community and technical colleges in every region of West  
134 Virginia and report periodically or as directed to the  
135 Legislative Oversight Commission on Education  
136 Accountability on the progress in meeting the goals and  
137 objectives established in articles one and one-d of this  
138 chapter.

139 Additionally, the council shall report annually during the  
140 January interim meetings on a date and at a time and location  
141 to be determined by the President of the Senate and the  
142 Speaker of the House of Delegates.

143 The annual report shall address at least the following:

144 (A) The performance of the community and technical  
145 college network during the previous fiscal year, including,  
146 but not limited to, progress in meeting goals stated in the  
147 compacts and progress of the institutions and the network as  
148 a whole in meeting the goals and objectives established in  
149 articles one and one-d of this chapter;

150 (B) The priorities established for capital investment needs  
151 pursuant to subdivision (11) of this subsection and the  
152 justification for such priority; and

153 (C) Recommendations of the council for statutory  
154 changes necessary or expedient to achieve established state  
155 goals and objectives.

156 (11) Establish a formal process for identifying needs for  
157 capital investments and for determining priorities for these  
158 investments for consideration by the Governor and the  
159 Legislature as part of the appropriation request process.  
160 Notwithstanding the language in subdivision eleven,  
161 subsection a, section four, article one-b of this chapter, the  
162 commission is not a part of the process for identifying needs  
163 for capital investments for the statewide network of  
164 independently accredited community and technical colleges;

165 (12) Draw upon the expertise available within the  
166 Governor's Workforce Investment Office and the West  
167 Virginia Development Office as a resource in the area of  
168 workforce development and training;

169 (13) Acquire legal services that are considered necessary,  
170 including representation of the council, its institutions,  
171 employees and officers before any court or administrative  
172 body, notwithstanding any other provision of this code to the  
173 contrary. The counsel may be employed either on a salaried  
174 basis or on a reasonable fee basis. In addition, the council  
175 may, but is not required to, call upon the Attorney General  
176 for legal assistance and representation as provided by law;

177           (14) Employ a chancellor for community and technical  
178 college education pursuant to section three of this article;

179           (15) Employ other staff as necessary and appropriate to  
180 carry out the duties and responsibilities of the council  
181 consistent with the provisions of section two, article four of  
182 this chapter;

183           (16) Employ other staff as necessary and appropriate to  
184 carry out the duties and responsibilities of the council who  
185 are employed solely by the council;

186           (17) Provide suitable offices in Charleston for the  
187 chancellor and other staff: *Provided*, That the offices may be  
188 located outside of Charleston at a technology and research  
189 center: *Provided, however*, That the current employees of  
190 WVNET shall not be moved from Monongalia County  
191 without legislative approval;

192           (18) Approve the total compensation package from all  
193 sources for presidents of community and technical colleges,  
194 as proposed by the governing boards. The governing boards  
195 must obtain approval from the council of the total  
196 compensation package both when presidents are employed  
197 initially and subsequently when any change is made in the  
198 amount of the total compensation package;

199           (19) Establish and implement policies and procedures to  
200 ensure that students may transfer and apply toward the  
201 requirements for a degree the maximum number of credits  
202 earned at any regionally accredited in-state or out-of-state  
203 higher education institution with as few requirements to  
204 repeat courses or to incur additional costs as is consistent  
205 with sound academic policy;

206           (20) Establish and implement policies and programs,  
207 jointly with the community and technical colleges, through

208 which students who have gained knowledge and skills  
209 through employment, participation in education and training  
210 at vocational schools or other education institutions, or  
211 internet-based education programs, may demonstrate by  
212 competency-based assessment that they have the necessary  
213 knowledge and skills to be granted academic credit or  
214 advanced placement standing toward the requirements of an  
215 associate degree or a bachelor's degree at a state institution  
216 of higher education;

217 (21) Seek out and attend regional and national meetings  
218 and forums on education and workforce development-related  
219 topics, as council members consider critical for the  
220 performance of their duties. The council shall keep abreast  
221 of national and regional community and technical college  
222 education trends and policies to aid members in developing  
223 the policies for this state that meet the education goals and  
224 objectives established in articles one and one-d of this  
225 chapter;

226 (22) Assess community and technical colleges for the  
227 payment of expenses of the council or for the funding of  
228 statewide services, obligations or initiatives related  
229 specifically to the provision of community and technical  
230 college education;

231 (23) Promulgate rules allocating reimbursement of  
232 appropriations, if made available by the Legislature, to  
233 community and technical colleges for qualifying noncapital  
234 expenditures incurred in the provision of services to students  
235 with physical, learning or severe sensory disabilities;

236 (24) Assume the prior authority of the commission in  
237 examining and approving tuition and fee increase proposals  
238 submitted by community and technical college governing  
239 boards as provided in section one, article ten of this chapter;

240           (25) Develop and submit to the commission, a single  
241 budget for community and technical college education that  
242 reflects recommended appropriations for community and  
243 technical colleges and that meets the following conditions:

244           (A) Incorporates the provisions of the financing rule  
245 mandated by this section to measure and provide  
246 performance funding to institutions which achieve or make  
247 significant progress toward achieving established state  
248 objectives and priorities;

249           (B) Considers the progress of each institution toward  
250 meeting the essential conditions set forth in section three,  
251 article three-c of this chapter, including independent  
252 accreditation; and

253           (C) Considers the progress of each institution toward  
254 meeting the goals, objectives, and priorities established in  
255 article one-d of this chapter and its approved institutional  
256 compact.

257           (26) Administer and distribute the independently  
258 accredited community and technical college development  
259 account;

260           (27) Establish a plan of strategic funding to strengthen  
261 capacity for support and assure delivery of high quality  
262 community and technical college education in all regions of  
263 the state;

264           (28) Foster coordination among all state-level, regional  
265 and local entities providing post-secondary vocational  
266 education or workforce development and coordinate all  
267 public institutions and entities that have a community and  
268 technical college mission;

269           (29) Assume the principal responsibility for oversight of  
270 those community and technical colleges seeking independent

271 accreditation and for holding governing boards accountable  
272 for meeting the essential conditions pursuant to article three-c  
273 of this chapter;

274 (30) Advise and consent in the appointment of the  
275 presidents of the community and technical colleges pursuant  
276 to section six, article one-b of this chapter. The role of the  
277 council in approving a president is to assure through personal  
278 interview that the person selected understands and is  
279 committed to achieving the goals and objectives established  
280 in the institutional compact and in articles one, one-d, and  
281 three-c of this chapter;

282 (31) Provide a single, statewide link for current and  
283 prospective employers whose needs extend beyond one  
284 locality;

285 (32) Provide a mechanism capable of serving two or  
286 more institutions to facilitate joint problem-solving in areas  
287 including, but not limited to the following:

288 (A) Defining faculty roles and personnel policies;

289 (B) Delivering high-cost technical education programs  
290 across the state;

291 (C) Providing one-stop service for workforce training to  
292 be delivered by multiple institutions; and

293 (D) Providing opportunities for resource-sharing and  
294 collaborative ventures;

295 (33) Provide support and technical assistance to develop,  
296 coordinate, and deliver effective and efficient community and  
297 technical college education programs and services in all  
298 regions of the state;

299           (34) Assist the community and technical colleges in  
300       establishing and promoting links with business, industry and  
301       labor in the geographic areas for which each community and  
302       technical college is responsible;

303           (35) Develop alliances among the community and  
304       technical colleges for resource sharing, joint development of  
305       courses and courseware, and sharing of expertise and staff  
306       development;

307           (36) Serve aggressively as an advocate for development  
308       of a seamless curriculum;

309           (37) Cooperate with all providers of education services in  
310       the state to remove barriers relating to a seamless system of  
311       public and higher education and to transfer and articulation  
312       between and among community and technical colleges, state  
313       colleges and universities and public education, preschool  
314       through grade twelve;

315           (38) Encourage the most efficient use of available  
316       resources;

317           (39) Coordinate with the commission in informing public  
318       school students, their parents and teachers of the academic  
319       preparation that students need in order to be prepared  
320       adequately to succeed in their selected fields of study and  
321       career plans, including presentation of academic career fairs;

322           (40) Jointly with the commission, approve and implement  
323       a uniform standard, as developed by the chancellors, to  
324       determine which students shall be placed in remedial or  
325       developmental courses. The standard shall be aligned with  
326       college admission tests and assessment tools used in West  
327       Virginia and shall be applied uniformly by the governing  
328       boards throughout the public higher education system. The  
329       chancellors shall develop a clear, concise explanation of the

330 standard which the governing boards shall communicate to  
331 the State Board of Education and the State Superintendent of  
332 Schools;

333 (41) Develop and implement strategies and curriculum  
334 for providing developmental education which shall be  
335 applied by any state institution of higher education providing  
336 developmental education;

337 (42) Develop a statewide system of community and  
338 technical college programs and services in every region of  
339 West Virginia for competency-based certification of  
340 knowledge and skills, including a statewide competency-  
341 based associate degree program;

342 (43) Review and approve all institutional master plans for  
343 the community and technical colleges pursuant to section  
344 four, article two-a of this chapter;

345 (44) Propose rules for promulgation pursuant to  
346 subsection (b) of this section and article three-a, chapter  
347 twenty-nine-a of this code that are necessary or expedient for  
348 the effective and efficient performance of community and  
349 technical colleges in the state;

350 (45) In its sole discretion, transfer any rule under its  
351 jurisdiction, other than a legislative rule, to the jurisdiction of  
352 the governing boards who may rescind, revise, alter or amend  
353 any rule transferred pursuant to rules adopted by the council  
354 and provide technical assistance to the institutions under its  
355 jurisdiction to aid them in promulgating rules;

356 (46) Develop for inclusion in the higher education report  
357 card, as defined in section eight, article one-d of this chapter,  
358 a separate section on community and technical colleges. This  
359 section shall include, but is not limited to, evaluation of the  
360 institutions based upon the benchmarks and indicators  
361 developed in subdivision (9) of this subsection;



362 (47) Facilitate continuation of the Advantage Valley  
363 Community College Network under the leadership and  
364 direction of Marshall Community and Technical College;

365 (48) Initiate and facilitate creation of other regional  
366 networks of affiliated community and technical colleges that  
367 the council finds to be appropriate and in the best interests of  
368 the citizens to be served;

369 (49) Develop with the State Board of Education plans for  
370 secondary and post-secondary vocational-technical-  
371 occupational and adult basic education, including, but not  
372 limited to the following:

373 (A) Policies to strengthen vocational-technical-  
374 occupational and adult basic education; and

375 (B) Programs and methods to assist in the improvement,  
376 modernization and expanded delivery of vocational-  
377 technical-occupational and adult basic education programs;

378 (50) Distribute federal vocational education funding  
379 provided under the Carl D. Perkins Vocational and Technical  
380 Education Act of 1998, PL 105-332, with an emphasis on  
381 distributing financial assistance among secondary and post-  
382 secondary vocational-technical-occupational and adult basic  
383 education programs to help meet the public policy 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-technical-  
412 occupational education, adult basic education and community  
413 and technical college education programs in the state which  
414 emphasize the involvement of business, industry and labor  
415 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 4. GENERAL ADMINISTRATION.**

##### **§18B-4-1. Employment of chancellors; designation of staff; offices.**

1 (a) The council and commission each shall employ a  
2 chancellor to assist in the performance of their respective  
3 duties and responsibilities subject to the following  
4 conditions:

5       (1) Each chancellor serves at the will and pleasure of the  
6 hiring body.

7       (2) Neither chancellor may hold or retain any other  
8 administrative position within the system of higher education  
9 while employed as chancellor.

10       (3) Each chancellor is responsible for carrying out the  
11 directives of the body by whom employed and shall work  
12 with that body in developing policy options.

13       (4) The commission is responsible to the council and the  
14 Chancellor for Community and Technical College Education  
15 for providing services in areas essential to exercising the  
16 powers and duties assigned to the council by law. The  
17 commission may not charge the council any fee for the  
18 provision of these essential services. The service areas  
19 include, but are not limited to, legal services, research,  
20 technology, computing, finance and facilities, academic  
21 affairs, telecommunications, human resources, student  
22 services and any other general areas the council considers to  
23 be essential to the exercise of its legal authority. The services  
24 are provided under the general supervision of the Vice  
25 Chancellor for Administration.

26       (5) For the purpose of developing or evaluating policy  
27 options, the chancellors may request the assistance of the  
28 presidents and staff of the institutions under their respective  
29 jurisdictions.

30       (b) In addition to the staff positions designated in  
31 subdivision (4), subsection (a) of this section, the Vice  
32 Chancellor for Administration, employed pursuant to section  
33 two of this article, serves the offices of the chancellors to  
34 discharge jointly the duties and responsibilities of the council  
35 and commission.



36 (c) The Vice Chancellor for Health Sciences shall  
37 coordinate the West Virginia University School of Medicine,  
38 the Marshall University School of Medicine and the West  
39 Virginia School of Osteopathic Medicine.

40 (d) Suitable offices for the vice chancellor of  
41 administration and other staff shall be provided in Kanawha  
42 County.

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## CHAPTER 69

**(S. B. 499 - By Senators Plymale,  
Wells, Browning, Edgell, Foster, Laird,  
Oliverio, Stollings, Unger, White,  
Barnes, Boley and Guills)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on March 31, 2010.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-3C-7a; and to amend and reenact §18B-3C-8 of said code, all relating to community and technical colleges; name changes for certain community and technical colleges; and modifying the location requirement for certain community and technical college headquarters.

*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-3C-7a; and that §18B-3C-8 of said code be amended and reenacted, all to read as follows:

**ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.**

§18B-3C-7a. Bridgemont Community and Technical College; Kanawha Valley Community and Technical College; Mountwest Community and Technical College.

§18B-3C-8. Legislative findings and intent; statewide network of independently accredited community and technical colleges; operations and administration.

**§18B-3C-7a. Bridgemont Community and Technical College; Kanawha Valley Community and Technical College; Mountwest Community and Technical College.**

1 (a) The Community and Technical College at West  
2 Virginia University Institute of Technology is hereafter  
3 named "Bridgemont Community and Technical College".  
4 Any reference in this code to the Community and Technical  
5 College at West Virginia University Institute of Technology  
6 means Bridgemont Community and Technical College.

7 (b) Marshall Community and Technical College is  
8 hereafter named "Mountwest Community and Technical  
9 College". Any reference in this code to Marshall Community  
10 and Technical College means Mountwest Community and  
11 Technical College.

12 (c) West Virginia State Community and Technical  
13 College is hereafter named "Kanawha Valley Community  
14 and Technical College". Any reference in this code to West  
15 Virginia State Community and Technical College means  
16 Kanawha Valley Community and Technical College.

**§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 of  
78 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 July 1, 2009, each governing board of a  
125 community and technical college which became independent

126 on July 1, 2008, shall make a determination by majority vote  
127 of the board whether to keep the current name for its  
128 respective institution or to select a new name. If a governing  
129 board chooses to select a new name, any reference in this  
130 code to that institution by a name in use prior to July 1, 2009,  
131 means the institution under the name designated by its board  
132 of governors.

133 (2) The statewide network of independently accredited  
134 community and technical colleges is comprised of the  
135 following independent state institutions of higher education  
136 under the jurisdiction of the council:

137 (A) *Blue Ridge Community and Technical College.* --

138 Blue Ridge Community and Technical College is an  
139 independently accredited state institution of higher education.  
140 The president and the governing board of the community and  
141 technical college are responsible for maintaining independent  
142 accreditation and adhering to the essential conditions  
143 pursuant to section three of this article.

144 (B) *Bridgemont Community and Technical College.* --

145 (i) Bridgemont Community and Technical College is an  
146 independently accredited state institution of higher education  
147 which may maintain an association with West Virginia  
148 University Institute of Technology, a division of West  
149 Virginia University, or directly with West Virginia  
150 University, subject to the provisions of section twelve of this  
151 article. The president and the governing board of the  
152 community and technical college are responsible for  
153 maintaining independent accreditation and adhering to the  
154 essential conditions pursuant to section three of this article.

155 (ii) West Virginia University Institute of Technology may  
156 continue associate degree programs in areas of particular

157 institutional strength which are closely articulated to its  
158 baccalaureate programs and missions or which are of a  
159 high-cost nature and can best be provided in direct  
160 coordination with a baccalaureate institution. Any such  
161 program shall be delivered under the authority of the council  
162 and through contract with the community and technical  
163 college. The terms of the contract shall be negotiated  
164 between the governing boards of the community and  
165 technical college and West Virginia University Institute of  
166 Technology or directly with West Virginia University, as  
167 appropriate. The final contract may not be implemented until  
168 approved by the council except that any contract between the  
169 community and technical college and West Virginia  
170 University Institute of Technology or West Virginia  
171 University related to program delivery under the terms of this  
172 section in effect on July 1, 2008, shall continue in effect until  
173 July 1, 2009, unless amended or revoked before that date by  
174 mutual agreement of the contract parties with approval by the  
175 council. Such a program shall be evaluated according to the  
176 benchmarks and indicators for community and technical  
177 college education developed by the council. If the council  
178 determines that the program is making insufficient progress  
179 toward accomplishing the benchmarks, the program shall  
180 thereafter be delivered by the community and technical  
181 college.

182 (iii) *Dual credit course delivery agreements.* --

183 (I) Nothing in this article alters or abrogates any  
184 agreement in place on the effective date of this section  
185 between West Virginia University Institute of Technology  
186 and Bridgemont Community and Technical College relating  
187 to delivery of dual credit courses as defined in section two,  
188 article one of this chapter;

189 (II) The community and technical college may deliver  
190 technical courses that are part of a certificate or associate



191 degree program as early entrance or dual credit courses for  
192 high school students; and

193 (III) Subject to an agreement between the baccalaureate  
194 institution and the community and technical college, the latter  
195 may deliver early entrance and dual credit courses as defined  
196 in section two, article one of this chapter to students in high  
197 schools which are not served by the baccalaureate institution.

198 (C) *Eastern West Virginia Community and Technical*  
199 *College.* --

200 Eastern West Virginia Community and Technical College  
201 is a free-standing state institution of higher education seeking  
202 independent accreditation. The president and the governing  
203 board of Eastern Community and Technical College are  
204 responsible for achieving independent accreditation and  
205 adhering to the essential conditions pursuant to section three  
206 of this article.

207 (D) *Mountwest Community and Technical College.* --

208 (i) Mountwest Community and Technical College is an  
209 independently accredited state institution of higher education  
210 which may maintain an association with Marshall University  
211 subject to the provisions of section twelve of this article. The  
212 president and the governing board of the community and  
213 technical college are responsible for maintaining independent  
214 accreditation and adhering to the essential conditions  
215 pursuant to section three of this article.

216 (ii) Marshall University may continue associate degree  
217 programs in areas of particular institutional strength which  
218 are closely articulated to its baccalaureate programs and  
219 missions or which are of a high-cost nature and can best be  
220 provided in direct coordination with a baccalaureate  
221 institution. Any such program shall be delivered under the

222 authority of the council and through contract with Mountwest  
223 Community and Technical College. The terms of the  
224 contract shall be negotiated between the governing boards of  
225 the community and technical college and Marshall  
226 University. The final contract may not be implemented until  
227 approved by the council except that any contract between the  
228 community and technical college and Marshall University  
229 related to program delivery under the terms of this section in  
230 effect on July 1, 2008, shall continue in effect until July 1,  
231 2009, unless amended or revoked before that date by mutual  
232 agreement of the contract parties with approval by the  
233 council. Such a program shall be evaluated according to the  
234 benchmarks and indicators for community and technical  
235 college education developed by the council. If the council  
236 determines that the program is making insufficient progress  
237 toward accomplishing the benchmarks, the program shall  
238 thereafter be delivered by Mountwest Community and  
239 Technical College.

240 (iii) *Dual credit course delivery agreements.* --

241 (I) Nothing in this article alters or abrogates any  
242 agreement in place on the effective date of this section  
243 between Marshall University and Mountwest Community and  
244 Technical College relating to delivery of dual credit courses  
245 as defined in section two, article one of this chapter;

246 (II) The community and technical college may deliver  
247 technical courses that are part of a certificate or associate  
248 degree program as early entrance or dual credit courses for  
249 high school students; and

250 (III) Subject to an agreement between the baccalaureate  
251 institution and the community and technical college, the latter  
252 may deliver early entrance and dual credit courses as defined  
253 in section two, article one of this chapter to students in high  
254 schools which are not served by the baccalaureate institution.

255           (E) *New River Community and Technical College.* --

256           (i) New River Community and Technical College is an  
257 independently accredited state institution of higher education  
258 which may maintain an association with Bluefield State  
259 College subject to the provisions of section twelve of this  
260 article. The community and technical college is  
261 headquartered in or near Beckley and incorporates the  
262 campuses of Greenbrier Community College Center of New  
263 River Community and Technical College and Nicholas  
264 Community College Center of New River Community and  
265 Technical College.

266           (ii) The president and the governing board of New River  
267 Community and Technical College are responsible for  
268 maintaining independent accreditation and adhering to the  
269 essential conditions pursuant to section three of this article.

270           (iii) Bluefield State College may continue associate  
271 degree programs in areas of particular institutional strength  
272 which are closely articulated to its baccalaureate programs  
273 and missions or which are of a high-cost nature and can best  
274 be provided through direct coordination with a baccalaureate  
275 institution. Any such program shall be delivered under the  
276 authority of the council and through contract with the  
277 community and technical college. The terms of the contract  
278 shall be negotiated between the governing boards of the  
279 community and technical college and Bluefield State College.  
280 The final contract may not be implemented until approved by  
281 the council except that any contract between the community  
282 and technical college and Bluefield State College related to  
283 program delivery under the terms of this section in effect on  
284 the July 1, 2008, shall continue in effect until July 1, 2009,  
285 unless amended or revoked before that date by mutual  
286 agreement of the contract parties with approval by the  
287 council. Such a program shall be evaluated according to the  
288 benchmarks and indicators for community and technical

289 college education developed by the council. If the council  
290 determines that the program is making insufficient progress  
291 toward accomplishing the benchmarks, the program shall  
292 thereafter be delivered by New River Community and  
293 Technical College.

294 (iv) Bluefield State College may continue the associate of  
295 science degree in nursing which is an existing nationally  
296 accredited associate degree program in an area of particular  
297 institutional strength and which is closely articulated to the  
298 baccalaureate program and mission. The program is of a  
299 high-cost nature and can best be provided through direct  
300 administration by a baccalaureate institution. This program  
301 may not be transferred to New River Community and  
302 Technical College or any other community and technical  
303 college as long as the program maintains national  
304 accreditation and is seamlessly coordinated into the  
305 baccalaureate program at the institution.

306 (v) New River Community and Technical College  
307 participates in the planning and development of a unified  
308 effort involving multiple providers to meet the documented  
309 education and work force development needs in the region.  
310 Nothing in this subdivision prohibits or limits any existing,  
311 or the continuation of any existing, affiliation between  
312 Mountain State University, West Virginia University Institute  
313 of Technology and West Virginia University. The objective  
314 is to assure students and employers in the area that there is  
315 coordination and efficient use of resources among the  
316 separate programs and facilities, existing and planned, in the  
317 Beckley area.

318 (F) *Pierpont Community and Technical College.* --

319 (i) Pierpont Community and Technical College is an  
320 independent state institution of higher education seeking  
321 independent accreditation. The president and the governing

322 board of Pierpont Community and Technical College,  
323 assisted by the president and governing board of Fairmont  
324 State University, are responsible for the community and  
325 technical college achieving independent accreditation and  
326 adhering to the essential conditions pursuant to sections three  
327 and thirteen of this article.

328 (ii) Fairmont State University may continue associate  
329 degree programs in areas of particular institutional strength  
330 which are closely articulated to their baccalaureate programs  
331 and missions or which are of a high-cost nature and can best  
332 be provided in direct coordination with a baccalaureate  
333 institution. Any such program shall be delivered under the  
334 authority of the council and through contract with the  
335 community and technical college. The terms of the contract  
336 shall be negotiated between the council and the governing  
337 board of Fairmont State University. The final contract may  
338 not be implemented until approved by the council except that  
339 any contract between the community and technical college  
340 and Fairmont State University related to program delivery  
341 under the terms of this section in effect on July 1, 2008, shall  
342 continue in effect until July 1, 2009, unless amended or  
343 revoked before that date by mutual agreement of the contract  
344 parties with approval by the council. Such a program shall be  
345 evaluated according to the benchmarks and indicators for  
346 community and technical college education developed by the  
347 council. Such a program shall be evaluated according to the  
348 benchmarks and indicators for community and technical  
349 college education developed by the council. If the council  
350 determines that the program is making insufficient progress  
351 toward accomplishing the benchmarks, the program shall  
352 thereafter be delivered by the community and technical  
353 college.

354 (iii) *Dual credit course delivery agreements.* --

355 (I) Nothing in this article alters or abrogates any  
356 agreement in place on the effective date of this section

357 between Fairmont State University and Pierpont Community  
358 and Technical College relating to delivery of dual credit  
359 courses as defined in section two, article one of this chapter;

360 (II) The community and technical college may deliver  
361 technical courses that are part of a certificate or associate  
362 degree program as early entrance or dual credit courses for  
363 high school students; and

364 (III) Subject to an agreement between the baccalaureate  
365 institution and the community and technical college, the latter  
366 may deliver early entrance and dual credit courses as defined  
367 in section two, article one of this chapter to students in high  
368 schools which are not served by the baccalaureate institution.

369 (G) *Southern West Virginia Community and Technical*  
370 *College.* -- Southern West Virginia Community and  
371 Technical College is an independently-accredited, free-  
372 standing state institution of higher education. The president  
373 and the governing board of Southern West Virginia  
374 Community and Technical College are responsible for  
375 maintaining independent accreditation and adhering to the  
376 essential conditions pursuant to section three of this article.

377 (H) *West Virginia Northern Community and Technical*  
378 *College.* -- West Virginia Northern 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 the community and technical  
382 college are responsible for maintaining independent  
383 accreditation and adhering to the essential conditions  
384 pursuant to section three of this article.

385 (I) *Kanawha Valley Community and Technical College.* --

386 (i) Kanawha Valley State Community and Technical  
387 College is an independently accredited state institution of  
388 higher education which may maintain an association with

389 West Virginia State University subject to the provisions of  
390 section twelve of this article. The president and the  
391 governing board of the community and technical college are  
392 responsible for maintaining independent accreditation and  
393 adhering to the essential conditions pursuant to section three  
394 of this article.

395 (ii) West Virginia State University may continue  
396 associate degree programs in areas of particular institutional  
397 strength which are closely articulated to its baccalaureate  
398 programs and missions or which are of a high-cost nature and  
399 can best be provided in direct coordination with a  
400 baccalaureate institution. Any such program shall be  
401 delivered under the authority of the council and through  
402 contract with the community and technical college. The  
403 terms of the contract shall be negotiated between the  
404 governing boards of the community and technical college and  
405 West Virginia State University. The final contract may not  
406 be implemented until approved by the council except that any  
407 contract between the community and technical college and  
408 West Virginia State University related to program delivery  
409 under the terms of this section in effect on July 1, 2008, shall  
410 continue in effect until July 1, 2009, unless amended or  
411 revoked before that date by mutual agreement of the contract  
412 parties with approval by the council. Such a program shall be  
413 evaluated according to the benchmarks and indicators for  
414 community and technical college education developed by the  
415 council. If the council determines that the program is making  
416 insufficient progress toward accomplishing the benchmarks,  
417 the program shall thereafter be delivered by the community  
418 and technical college.

419 (iii) *Dual credit course delivery agreements.* --

420 (I) Nothing in this article alters or abrogates any  
421 agreement in place on the effective date of this section  
422 between West Virginia State University and Kanawha Valley  
423 Community and Technical College relating to delivery of

424 dual credit courses as defined in section two, article one of  
425 this chapter;

426 (II) The community and technical college may deliver  
427 technical courses that are part of a certificate or associate  
428 degree program as early entrance or dual credit courses for  
429 high school students; and

430 (III) Subject to an agreement between the baccalaureate  
431 institution and the community and technical college, the latter  
432 may deliver early entrance and dual credit courses as defined  
433 in section two, article one of this chapter to students in high  
434 schools which are not served by the baccalaureate institution.

435 (J) *West Virginia University at Parkersburg.* --

436 (i) West Virginia University at Parkersburg is an  
437 independently accredited state institution of higher education  
438 which may maintain an association with West Virginia  
439 University subject to the provisions of section twelve of this  
440 article. The president and the governing board of the  
441 community and technical college are responsible for  
442 maintaining independent accreditation and adhering to the  
443 essential conditions pursuant to section three of this article.

444 (ii) Any contract between the community and technical  
445 college and West Virginia University related to program  
446 delivery under the authority of the council or related to  
447 delivery of baccalaureate programs, in effect on July 1, 2008,  
448 shall continue in effect unless amended or revoked by mutual  
449 agreement of the contract parties with approval by the  
450 council.

451 (iii) In recognition of the unique and essential part West  
452 Virginia University at Parkersburg plays in providing  
453 education services in its region, the community and technical  
454 college may continue delivering baccalaureate degree  
455 programs offered at the institution on the effective date of  
456 this section, may implement additional baccalaureate



457 programs with the approval of the commission and is  
458 strongly encouraged:

459 (I) To continue and expand its role as a higher education  
460 center pursuant to subsection (c) of this section; and

461 (II) To broker from West Virginia University and other  
462 higher education institutions, as appropriate, additional  
463 baccalaureate level degree programs the community and  
464 technical college determines are needed in its service region.

465 (III) Any baccalaureate degree programs offered at the  
466 community and technical college shall be delivered under the  
467 authority of the commission. The program shall be evaluated  
468 according to the benchmarks and indicators for baccalaureate  
469 education developed by the commission.



## CHAPTER 70

**(Com. Sub. for H. B. 4145 - By Delegates  
Aquina, Fleischauer, Eldridge and D. Walker)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 26, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new section, designated §18B-4-9, relating  
to requiring the Commission and Council to establish and  
implement measures to provide services and facilities to assist  
student veterans at state institutions of higher education; and  
providing for annual reports to the Legislature.

*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-4-9, to read as follows:

#### ARTICLE 4. GENERAL ADMINISTRATION.

##### **§18B-4-9. Development of services and facilities for student veterans.**

1           (a) *Legislative findings.* -- The Legislature finds that  
2 veterans of the Armed Forces of the United States that attend  
3 institutions of higher education in this state have many  
4 unique needs, issues and concerns that most traditional  
5 students do not have. Student veterans that are returning to  
6 fulfill their needs for higher education who have been or  
7 during their pursuit of higher education may be deployed to  
8 active duty often face unique issues and concerns that are  
9 unprecedented and unique to the current generation of  
10 veterans of the post 9/11 era of service in the Armed Forces.  
11 Many of these veterans have had or will be subject to  
12 multiple deployments to active duty, including overseas  
13 deployment, resulting in many unique issues and challenges  
14 in their pursuit of higher education.

15           (b) *Legislative intent.* -- It is the intent of the Legislature  
16 that state institutions of higher education provide adequate  
17 services and facilities for student veterans in order to better  
18 serve their unique issues and needs and to make West  
19 Virginia's state institutions of higher education veteran-  
20 friendly.

21           (c) The Commission and Council each shall establish and  
22 implement measures in the state institutions of higher  
23 education under their respective jurisdictions to assure that  
24 veterans enrolled in the institutions receive services and are  
25 provided facilities appropriate for their unique needs, that  
26 student veterans complete programs of study and earn

27 degrees, and that the institutions become veteran-friendly by  
28 actively and effectively providing academic and social  
29 support and assistance to student veterans. The measures  
30 shall include, but are not limited to, the following:

31 (1) Establishing veteran-friendly community and  
32 technical college degree programs which recognize and  
33 award academic credit toward degrees for various types of  
34 technical and vocational military training and experience;

35 (2) Developing policies for each state institutions of  
36 higher education to grant academic credit for Armed Forces  
37 experiences;

38 (3) Developing programs to facilitate student veterans in  
39 sharing their unique knowledge and experience in the  
40 military through public school programs and local  
41 community organizations;

42 (4) Establishing and sponsoring an organization for  
43 student veterans on campus and encouraging other veteran-  
44 friendly organizations;

45 (5) Appointing and training specific faculty within each  
46 degree program or major as liaisons and contacts for student  
47 veterans;

48 (6) Providing information about the Regents Bachelor of  
49 Arts Degree program to student veterans and potential  
50 student veterans;

51 (7) Coordinating existing disability services on campus  
52 with veteran disability services available from the United  
53 States Department of Veterans Affairs, other federal and state  
54 agencies, and private resources;

55 (8) Providing counselors on each campus who are trained  
56 to effectively respond to the unique needs of veterans and to  
57 provide services or provide referrals to services to fulfill  
58 these needs for student veterans;

59 (9) Developing training materials on responding to  
60 student veteran needs to be available for continued  
61 professional development of counselors to student veterans;

62 (10) Facilitating regular statewide meetings for all  
63 personnel at state institutions of higher education who  
64 regularly provide specific services to student veterans to  
65 discuss and develop best practices, exchange ideas and  
66 experiences, and hear presentations by individuals with  
67 generally accepted expertise in areas of the various needs of  
68 student veterans;

69 (11) Establishing a procedure to periodically apprise  
70 appropriate state and federal agencies of the status of student  
71 veterans in West Virginia;

72 (12) Establishing a program to create a collaborative  
73 relationship between student veterans and alumni of the  
74 institution, and with prospective employers to facilitate and  
75 provide employment as well as social opportunities to  
76 graduating student veterans; and

77 (13) Developing and facilitating communications  
78 between state institutions of higher education and various  
79 veteran organizations in the state to advance veteran causes  
80 that benefit student veterans.

81 (d) The Commission and Council jointly shall submit a  
82 report to the Legislature on September 1, annually, on the  
83 progress toward implementing the provisions of this section.

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## CHAPTER 71

**(Com. Sub. for S. B. 543 - By Senators  
Plymale, Unger, Jenkins and Foster)**

[Passed March 5, 2010; in effect from passage.]  
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §18B-17-2 of the Code of West Virginia, 1931, as amended, relating to authorizing a rules for the Higher Education Policy Commission regarding the Energy and Water Savings Revolving Loan Fund Program and PROMISE (Providing Real Opportunities for Maximizing In-State Student Excellence) scholarship.

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

That §18B-17-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **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  
2       October 15, 2004, relating to the Higher Education Policy  
3       Commission (Underwood-Smith Teacher Scholarship  
4       Program rule) is authorized.

5       (b) The legislative rule filed in the State Register on  
6       October 15, 2004, relating to the Higher Education Policy  
7       Commission (West Virginia Engineering, Science and  
8       Technology Scholarship Program rule) is authorized.

9 (c) The legislative rule filed in the State Register on  
10 October 15, 2004, relating to the Higher Education Policy  
11 Commission (Medical Education Fee and Medical Student  
12 Loan Program rule) is authorized.

13 (d) The legislative rule filed in the State Register on  
14 October 27, 2005, relating to the Higher Education Policy  
15 Commission (Authorization of degree-granting institutions)  
16 is authorized.

17 (e) The legislative rule filed in the State Register on  
18 August 23, 2006, relating to the Higher Education Policy  
19 Commission (West Virginia Higher Education Grant  
20 Program) is authorized.

21 (f) The legislative rule filed in the State Register on  
22 January 4, 2008, relating to the Higher Education Policy  
23 Commission (Providing Real Opportunities for Maximizing  
24 In-state Student Excellence - PROMISE) is authorized.

25 (g) The legislative rule filed in the State Register on  
26 August 25, 2008, relating to the Higher Education Policy  
27 Commission (Research Trust Program) is authorized.

28 (h) The legislative rule filed in the State Register on  
29 January 8, 2009, relating to the Higher Education Policy  
30 Commission (Guidelines for Governing Boards in Employing  
31 and Evaluating Presidents) is authorized.

32 (i) The legislative rule filed in the State Register on  
33 September 10, 2008, relating to the Higher Education Policy  
34 Commission (Medical Student Loan Program) is authorized,  
35 with the following amendment:

36 On page 2, subsection 5.1, following the words “financial  
37 aid office” by inserting a new subdivision 5.1.3 to read as  
38 follows: “United States citizenship or legal immigrant status  
39 while actively pursuing United States citizenship.”

40 (j) The legislative rule filed in the State Register on  
41 December 1, 2008, relating to the Higher Education Policy  
42 Commission (West Virginia Higher Education Grant  
43 Program) is authorized.

44 (k) The legislative rule filed in the State Register on  
45 January 26, 2009, relating to the Higher Education Policy  
46 Commission (Accountability System) is authorized.

47 (l) The legislative rule filed in the State Register on May  
48 20, 2009, relating to the Higher Education Policy  
49 Commission (Energy and Water Savings Revolving Loan  
50 Fund Program) is authorized.

51 (m) The legislative rule filed in the State Register on  
52 January 27, 2010, relating to the Higher Education Policy  
53 Commission (Providing Real Opportunities for Maximizing  
54 In-state Student Excellence - PROMISE) is authorized.



## CHAPTER 72

**(Com. Sub. for H. B. 4130 - By Mr. Speaker,  
Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 23, 2010.]

AN ACT to amend and reenact §3-1A-1, §3-1A-4 and §3-1A-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §3-12-1, §3-12-2, §3-12-3, §3-12-4, §3-12-5, §3-12-6, §3-12-7, §3-12-8, §3-12-9, §3-12-10, §3-12-11, §3-12-12, §3-12-13, §3-12-14,

§3-12-15, §3-12-16 and §3-12-17, all relating to creating the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program; giving additional duties and per diem pay to the State Election Commission; authorizing the State Election Commission to use video, telephone and Internet conferencing; providing alternative public campaign financing option for candidates for the West Virginia Supreme Court of Appeals in 2012; setting forth short title and certain legislative findings and declarations; defining terms; specifying that the provisions of the act are applicable to candidates for the West Virginia Supreme Court of Appeals in the 2012 primary and general elections; establishing the Supreme Court of Appeals Public Campaign Financing Fund and sources of revenue for the fund; authorizing transfer from the Purchasing Card Administration Fund to the fund for three years; requiring an applicant for public campaign financing to complete a declaration of intent and setting forth the manner in which an application for funding may be made; setting forth eligibility criteria for qualifying candidates; allowing participating candidates to raise funds from private sources and spend exploratory contributions; requiring candidates seeking public campaign funds to collect a required number of qualifying contributions; requiring candidates to provide detailed receipts to contributors and to the State Election Commission for exploratory and qualifying contributions; requiring participating candidates to comply with all provisions of the act; requiring the State Election Commission to certify eligible candidates and setting forth the procedure for certification; providing for challenges to certification; providing for revocation of certification; providing for withdrawal from program; providing for distribution of funds from the Public Campaign Financing Fund to qualified candidates for funding election campaigns; specifying the amount of funds available for each candidate and when the funds become available; setting forth restrictions on participating candidates' contributions and spending; prohibiting participating candidates from accepting private contributions other than as specifically set forth in the act; providing for



repayment of funds under certain circumstances; prohibiting the use of personal funds for certain purposes; permitting qualified candidates to raise funds from private sources when there is insufficient money in the Public Campaign Financing Fund to make a complete distribution to all qualified candidates; requiring certain disclosures; requiring candidates to keep records and report to the State Election Commission; providing for additional funds when independent expenditures or opponent expenditures exceed certain limits; setting forth certain duties of the State Election Commission and the Secretary of State; authorizing emergency and legislative rules; authorizing the creation of a voters' guide; providing for the deposit of certain revenue into the fund; requiring repayment of excessive expenditures by candidates; providing both civil and criminal penalties for violations of the act; and expiring the act in 2013.

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

That §3-1A-1, §3-1A-4 and §3-1A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §3-12-1, §3-12-2, §3-12-3, §3-12-4, §3-12-5, §3-12-6, §3-12-7, §3-12-8, §3-12-9, §3-12-10, §3-12-11, §3-12-12, §3-12-13, §3-12-14, §3-12-15, §3-12-16 and §3-12-17, all to read as follows:

**Article**

**1A. State Election Commission and Secretary of State.**

**12. West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program.**

**ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.**

§3-1A-1. Election commission continued; composition; chairperson; per diem; traveling expenses.

§3-1A-4. Office and meetings of commission.

§3-1A-5. Powers and duties of commission; legislative rules.

**§3-1A-1. Election commission continued; composition; chairperson; per diem; traveling expense.**

1       The “State Election Commission,” heretofore created, is  
2 continued and is composed of the Secretary of State, and four  
3 persons appointed by the Governor, by and with the advice  
4 and consent of the Senate. The commission shall from this  
5 membership elect a chairman for a term of two years. Each  
6 member of the commission shall be reimbursed for all  
7 reasonable and necessary expenses actually paid the per diem  
8 and expense reimbursement established for the Legislature in  
9 section seven, article two-a, chapter four of this code in the  
10 performance of his or her duties as a member of the  
11 commission.

**§3-1A-4. Office and meetings of commission.**

1       (a) The office and place of meeting of the commission is  
2 the office of the Secretary of State in the State Capitol. The  
3 commission may also conduct meetings via video, telephone  
4 or Internet conferencing.

5       (b) The commission shall hold such meetings as may be  
6 called by the chairman, the Governor or the Secretary of  
7 State.

**§3-1A-5. Powers and duties of commission; legislative rules.**

1       (a) The commission has the power and duty to approve or  
2 disapprove applications for approval of any voting machine  
3 as provided in section seven, article four of this chapter.

4       (b) The commission also shall serve as a body advisory  
5 to the Secretary of State, and, as such, shall have the  
6 following powers and duties:

7       (1) To recommend policies and practices pertaining to the  
8 registration of voters and the conduct of elections generally;

9       (2) To review the work of the office of Secretary of State  
10 pertaining to the duties of that office with respect to

11 elections, and for this purpose to have access at reasonable  
12 times to pertinent records, books, papers and documents;

13 (3) To consider and study the election practices of other  
14 jurisdictions, with a view to determining the techniques used  
15 in eliminating fraud in elections and in simplifying election  
16 procedures;

17 (4) To advise or make recommendations to the Governor  
18 relative to election practices and policy in the state;

19 (5) To advise the Secretary of State on carrying out the  
20 duties to which he or she is assigned pursuant to the West  
21 Virginia Supreme Court of Appeals Public Campaign  
22 Financing Pilot Program, established in article twelve of this  
23 chapter;

24 (6) To carry out the duties assigned to the commission by  
25 the West Virginia Supreme Court of Appeals Public  
26 Campaign Financing Pilot Program, established in article  
27 twelve of this chapter; and

28 (7) To keep minutes of the transactions of each meeting  
29 of the commission, which shall be public records and filed  
30 with the Secretary of State.

31 (c) It is the commission's further duty to prepare and  
32 distribute in its name, within available appropriations and  
33 upon the recommendation of the Secretary of State,  
34 nonpartisan educational material to inform voters of the  
35 importance of voting, to encourage voters to vote, to inform  
36 voters of election laws and procedures, and to inform voters  
37 of the effect of any public question, Constitutional  
38 amendment or bond issue that is to be voted upon by all the  
39 voters of the state and that has been authorized to be placed  
40 upon the ballot by the Legislature, and manuals to assist  
41 county commissions, ballot commissioners, circuit and

42 county clerks and other election officials in the proper  
43 performance of their duties in the conduct of elections.

44 (d) The commission shall propose for promulgation  
45 emergency and legislative rules, in accordance with the  
46 provisions of article three, chapter twenty-nine-a of this code,  
47 as may be necessary to standardize and make effective the  
48 administration of the provisions of article eight of this  
49 chapter, and may propose for promulgation other rules, in  
50 accordance with the provisions of article three, chapter  
51 twenty-nine-a of this code, relating to the conduct and  
52 administration of elections as the commission determines to  
53 be advisable.

54 (e) Meetings of the commission conducted for the  
55 purpose of confirming the initial eligibility of individual  
56 candidates to receive public campaign financing under the  
57 West Virginia Supreme Court of Appeals Public Campaign  
58 Financing Fund; the authorization of supplemental  
59 distributions from the fund; and the candidate's ability to  
60 receive supplemental distributions pursuant to the provisions  
61 of chapter twelve of this article are expressly exempted from  
62 the public notice and public meeting requirements of article  
63 nine-a, chapter six of this code.

**ARTICLE 12. WEST VIRGINIA SUPREME COURT OF  
APPEALS PUBLIC CAMPAIGN  
FINANCING PILOT PROGRAM.**

- §3-12-1. Short title.
- §3-12-2. Legislative findings and declarations.
- §3-12-3. Definitions.
- §3-12-4. Alternative public campaign financing option.
- §3-12-5. Supreme Court of Appeals Public Campaign Financing Fund.
- §3-12-6. Sources of revenue for the fund.
- §3-12-7. Declaration of intent.
- §3-12-8. Exploratory period; contributions; expenditures.
- §3-12-9. Qualifying contributions.
- §3-12-10. Certification of candidates.
- §3-12-11. Schedule and amount of Supreme Court of Appeals Public Campaign Financing Fund payments; additional funds.

- §3-12-12. Restrictions on contributions and expenditures.
- §3-12-13. Reporting requirements.
- §3-12-14. Duties of the State Election Commission; Secretary of State.
- §3-12-15. Criminal penalties.
- §3-12-16. Civil penalties.
- §3-12-17. Expiration of article.

### **§3-12-1. Short title.**

1           This article is known as the “West Virginia Supreme  
2   Court of Appeals Public Campaign Financing Pilot Program.”  
3   The pilot program begins with the exploratory period for the  
4   2012 primary election and continues through the 2012  
5   general election.

### **§3-12-2. Legislative findings and declarations.**

1           The Legislature finds and declares the following:

2           (1) Current campaign finance laws permit candidates to  
3   spend unlimited amounts of money raised from private  
4   sources;

5           (2) Current campaign finance laws permit certain  
6   independent parties to raise and spend unlimited amounts of  
7   money to influence the outcome of elections;

8           (3) Over the last decade, fundraising and campaign  
9   expenditures in elections for a seat on the Supreme Court of  
10   Appeals have dramatically increased in West Virginia;

11          (4) In 2000, candidates running for a seat on the Supreme  
12   Court of Appeals raised a total of \$1.4 million;

13          (5) In 2004, candidates running for a seat on the Supreme  
14   Court of Appeals raised a total of \$2.8 million;

15          (6) In 2008, candidates running for a seat on the Supreme  
16   Court of Appeals raised a total of \$3.3 million;

17           (7) As spending by candidates and independent parties  
18 increases, so does the perception that contributors and  
19 interested third parties hold too much influence over the  
20 judicial process;

21           (8) The detrimental effects of spending large amounts by  
22 candidates and independent parties are especially problematic  
23 in judicial elections because impartiality is uniquely  
24 important to the integrity and credibility of courts;

25           (9) An alternative public campaign financing option for  
26 candidates running for a seat on the Supreme Court of  
27 Appeals will ensure the fairness of democratic elections in  
28 this state, protect the Constitutional rights of voters and  
29 candidates from the detrimental effects of increasingly large  
30 amounts of money being raised and spent to influence the  
31 outcome of elections, protect the impartiality and integrity of  
32 the judiciary, and strengthen public confidence in the  
33 judiciary; and

34           (10) Funding the “West Virginia Supreme Court of  
35 Appeals Public Campaign Financing Pilot Program” from a  
36 wide range of revenue sources furthers important state  
37 interests in protecting the integrity of judicial elections and  
38 serves to protect the public interest.

### **§3-12-3. Definitions.**

1           As used in this article, the following terms and phrases  
2 have the following meanings:

3           (1) “Candidate’s committee” means a political committee  
4 established with the approval of or in cooperation with a  
5 candidate or a prospective candidate to explore the  
6 possibilities of seeking a particular office or to support or aid  
7 his or her nomination or election to an office in an election  
8 cycle. If a candidate directs or influences the activities of

9 more than one active committee in a current campaign, those  
10 committees shall be considered one committee for the  
11 purpose of contribution limits.

12 (2) "Certified candidate" means an individual seeking  
13 election to the West Virginia Supreme Court of Appeals who  
14 has been certified in accordance with section ten of this  
15 article as having met all of the requirements for receiving  
16 public campaign financing from the fund.

17 (3) "Contribution" means a gift subscription, assessment,  
18 payment for services, dues, advance, donation, pledge,  
19 contract, agreement, forbearance or promise of money or  
20 other tangible thing of value, whether conditional or legally  
21 enforceable, or a transfer of money or other tangible thing of  
22 value to a person, made for the purpose of influencing the  
23 nomination, election or defeat of a candidate. An offer or  
24 tender of a contribution is not a contribution if expressly and  
25 unconditionally rejected or returned. A contribution does not  
26 include volunteer personal services provided without  
27 compensation: *Provided*, That a nonmonetary contribution  
28 is to be considered at fair market value for reporting  
29 requirements and contribution limitations.

30 (4) "Exploratory contribution" means a contribution of no  
31 more than \$1,000 made by an individual adult, including a  
32 participating candidate and members of his or her immediate  
33 family, during the exploratory period. Exploratory contributions  
34 may not exceed \$20,000 in the aggregate.

35 (5) "Exploratory period" means the period during which  
36 a participating candidate may raise and spend exploratory  
37 contributions to examine his or her chances of election and to  
38 qualify for public campaign financing under this article. The  
39 exploratory period begins on January 1 the year before the  
40 primary in which the candidate may run for Justice of the  
41 Supreme Court of Appeals and ends on the last Saturday in  
42 January of the election year.

43           (6) “Financial agent” means any individual acting for and  
44 by himself or herself, or any two or more individuals acting  
45 together or cooperating in a financial way to aid or take part  
46 in the nomination or election of any candidate for public  
47 office, or to aid or promote the success or defeat of any  
48 political party at any election.

49           (7) “Fund” means the Supreme Court of Appeals Public  
50 Campaign Financing Fund created by section five of this  
51 article.

52           (8) “General election campaign period” means the period  
53 beginning the day after the primary election and ending on  
54 the day of the general election.

55           (9) “Independent expenditure” means an expenditure by  
56 a person:

57           (A) Expressly advocating the election or defeat of a  
58 clearly identified candidate; and

59           (B) That is not made in concert or cooperation with or at  
60 the request or suggestion of such candidate, his or her agents,  
61 the candidate’s authorized political committee or a political  
62 party committee or its agents.

63           Supporting or opposing the election of a clearly identified  
64 candidate includes supporting or opposing the candidates of  
65 a political party. An expenditure which does not meet the  
66 criteria for an independent expenditure is considered a  
67 contribution.

68           (10) “Immediate family” or “immediate family members”  
69 means the spouse, parents, step-parents, siblings and children  
70 of the participating candidate.

71           (11) “Nonparticipating candidate” means a candidate who  
72 is:



73 (A) Seeking election to the Supreme Court of Appeals;

74 (B) Is neither certified nor attempting to be certified to  
75 receive public campaign financing from the fund; and

76 (C) Has an opponent who is a participating or certified  
77 candidate.

78 (12) “Participating candidate” means a candidate who is  
79 seeking election to the Supreme Court of Appeals and is  
80 attempting to be certified in accordance with section ten of  
81 this article to receive public campaign financing from the  
82 fund.

83 (13) “Person” means an individual, partnership,  
84 committee, association and any other organization or group  
85 of individuals.

86 (14) “Primary election campaign period” means the  
87 period beginning on the first day of the primary election  
88 filing period, as determined under section seven, article five  
89 of this chapter, and ending on the day of the subsequent  
90 primary election.

91 (15) “Qualifying contribution” means a contribution  
92 received from a West Virginia registered voter of not less  
93 than \$1 nor more than \$100 in the form of cash, check or  
94 money order, made payable to a participating candidate or the  
95 candidate’s committee, or in the form of an electronic  
96 payment or debit or credit card payment, received during the  
97 qualifying period.

98 (16) “Qualifying period” means the period during which  
99 participating candidates may raise and spend qualifying  
100 contributions in order to qualify to receive public campaign  
101 financing.

102 (A) For candidates seeking nomination on the primary  
103 election ballot, the qualifying period begins on September 1  
104 preceding the election year and ends on the last Saturday in  
105 January of the election year.

106 (B) For candidates, other than those nominated during the  
107 primary election, seeking to be placed on the general election  
108 ballot, the qualifying period begins on June 1 of the election  
109 year and ends on October 1 of the election year.

**§3-12-4. Alternative public campaign financing option.**

1 This article establishes an alternative public campaign  
2 financing option available to candidates for election to the  
3 office of Justice of the West Virginia Supreme Court of  
4 Appeals for the 2012 primary and general elections.  
5 Candidates electing the alternative public campaign financing  
6 option shall comply with all other applicable election and  
7 campaign laws and rules.

**§3-12-5. Supreme Court of Appeals Public Campaign Financing Fund.**

1 There is established within the State Treasury a special  
2 revenue fund to be known as the “Supreme Court of Appeals  
3 Public Campaign Financing Fund” for the dual purpose of  
4 providing public financing for the election campaigns of  
5 certified candidates under the provisions of this article and of  
6 paying the administrative and enforcement costs of the  
7 Secretary of State and State Election Commission related to  
8 this article. All moneys collected under the provisions of this  
9 article shall be deposited in the fund, which shall be  
10 administered by the State Election Commission. Funds may  
11 also be accepted from any gift, grant, bequest, endowment  
12 fund or donation which may be received by the State Election  
13 Commission from any person, firm, foundation or  
14 corporation. Any balance, including accrued interest or other

15 earnings in the fund at the end of any fiscal year do not revert  
16 to the General Revenue Fund, but shall remain in the fund.  
17 Expenditures may be made from the fund only for the  
18 purposes set forth in this article and in accordance with the  
19 provisions of article three, chapter twelve of this code and  
20 upon fulfillment of the provisions of article two, chapter  
21 eleven-b of this code.

**§3-12-6. Sources of revenue for the fund.**

1 Revenue from the following sources shall be deposited in  
2 the fund:

3 (1) All exploratory and qualifying contributions in excess  
4 of the established maximums;

5 (2) Money returned by participating or certified  
6 candidates who fail to comply with the provisions of this  
7 article;

8 (3) Unspent or unobligated moneys allotted to certified  
9 candidates and remaining unspent or unobligated on the date  
10 of the general election for which the money was distributed;

11 (4) If a certified candidate loses, all remaining unspent or  
12 unobligated moneys after the primary election;

13 (5) Civil penalties levied by the State Election  
14 Commission against candidates for violations of this article;

15 (6) Civil penalties levied by the Secretary of State  
16 pursuant to section seven, article eight of this chapter;

17 (7) Voluntary donations made directly to the fund;

18 (8) Interest income;

19           (9) On or before July 1, 2010, and for two successive  
20 years thereafter, the State Auditor shall authorize the transfer  
21 of the amount of \$1 million from the Purchasing Card  
22 Administration Fund established in section ten-d, article  
23 three, chapter twelve of this code to the fund created by this  
24 article; and

25           (10) Money appropriated to the fund.

### **§3-12-7. Declaration of intent.**

1           A candidate desiring to receive campaign financing from  
2 the fund shall first file a declaration of intent before the end  
3 of the qualifying period and prior to collecting any qualifying  
4 contributions. The declaration shall be on a form prescribed  
5 by the State Election Commission and shall contain a  
6 statement that the candidate is qualified to be placed on the  
7 ballot, and, if elected, to hold the office sought and has  
8 complied with and will continue to comply with all  
9 requirements of this article, including contribution and  
10 expenditure restrictions. Contributions made prior to the  
11 filing of the declaration of intent are not qualifying  
12 contributions. Any contributions received by a candidate  
13 during any precandidacy period which preceded the  
14 exploratory period which remain unexpended at the time of  
15 the declaration of intent shall be considered exploratory funds  
16 and subject to the limits and provisions of section eight of  
17 this article.

### **§3-12-8. Exploratory period; contributions; expenditures.**

1           (a) A participating candidate or his or her committee may  
2 not accept, spend or obligate exploratory contributions  
3 exceeding \$20,000 in the aggregate, during the exploratory  
4 period. At the time the participating candidate formally  
5 declares his or her intent to qualify for public campaign  
6 financing, in accordance with section five of this article, any

7 unexpended or undedicated contributions received during any  
8 precandidacy period which preceded the exploratory period  
9 shall be deemed to be exploratory contributions for that  
10 candidate. The maximum individual exploratory contribution  
11 which may be accepted from any person including immediate  
12 family members is \$1,000. A participating candidate may  
13 loan, contribute or obligate up to \$1,000 of his or her own  
14 money for exploratory purposes. Any exploratory contributions  
15 received by the participating candidate in excess of \$20,000  
16 in the aggregate shall be sent to the Election Commission for  
17 deposit in the fund.

18 (b) Each exploratory contribution shall be acknowledged  
19 by a written receipt. Receipts for exploratory contributions  
20 of \$250 or more during an election cycle shall include the  
21 contributor's name, residence and mailing address, business  
22 affiliation and occupation. Receipts for exploratory  
23 contributions of less than \$250 shall include the contributor's  
24 name and the amount of the contribution, and otherwise  
25 comport with the disclosure and reporting requirements of  
26 section five-a, article eight of this chapter.

27 (c) An exploratory contribution from one person may not  
28 be made in the name of another person.

29 (d) At the beginning of each month a participating or  
30 certified candidate or his or her financial agent shall report all  
31 exploratory contributions, expenditures and obligations along  
32 with all receipts for contributions received during the prior  
33 month to the Secretary of State. Such reports shall be filed  
34 electronically: *Provided*, That a committee may apply for an  
35 exemption in case of hardship pursuant to subsection (c) of  
36 section five-b, article eight of this chapter. If the candidate  
37 decides not to run for office all unspent or unobligated  
38 exploratory contributions shall be sent to the State Election  
39 Commission for deposit in the fund. If the candidate decides  
40 to run for office as a nonparticipating candidate the unspent

41 or unobligated exploratory contributions shall be used in  
42 accordance with articles eight and twelve of this chapter.

**§3-12-9. Qualifying contributions.**

1 (a) A participating candidate or his or her candidate's  
2 committee may not accept more than one qualifying  
3 contribution from a single individual. A qualifying contribution  
4 may not be less than \$1 nor more than \$100. To be  
5 considered as a proper qualifying contribution, the qualifying  
6 contribution must be made by a registered West Virginia  
7 voter. A participating candidate shall collect qualifying  
8 contributions which in the aggregate are not less than  
9 \$35,000 nor more than \$50,000. Qualifying contributions in  
10 excess of \$50,000 shall be sent to the State Election  
11 Commission for deposit in the fund.

12 (b) Each qualifying contribution shall be acknowledged  
13 by a written receipt that includes:

14 (1) The printed name of the participating candidate on  
15 whose behalf the contribution is made and the signature of  
16 the person who collected the contribution for the candidate or  
17 his or her candidate's committee;

18 (2) For qualifying contributions of \$25 or more, the  
19 contributor's signature, printed name, street address, zip  
20 code, telephone number, occupation and name of employer;  
21 and for qualifying contributions of less than \$25, the  
22 contributor's signature, printed name, street address and zip  
23 code;

24 (3) A statement above the contributor's signature that:

25 (A) The contributor understands the purpose of the  
26 contribution is to assist the participating candidate in  
27 obtaining public campaign financing;

28 (B) The contribution was made without coercion;

29 (C) The contributor has not been reimbursed, received or  
30 promised anything of value for making the contribution; and

31 (4) One copy of the receipt shall be given to the  
32 contributor, one copy shall be retained by the candidate and  
33 one copy shall be sent by the candidate to the Secretary of  
34 State. A contribution which is not acknowledged by a  
35 written receipt in the form required by this subsection is not  
36 a qualifying contribution.

37 (c) During the qualifying period, a participating candidate  
38 or his or her candidate's committee must obtain at least five  
39 hundred qualifying contributions from registered West  
40 Virginia voters. A minimum of ten percent of the total  
41 number of qualifying contributions received by the candidate  
42 must be from each of the state's congressional districts.

43 (d) A participating candidate and each member of the  
44 candidate's immediate family who is a registered voter in this  
45 state may each make one qualifying contribution. A  
46 participating candidate may not use any other personal funds  
47 to satisfy the qualifying contributions requirements.

48 (e) A participating candidate may not reimburse, give or  
49 promise anything of value in exchange for a qualifying  
50 contribution.

51 (f) At the beginning of each month, a participating or  
52 certified candidate or his or her financial agent or committee  
53 shall report all qualifying contributions, expenditures and  
54 obligations along with all receipts for contributions received  
55 during the prior month to the Secretary of State. Such reports  
56 shall be filed electronically: *Provided*, That a committee may  
57 apply for an exemption in case of hardship pursuant to  
58 subsection (c) of section five-b, article eight of this chapter.

59 If the candidate decides not to run for office, all unspent or  
60 unobligated qualifying contributions shall be sent to the State  
61 Election Commission for deposit in the fund. If the candidate  
62 decides to run for office as a nonparticipating candidate, the  
63 unspent or unobligated qualifying contributions shall be used  
64 in accordance with articles eight and twelve of this chapter.

65 (g) All qualifying contributions collected and all  
66 expenditures by a participating candidate or his or her  
67 committee shall be reported to the Secretary of State no later  
68 than two business days after the close of the qualifying  
69 period.

**§3-12-10. Certification of candidates.**

1 (a) To be certified, a participating candidate shall apply  
2 to the State Election Commission for public campaign  
3 financing from the fund and file a sworn statement that he or  
4 she has complied and will comply with all requirements of  
5 this article throughout the applicable campaign.

6 (b) Upon receipt of a notice from the Secretary of State  
7 that a participating candidate has received the required  
8 number and amount of qualifying contributions, the State  
9 Election Commission shall determine whether the candidate  
10 or candidate's committee:

11 (1) Has signed and filed a declaration of intent as  
12 required by section seven of this article;

13 (2) Has obtained the required number and amount of  
14 qualifying contributions as required by section nine of this  
15 article;

16 (3) Has complied with the contribution restrictions of this  
17 article;



18           (4) Is eligible, as provided in section nine, article five of  
19 this chapter, to appear on the primary or general election  
20 ballot; and

21           (5) Has met all other requirements of this article.

22           (c) The State Election Commission shall process  
23 applications in the order they are received and shall verify a  
24 participating candidate's compliance with the requirements  
25 of subsection (b) of this section by using the verification and  
26 sampling techniques approved by the State Election  
27 Commission.

28           (d) The State Election Commission shall determine  
29 whether to certify a participating candidate as eligible to  
30 receive public campaign financing no later than three  
31 business days after the candidate or the candidate's  
32 committee makes his or her final report of qualifying  
33 contributions or, if a challenge is filed under subsection (g)  
34 of this section, no later than six business days after the  
35 candidate or the candidate's committee makes his or her final  
36 report of qualifying contributions. A certified candidate shall  
37 comply with the provisions of this article through the general  
38 election campaign period.

39           (e) No later than two business days after the State  
40 Election Commission certifies that a participating candidate  
41 is eligible to receive public campaign financing under the  
42 provisions of this section, the State Election Commission,  
43 acting in concert with the State Auditor's office and the State  
44 Treasurer's office, shall cause a check to be issued to the  
45 candidate's campaign depository account an amount equal to  
46 the initial public campaign financing benefit for which the  
47 candidate qualifies under section eleven of this article, minus  
48 the candidate's qualifying contributions, and shall notify all  
49 other candidates for the same office of its determination.

50 (f) If the candidate desires to receive public financing  
51 benefits by electronic transfer, the candidate shall include in  
52 his or her application sufficient information and authorization  
53 for the State Treasurer to transfer payments to his or her  
54 campaign depository account.

55 (g) Any person may challenge the validity of any  
56 contribution listed by a participating candidate by filing a  
57 written challenge with the State Election Commission setting  
58 forth any reason why the contribution should not be accepted  
59 as a qualifying contribution. If a contribution is challenged  
60 under this subsection, the State Election Commission shall  
61 decide the validity of the challenge no later than the end of  
62 the next business day after the day that the challenge is filed,  
63 unless the State Election Commission determines that the  
64 candidate whose contribution is challenged has both a  
65 sufficient qualifying number and amount of qualifying  
66 contributions to be certified as a candidate under this section  
67 without considering the challenge. Within five business days  
68 of a challenge, the candidate or candidate's committee who  
69 listed any contribution that is the subject of a challenge may  
70 file a report with the State Election Commission of an  
71 additional contribution collected pursuant to section nine of  
72 this article for consideration as a qualifying contribution.

73 (h) A candidate's certification and receipt of public  
74 campaign financing may be revoked by the State Election  
75 Commission, if the candidate violates any of the provisions  
76 of this article. A certified candidate who violates the  
77 provisions of this article shall repay all moneys received from  
78 the fund to the State Election Commission.

79 (i) The determination of any issue before the State  
80 Election Commission is the final administrative determination.  
81 Any meetings conducted by the State Elections Commission  
82 to certify a candidate's initial eligibility to receive funds  
83 under this article, or their eligibility to receive supplemental

84 funds or rescue funds under section eleven of this article shall  
85 not be subject the public notice and open meeting  
86 requirements of article nine-a, chapter six of this Code, but  
87 the Commission shall concurrently provide public notice of  
88 any decision and determination it makes which impacts the  
89 candidate's eligibility to receive initial funds or supplemental  
90 funds pursuant to the provisions of this article. Any person  
91 adversely affected by a decision of the State Election  
92 Commission under the provisions of this article may appeal  
93 that decision to the circuit court of Kanawha County.

94 (j) A candidate may withdraw from being a certified  
95 candidate and become a nonparticipating candidate at any  
96 time with the approval of the State Election Commission.  
97 Any candidate seeking to withdraw shall file a written  
98 request with the State Election Commission, which shall  
99 consider requests on a case-by-case basis. No certified  
100 candidate may withdraw until he or she has repaid all moneys  
101 received from the fund: *Provided*, That the State Election  
102 Commission may, in exceptional circumstances, waive the  
103 repayment requirement. The State Election Commission may  
104 assess a penalty not to exceed \$10,000 against any candidate  
105 who withdraws without approval.

**§3-12-11. Schedule and amount of Supreme Court of Appeals  
Public Campaign Financing Fund payments;  
additional funds.**

1 (a) The State Election Commission, acting in concert  
2 with the State Auditor's office and the State Treasurer's  
3 office, shall have a check issued within two business days  
4 after the date on which the candidate is certified, to make  
5 payments from the fund for the 2012 primary election  
6 campaign period available to a certified candidate.

7 (1) In a contested primary election, a certified candidate  
8 shall receive \$200,000 in initial campaign financing from the  
9 fund, minus the certified candidate's qualifying contributions.

10           (2) In an uncontested primary election, a certified  
11 candidate shall receive \$50,000 from the public campaign  
12 financing fund, minus the certified candidate's qualifying  
13 contributions.

14           (b) Within two business days after the primary election  
15 results are certified by the Secretary of State, the State  
16 Election Commission, acting in concert with the State  
17 Auditor's office and the State Treasurer's office, shall cause  
18 a check to be issued to make initial payments from the fund  
19 for the 2012 general election campaign period available to a  
20 certified candidate.

21           (1) In a contested general election, a certified candidate  
22 may receive from the fund an amount not to exceed  
23 \$350,000.

24           (2) In an uncontested general election, a certified  
25 candidate shall receive \$35,000 from the public campaign  
26 financing fund.

27           (c) The State Election Commission shall authorize the  
28 distribution of initial campaign financing moneys to certified  
29 candidates in equal amounts. The commission shall propose  
30 a legislative rule on distribution of funds.

31           (d) The State Election Commission may not authorize or  
32 direct the distribution of moneys to certified candidates in  
33 excess of the total amount of money deposited in the fund  
34 pursuant to section six of this article. If the commission  
35 determines that the money in the fund is insufficient to totally  
36 fund all certified candidates, the commission shall authorize  
37 the distribution of the remaining money proportionally,  
38 according to each candidate's eligibility for funding. Each  
39 candidate may raise additional money in the same manner as  
40 a nonparticipating candidate for the same office up to the  
41 unfunded amount of the candidate's eligible funding.

42 (e) If the commission determines from any reports filed  
43 pursuant to this chapter or by other reliable and verifiable  
44 information obtained through investigation that a  
45 nonparticipating candidate's campaign expenditures or  
46 obligations, in the aggregate, have exceeded by twenty  
47 percent the initial funding available under this section any  
48 certified candidate running for the same office, the commission  
49 shall authorize the release of additional funds in the amount  
50 of the reported excess to any opposing certified candidate for  
51 the same office.

52 (f) If the State Election Commission determines from any  
53 reports filed pursuant to this chapter or by other reliable and  
54 verifiable information obtained through investigation that  
55 independent expenditures on behalf of a nonparticipating  
56 candidate, either alone or in combination with the  
57 nonparticipating candidate's campaign expenditures or  
58 obligations, have exceeded by twenty percent the initial  
59 funding available under this section to any certified candidate  
60 running for the same office, the commission shall authorize  
61 the release of additional funds in the amount of the reported  
62 excess to any certified candidate who is an opponent for the  
63 same office.

64 (g) If the commission determines from any reports filed  
65 pursuant to this chapter or by other reliable and verifiable  
66 information obtained through investigation that independent  
67 expenditures on behalf of a certified candidate, in  
68 combination with the certified candidate's campaign  
69 expenditures or obligations, exceed by twenty percent the  
70 initial funding available under this section to any certified  
71 candidate running for the same office, the State Election  
72 Commission shall authorize the release of additional funds in  
73 the amount of the reported excess to any other certified  
74 candidate who is an opponent for the same office.

75 (h) Additional funds released under this section to a  
76 certified candidate may not exceed \$400,000 in a primary  
77 election and \$700,000 in a general election.

78 (i) In the event the commission determines that additional  
79 funds beyond the initial distribution are to be released to a  
80 participating candidate pursuant to the provisions of the  
81 section, the commission, acting in concert with the State  
82 Auditor's office and the State Treasurer's office, shall cause  
83 a check for any such funds to be issued to the candidate's  
84 campaign depository within two business days.

### **§3-12-12. Restrictions on contributions and expenditures.**

1 (a) A certified candidate or his or her committee may not  
2 accept loans or contributions from any private source,  
3 including the personal funds of the candidate and the  
4 candidate's immediate family, during the primary or general  
5 election campaign periods except as permitted by this article.

6 (b) After filing the declaration of intent and during the  
7 qualifying period, a participating candidate may not spend or  
8 obligate more than he or she has collected in exploratory and  
9 qualifying contributions. After the qualifying period and  
10 through the general election campaign period, a certified  
11 candidate may spend or obligate any unspent exploratory or  
12 qualifying contributions and the moneys he or she receives  
13 from the fund under the provisions of section eleven of this  
14 article.

15 (c) A participating or certified candidate may expend  
16 exploratory and qualifying contributions and funds received  
17 from the fund only for lawful election expenses as provided  
18 in section nine, article eight of this chapter. Moneys  
19 distributed to a certified candidate from the fund may be  
20 expended only during the primary and general election  
21 campaign period for which funds were dispersed. Money  
22 from the fund may not be used:

23 (1) In violation of the law;

24           (2) To repay any personal, family or business loans,  
25       expenditures or debts; or

26           (3) To help any other candidate.

27           (d) A certified candidate or his or her committee shall  
28       return to the fund any unspent and unobligated exploratory  
29       contributions, qualifying contributions or moneys received  
30       from the fund within forty-eight hours after:

31           (1) The date on which the candidate ceases to be  
32       certified; or

33           (2) The date on which the individual loses the primary  
34       election or otherwise ceases to be a candidate.

35           (e) Funds remaining unspent or unobligated after the  
36       close of the primary election campaign period may be  
37       retained by the candidate for use during the general election  
38       campaign period but shall be deducted from the amount the  
39       candidate is eligible to receive under subsection (b), section  
40       eleven of this article.

41           (f) A certified candidate or his or her committee shall  
42       return to the fund any unspent or unobligated public  
43       campaign financing funds no later than five business days  
44       after the general election.

45           (g) A contribution from one person may not be made in  
46       the name of another person.

47           (h) A participating or certified candidate or his or her  
48       committee receiving qualifying contributions or exploratory  
49       contributions from a person not listed on the receipt required  
50       by sections eight and nine of this article is liable to the State  
51       Election Commission for the entire amount of that  
52       contribution and any applicable penalties.

53 (i) A certified candidate accepting any benefits under the  
54 provisions of this article shall continue to comply with all of  
55 its provisions throughout the primary election campaign  
56 period and general election campaign period.

57 (j) A participating or certified candidate or his or her  
58 financial agent shall provide the Secretary of State with all  
59 requested campaign records, including all records of  
60 exploratory and qualifying contributions received and  
61 campaign expenditures and obligations, and shall fully  
62 cooperate with any audit of campaign finances requested or  
63 authorized by the State Election Commission.

### **§3-12-13. Reporting requirements.**

1 (a) Participating candidates, certified candidates and  
2 nonparticipating candidates shall comply with the provisions  
3 of this section in addition to any other reporting required by  
4 the provisions of this chapter.

5 (b) During the exploratory and qualifying periods, a  
6 participating candidate or his or her financial agent shall  
7 submit, on the first of each month, a report of all exploratory  
8 and qualifying contributions along with their receipts and an  
9 accounting of all expenditures and obligations received  
10 during the immediately preceding month. The reports shall  
11 be on forms or in a format prescribed by the Secretary of  
12 State. Such reports shall be filed electronically: *Provided,*  
13 That a committee may apply for an exemption, in case of  
14 hardship, pursuant to subsection (c) of section five-b, article  
15 eight of this chapter.

16 (c) No later than two business days after the close of the  
17 qualifying period, a participating candidate or his or her  
18 financial agent shall report to the Secretary of State on  
19 appropriate forms a summary of:



20 (1) All exploratory contributions received and funds  
21 expended or obligated during the exploratory period together  
22 with copies of any receipts not previously submitted for  
23 exploratory contributions; and

24 (2) All qualifying contributions received and funds  
25 expended or obligated during the qualifying period together  
26 with copies of any receipts not previously submitted for  
27 qualifying contributions.

28 (d) A certified candidate or his or her financial agent shall  
29 file periodic financial statements in accordance with section  
30 five, article eight of this chapter, detailing all funds received,  
31 expended or obligated during the specified periods. The  
32 reports shall be on forms approved by the Secretary of State.

33 (e) In addition to any other reporting required by this  
34 chapter, a nonparticipating candidate or his or her financial  
35 agent shall report to the Secretary of State on approved forms  
36 an itemized summary of his or her campaign expenditures or  
37 obligations, according to the following provisions and  
38 guidelines:

39 (1) On the first Saturday in March or within six days  
40 thereafter, listing the nonparticipating candidate's  
41 expenditures and obligations prior to March 1, if the  
42 nonparticipating candidate's campaign expenditures or  
43 obligations, in the aggregate, exceed the initial funding  
44 available under section eleven of this article to any certified  
45 candidate for the same office.

46 (2) On the first Saturday in April, listing any expenditures  
47 or obligations, in the aggregate, that exceed the initial  
48 funding available under section eleven of this article to any  
49 certified candidate running for the same office and which  
50 have taken place subsequent to those reported on the  
51 financial statement required to be filed by a candidate for  
52 public office pursuant to subdivision (1), subsection (b),

53 section five, article eight of this chapter. Thereafter, any  
54 additional expenditures or obligations, in the aggregate, that  
55 exceed the initial funding available under section eleven of  
56 this article to any certified candidate running for the same  
57 office made prior to the fifteenth day before the primary  
58 election shall be reported to the Secretary of State within  
59 forty-eight hours.

60 (3) On the first Saturday in July or within six days  
61 thereafter, listing the nonparticipating candidate's  
62 expenditures and obligations prior to July 1 subsequent to the  
63 primary election, if the nonparticipating candidate's  
64 expenditures or obligations, in the aggregate, exceed the  
65 initial funding available under section eleven of this article to  
66 any certified candidate running for the same office.

67 (4) On the first Saturday in October, listing any  
68 expenditures or obligations, in the aggregate, that exceed the  
69 initial funding available under section eleven of this article to  
70 any certified candidate running for the same office and which  
71 have taken place subsequent to those reported on the  
72 financial statement required to be filed by a candidate for  
73 public office pursuant to subdivision (4), subsection (b),  
74 section five, article eight of this chapter. Thereafter, any  
75 additional expenditures or obligations, in the aggregate, that  
76 exceed the initial funding available under section eleven of  
77 this article to any certified candidate running for the same  
78 office made prior to the fifteenth day before the general  
79 election shall be reported to the State Election Commission  
80 within forty-eight hours.

81 (5) During the last fifteen days before the primary or  
82 general elections in 2012, the nonparticipating candidate or  
83 his or her financial agent shall report to the State Election  
84 Commission within twenty-four hours thereof every  
85 additional expenditure or obligation, in the aggregate, that  
86 exceeds the initial funding available under section eleven of

87 this article to any certified candidate running for the same  
88 office.

89 (f) Any person, organization or entity making  
90 independent expenditures advocating the election or defeat of  
91 a certified candidate or the nomination or election of any  
92 candidate who is opposed by a certified candidate in excess  
93 of \$1,000, in the aggregate, shall report these expenditures to  
94 the State Election Commission on approved forms within  
95 forty-eight hours of the expenditure.

96 (g) During the last fifteen days before the primary or  
97 general election in 2012, any person, organization or entity  
98 making independent expenditures advocating the election or  
99 defeat of any candidate, including the election or defeat of a  
100 certified candidate or the nomination or election of any  
101 candidate who is opposed by a certified candidate, shall  
102 continue to file reports as required pursuant to subsection (b),  
103 section two, article eight of this chapter.

### **§3-12-14. Duties of the State Election Commission; Secretary of State.**

1 (a) In addition to its other duties, the State Election  
2 Commission shall carry out the duties of this article and  
3 complete the following as applicable:

4 (1) Prescribe forms for reports, statements, notices and  
5 other documents required by this article;

6 (2) Make an annual report to the Legislature accounting  
7 for moneys in the fund, describing the State Election  
8 Commission's activities and listing any recommendations for  
9 changes of law, administration or funding amounts;

10 (3) Propose emergency and legislative rules for  
11 legislative approval, in accordance with the provisions of  
12 article three, chapter twenty-nine-a of this code, as may be

13 necessary for the proper administration of the provisions of  
14 this article;

15 (4) Enforce the provisions of this article to ensure that  
16 moneys from the fund are placed in candidate campaign  
17 accounts and spent as specified in this article;

18 (5) Monitor reports filed pursuant to this article and the  
19 financial records of candidates to ensure that qualified  
20 candidates receive matching funds promptly and to ensure  
21 that moneys required by this article to be paid to the fund are  
22 deposited in the fund;

23 (6) Cause an audit of the fund to be conducted by  
24 independent certified public accountants ninety days after a  
25 general election. The State Election Commission shall  
26 cooperate with the audit, provide all necessary documentation  
27 and financial records to the auditor and maintain a record of  
28 all information supplied by the audit;

29 (7) In consultation with the State Treasurer and the State  
30 Auditor, develop a rapid, reliable method of conveying funds  
31 to certified candidates. In all cases, the commission shall  
32 distribute funds to certified candidates in a manner that is  
33 expeditious, ensures accountability and safeguards the  
34 integrity of the fund; and

35 (8) Regularly monitor the receipts, disbursements,  
36 obligations and balance in the fund to determine whether the  
37 fund will have sufficient moneys to meet its obligations and  
38 sufficient moneys available for disbursement during the  
39 general election campaign period.

40 (b) In addition to his or her other duties, the Secretary of  
41 State shall carry out the duties of this article and complete the  
42 following as applicable:

43 (1) Prescribe forms for reports, statements, notices and  
44 other documents required by this article;

45           (2) Prepare and publish information about this article and  
46           provide it to potential candidates and citizens of this state;

47           (3) Prepare and publish instructions setting forth methods  
48           of bookkeeping and preservation of records to facilitate  
49           compliance with this article and to explain the duties of  
50           candidates and others participating in elections under the  
51           provisions of this article;

52           (4) Propose emergency and legislative rules for legislative  
53           approval in accordance with the provisions of article three,  
54           chapter twenty-nine-a of this code as may be necessary for the  
55           proper administration of the provisions of this article;

56           (5) Enforce the provisions of this article to ensure that  
57           moneys from the fund are placed in candidate campaign  
58           accounts and spent as specified in this article;

59           (6) Monitor reports filed pursuant to this article and the  
60           financial records of candidates to ensure that qualified  
61           candidates receive matching funds promptly and to ensure  
62           that moneys required by this article to be paid to the fund are  
63           deposited in the fund;

64           (7) Ensure public access to the campaign finance reports  
65           required pursuant to this article, and whenever possible, use  
66           electronic means for the reporting, storing and display of the  
67           information; and

68           (8) Prepare a voters' guide for the general public listing  
69           the names of each candidate seeking election to the Supreme  
70           Court of Appeals. Both certified and nonparticipating  
71           candidates shall be invited by the State Election Commission  
72           to submit a statement, not to exceed five hundred words in  
73           length, for inclusion in the guide. The guide shall identify  
74           the candidates that are certified candidates and the candidates  
75           that are nonparticipating candidates. Copies of the guide

76 shall be posted on the website of the Secretary of State, as  
77 soon as may be practical.

78 (c) To fulfill their responsibilities under this article, the  
79 State Election Commission and the Secretary of State may  
80 subpoena witnesses, compel their attendance and testimony,  
81 administer oaths and affirmations, take evidence and require,  
82 by subpoena, the production of any books, papers, records or  
83 other items material to the performance of their duties or the  
84 exercise of their powers.

85 (d) The State Election Commission may also propose and  
86 adopt procedural rules to carry out the purposes and provisions  
87 of this article and to govern procedures of the State Election  
88 Commission as it relates to the requirements of this article.

### **§3-12-15. Criminal penalties.**

1 (a) A participating or certified candidate who, either  
2 personally or through his or her committee, knowingly  
3 accepts contributions or benefits in excess of those allowed  
4 under this article, spends or obligates funds in excess of the  
5 public campaign financing funding to which he or she is  
6 entitled or uses the benefits or funding for a purpose other  
7 than those permitted under this article is guilty of a  
8 misdemeanor and, upon conviction thereof, shall be fined not  
9 less than \$50 nor more than \$500, or confined in jail for up  
10 to thirty days or both.

11 (b) A participating or certified candidate who, either  
12 personally or through his or her committee or financial agent,  
13 provides false information to, or conceals or withholds  
14 information from, the State Election Commission or the  
15 Secretary of State is guilty of a misdemeanor and, upon  
16 conviction thereof, shall be fined not less than \$1,000 nor  
17 more than \$10,000, or confined in jail for up to one year or  
18 both.

**§3-12-16. Civil penalties.**

1           (a) If a participating or certified candidate or his or her  
2 committee or financial agent unintentionally accepts  
3 contributions from a private source in violation of the  
4 provisions of this article or spends or obligates to spend more  
5 than the amount of public financing money he or she is  
6 eligible to receive from the fund pursuant to section eleven of  
7 this article, the State Election Commission may order the  
8 candidate to pay to the State Election Commission an amount  
9 equal to the amount of the contribution, expenditure or  
10 obligation.

11           (b) If a participating or certified candidate or his or her  
12 committee or financial agent intentionally accepts contributions  
13 from a private source in violation of this article or spends or  
14 obligates more than the amount of public campaign financing  
15 he or she is eligible to receive from the fund, the State  
16 Election Commission shall order the candidate to pay to the  
17 State Election Commission an amount equal to ten times the  
18 amount of the contribution, expenditure or obligation. The  
19 candidate shall pay the civil penalty authorized under this  
20 subsection within seven days of receipt of written notice from  
21 the State Election Commission of the imposition of the  
22 penalty.

23           (c) If a participating or certified candidate fails to pay any  
24 moneys required to be paid to the State Election Commission  
25 or returned to the fund under this article, the State Election  
26 Commission may order the candidate to pay an amount equal  
27 to three times the amount that should have been paid to the  
28 State Election Commission or returned to the fund.

29           (d) In addition to any other penalties imposed by law, the  
30 State Election Commission may impose a civil penalty for a  
31 violation by or on behalf of any candidate of any reporting  
32 requirement imposed by this article in the amount of \$100 a  
33 day. The penalty shall be doubled if the amount not reported

34 for a specific election exceeds ten percent of the initial  
 35 amount of public financing available to a certified candidate  
 36 in a primary or general election pursuant to section eleven of  
 37 this article.

38 (e) All penalties collected by the State Election  
 39 Commission pursuant to this section shall be deposited into  
 40 the fund. The candidate and the candidate's campaign  
 41 account are jointly and severally responsible for the payment  
 42 of any penalty imposed pursuant to this section.

**§3-12-17. Expiration of article.**

1 The provisions of this article shall have no force or effect  
 2 on or after July 1, 2013. Any moneys remaining in the fund  
 3 on July 1, 2013, shall be transferred to the General Revenue  
 4 Fund.

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## CHAPTER 73

**(S. B. 339 - By Senators Williams and White)**

[Passed March 9, 2010; in effect ninety days from passage.]  
 [Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §3-2-4a of the Code of West Virginia, 1931, as amended, relating to statewide voter registration list maintenance; and making a technical correction to that statute.

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

That §3-2-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:



**ARTICLE 2. REGISTRATION OF VOTERS.****§3-2-4a. Statewide voter registration list.**

1           (a) The Secretary of State shall implement and maintain  
2 a single, official, statewide, centralized, interactive  
3 computerized voter registration list of every legally registered  
4 voter in the state, which shall include the following:

5           (1) The computerized list shall serve as the single system  
6 for storing and managing the official list of registered voters  
7 throughout the state.

8           (2) The computerized list shall contain the name,  
9 registration information and voter history of every legally  
10 registered voter in the state.

11           (3) Under the computerized list, the Secretary of State  
12 shall assign a unique identifier to each legally registered  
13 voter in the state.

14           (4) The computerized list shall be coordinated with other  
15 agency databases within the state; including, but not limited to,  
16 the vital statistics database maintained by the Department  
17 of Health and Human Resources. The Department of Health  
18 and Human Resources by January 31st of each calendar year  
19 shall provide to each county clerk a list from this database of  
20 all decedents in that county in the preceding year and shall  
21 provide to the Secretary of State the list of all decedents in  
22 the state in the preceding year.

23           (5) The Secretary of State and any clerk of the county  
24 commission may obtain immediate electronic access to the  
25 information contained in the computerized list.

26           (6) The clerk of the county commission shall  
27 electronically enter voter registration information into the  
28 computerized list on an expedited basis at the time the  
29 information is provided to the clerk.

30           (7) The Secretary of State shall provide necessary support  
31 to enable every clerk of the county commission in the state to  
32 enter information as described in subdivision (6) of this  
33 subsection.

34           (8) The computerized list shall serve as the official voter  
35 registration list for conducting all elections in the state.

36           (b) The Secretary of State or any clerk of a county  
37 commission shall perform maintenance with respect to the  
38 computerized list on a regular basis as follows:

39           (1) If an individual is to be removed from the  
40 computerized list, he or she shall be removed in accordance  
41 with the provisions of 42 U.S.C. §1973gg, *et seq.*, the  
42 National Voter Registration Act of 1993.

43           (2) The Secretary of State shall coordinate the  
44 computerized list with state agency records and remove the  
45 names of individuals who are not qualified to vote because of  
46 felony status or death: *Provided*, That no state agency may  
47 withhold information regarding a voter's status as deceased  
48 or as a felon unless ordered by a court of law: *Provided*,  
49 *however*, that the Secretary of State shall, in each calendar  
50 year, certify that the removal of individuals who are not  
51 qualified to vote because of a felony conviction as provided  
52 in section two of this article or death is completed at least  
53 thirty days preceding the date of any primary election.

54           (c) The list maintenance performed under subsection (b) of  
55 this section shall be conducted in a manner that ensures that:

56           (1) The name of each registered voter appears in the  
57 computerized list;

58           (2) Only voters who are not registered or who are not  
59 eligible to vote are removed from the computerized list;

60       (3) Duplicate names are eliminated from the  
61 computerized list;

62       (4) Deceased individuals names are eliminated from the  
63 computerized list.

64       (d) The Secretary of State and the clerks of all county  
65 commissions shall provide adequate technological security  
66 measures to prevent the unauthorized access to the  
67 computerized list established under this section.

68       (e) The Secretary of State shall ensure that voter  
69 registration records in the state are accurate and updated  
70 regularly, including the following:

71       (1) A system of file maintenance that makes a reasonable  
72 effort to remove registrants who are ineligible to vote from  
73 the official list of eligible voters. Under the system,  
74 consistent with 42 U.S.C. §1973gg, *et seq.*, registrants who  
75 have not responded to a notice sent pursuant to section  
76 twenty six, article two of this chapter and who have not voted  
77 in two consecutive general elections for federal office shall  
78 be removed from the official list of eligible voters, except  
79 that no registrant may be removed solely by reason of a  
80 failure to vote; and

81       (2) Safeguards to ensure that eligible voters are not  
82 removed in error from the official list of eligible voters.

83       (f) Applications for voter registration may only be  
84 accepted when the following information is provided:

85       (1) Except as provided in subdivision (2) of this  
86 subsection and notwithstanding any other provision of law to  
87 the contrary, an application for voter registration may not be  
88 accepted or processed unless the application includes:

89 (A) In the case of an applicant who has been issued a  
90 current and valid driver's license, the applicant's driver's  
91 license number;

92 (B) In the case of an applicant who has been issued an  
93 identification card by the Division of Motor Vehicles, the  
94 applicant's identification number; or

95 (C) In the case of any other applicant, the last four digits  
96 of the applicant's social security number; and

97 (2) If an applicant for voter registration has not been  
98 issued a current and valid driver's license, Division of Motor  
99 Vehicles' identification card or a social security number, the  
100 Secretary of State shall assign the applicant a number which  
101 will serve to identify the applicant for voter registration  
102 purposes. To the extent that the state has a computerized list  
103 in effect under this section and the list assigns unique  
104 identifying numbers to registrants, the number assigned  
105 under this section shall be the unique identifying number  
106 assigned under the list.

107 (g) The Secretary of State and the Commissioner of the  
108 Division of Motor Vehicles shall enter into an agreement to  
109 match and transfer applicable information in the database of  
110 the statewide voter registration system with information in  
111 the database of the Division of Motor Vehicles to the extent  
112 required to enable each official to verify the accuracy of the  
113 information provided on applications for voter registration.

114 (h) The Commissioner of the Division of Motor Vehicles  
115 shall enter into an agreement with the Commissioner of  
116 Social Security under 42 U.S.C. §301, *et seq.*, the Social  
117 Security Act. All fees associated with this agreement shall be  
118 paid for from moneys in the fund created under section  
119 twelve, article two of this chapter.

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**CHAPTER 74**

**(H. B. 4589 - By Delegates Iaquina,  
Longstreth, Duke, Ellem and Frazier)**

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[Passed March 12, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 19, 2010.]

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AN ACT to amend and reenact §3-3-2, §3-3-2b, §3-3-5 and §3-3-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4-10 of said code; and to amend and reenact §3-5-13 of said code, all relating to conforming the appropriate sections to the requirements of the Military and Overseas Voter Empowerment Act of 2009.

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

That §3-3-2, §3-3-2b, §3-3-5 and §3-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4-10 of said code be amended and reenacted; that §3-5-13 of said code be amended and reenacted, all to read as follows:

**Article**

- 3. Voting by Absentees.**
- 4. Voting Machines.**
- 5. Primary Elections and Nominating Procedures.**

**ARTICLE 3. VOTING BY ABSENTEES.**

- §3-3-2. Authority to conduct absentee voting; absentee voting application; form.  
§3-3-2b. Special absentee voting list.  
§3-3-5. Voting an absentee ballot by mail or electronically; penalties.  
§3-3-11. Preparation, number and handling of absent voters' ballots.

**ARTICLE 3. VOTING BY ASSEMBLY.****§3-3-2. Authority to conduct absentee voting; absentee voting application; form.**

1           (a) Absentee voting is to be supervised and conducted by  
2 the proper official for the political division in which the  
3 election is held, in conjunction with the ballot commissioners  
4 appointed from each political party, as follows:

5           (1) For any election held throughout the county, within a  
6 political subdivision or territory other than a municipality, or  
7 within a municipality when the municipal election is conducted  
8 in conjunction with a county election, the clerk of the county  
9 commission; or

10          (2) The municipal recorder or other officer authorized by  
11 charter or ordinance provisions to conduct absentee voting,  
12 for any election held entirely within the municipality, or in  
13 the case of annexation elections, within the area affected.  
14 The terms “clerk” or “clerk of the county commission” or  
15 “official designated to supervise and conduct absentee  
16 voting” used elsewhere in this article means municipal  
17 recorder or other officer in the case of municipal elections.

18          (b) A person authorized and desiring to vote a mail-in  
19 absentee ballot in any primary, general or special election is  
20 to make application in writing in the proper form to the  
21 proper official as follows:

22          (1) The completed application is to be on a form  
23 prescribed by the Secretary of State and is to contain the  
24 name, date of birth and political affiliation of the voter,  
25 residence address within the county, the address to which the  
26 ballot is to be mailed, the authorized reason, if any, for which  
27 the absentee ballot is requested and, if the reason is illness or  
28 hospitalization, the name and telephone number of the  
29 attending physician, the signature of the voter to a declaration  
30 made under the penalties for false swearing as provided in

31 section three, article nine of this chapter that the statements  
32 and declarations contained in the application are true, any  
33 additional information which the voter is required to supply,  
34 any affidavit which may be required and an indication as to  
35 whether it is an application for voting in person or by mail;  
36 or

37 (2) For any person authorized to vote an absentee ballot  
38 under the provisions of 42 U.S.C. §1973, *et seq.*, the  
39 Uniformed and Overseas Citizens Absentee Voting Act of  
40 1986, the completed application may be on the federal  
41 postcard application for absentee ballot form issued under  
42 authority of that act, submitted by mail or electronically; or

43 (3) For any person unable to obtain the official form for  
44 absentee balloting at a reasonable time before the deadline  
45 for an application for an absentee ballot by mail is to be  
46 received by the proper official, the completed application  
47 may be in a form set out by the voter, provided all information  
48 required to meet the provisions of this article is set forth and  
49 the application is signed by the voter requesting the ballot.

### §3-3-2b. Special absentee voting list.

1 (a) Any person who is registered and otherwise qualified  
2 to vote and who is permanently and totally physically  
3 disabled and who is unable to vote in person at the polls in an  
4 election may apply to the official designated to supervise and  
5 conduct absentee voting for placement on the special  
6 absentee voting list.

7 (b) The application is to be on a form prescribed by the  
8 Secretary of State which is to include the voter's name and  
9 signature, residence address, a statement that the voter is  
10 permanently and totally physically disabled and would be  
11 unable to vote in person at the polls in any election, a  
12 description of the nature of that disability, and a statement  
13 signed by a physician to that effect.

14 (c) Upon receipt of a properly completed application, the  
15 official designated to supervise and conduct absentee voting  
16 shall enter the name on the special absentee voting list, which  
17 is to be maintained in a secure and permanent record. The  
18 person's name will remain active on the list until: (1) The  
19 person requests in writing that his or her name be removed;  
20 (2) the person removes his or her residence from the county,  
21 is purged from the voter registration books or otherwise  
22 becomes ineligible to vote; (3) a ballot mailed to the address  
23 provided on the application is returned undeliverable by the  
24 United States postal service; or (4) the death of the person.

25 (d) The official designated to supervise and conduct  
26 absentee voting shall mail an application for an absentee  
27 ballot by mail to each person active on the special absentee  
28 voting list not later than forty-six days before each election.

**§3-3-5. Voting an absentee ballot by mail or electronically;  
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, or electronically the  
4 appropriate application for voting absentee by mail as  
5 provided in this article. The voter shall complete and sign the  
6 application in his or her own handwriting or, if the voter is  
7 unable to complete the application because of illiteracy or  
8 physical disability, the person assisting the voter and  
9 witnessing the mark of the voter shall sign his or her name in  
10 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, or electronically within the following times:

15 (1) For persons eligible to vote an absentee ballot under  
16 the provisions of subdivision (3), subsection (b), section one



17 of this article, relating to absent uniformed services and  
18 overseas voters, not earlier than January 1 of an election year  
19 or eighty-four days preceding the election, whichever is  
20 earlier, and not later than the sixth day preceding the election,  
21 which application is to, upon the voter's request, be accepted  
22 as an application for the ballots for all elections in the  
23 calendar year; and

24 (2) For all other persons eligible to vote an absentee  
25 ballot by mail, not earlier than eighty-four days preceding the  
26 election and not later than the sixth day preceding the  
27 election.

28 (c) Upon acceptance of a completed application, the  
29 official designated to supervise and conduct absentee voting  
30 shall determine whether the following requirements have  
31 been met:

32 (1) The application has been completed as required by  
33 law;

34 (2) The applicant is duly registered to vote in the precinct  
35 of his or her residence and, in a primary election, is qualified  
36 to vote the ballot of the political party requested;

37 (3) The applicant is authorized for the reasons given in  
38 the application to vote an absentee ballot by mail;

39 (4) The address to which the ballot is to be mailed is an  
40 address outside the county if the voter is applying to vote by  
41 mail under the provisions of paragraph (A) or (B),  
42 subdivision (2), subsection (b), section one of this article; or  
43 subdivision (3) or (4) of said subsection;

44 (5) The applicant is not making his or her first vote after  
45 having registered by postcard registration or, if the applicant  
46 is making his or her first vote after having registered by

47 postcard registration, the applicant is exempt from these  
48 requirements; and

49 (6) No regular and repeated pattern of applications for an  
50 absentee ballot by mail for the reason of being out of the  
51 county during the entire period of voting in person exists to  
52 suggest that the applicant is no longer a resident of the  
53 county.

54 (d) If the official designated to supervise and conduct  
55 absentee voting determines that the required conditions have  
56 been met, two representatives that are registered to vote with  
57 different political party affiliations shall sign their names in  
58 the places indicated on the back of the official ballot. If the  
59 official designated to supervise and conduct absentee voting  
60 determines the required conditions have not been met, or has  
61 evidence that any of the information contained in the  
62 application is not true, the official shall give notice to the  
63 voter that the voter's absentee ballot will be challenged as  
64 provided in this article and shall enter that challenge.

65 (e) (1) Within one day after the official designated to  
66 supervise and conduct absentee voting has both the  
67 completed application and the ballot, the official shall mail to  
68 the voter at the address given on the application the following  
69 items as required and as prescribed by the Secretary of State:

70 (A) One of each type of official absentee ballot the voter  
71 is eligible to vote, prepared according to law;

72 (B) One envelope, unsealed, which may have no marks  
73 except the designation "Absent Voter's Ballot Envelope No.  
74 1" and printed instructions to the voter;

75 (C) One postage paid envelope, unsealed, designated  
76 "Absent Voter's Ballot Envelope No. 2";

77 (D) Instructions for voting absentee by mail;

78 (E) For electronic systems, a device for marking by  
79 electronically sensible pen or ink, as may be appropriate;

80 (F) Notice that a list of write-in candidates is available  
81 upon request; and

82 (G) Any other supplies required for voting in the  
83 particular voting system.

84 (2) If the voter is an absent uniformed services voter or  
85 overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the  
86 official designated to supervise and conduct absentee voting  
87 shall transmit the ballot to the voter via mail, or electronically  
88 as requested by the voter. If the voter does not designate a  
89 preference for transmittal, the clerk may select either method  
90 of transmittal for the ballot. If the ballot is transmitted  
91 electronically pursuant to this subdivision, the official  
92 designated to supervise and conduct absentee voting shall  
93 also transmit electronically;

94 (A) A waiver of privacy form, to be promulgated by the  
95 Secretary of State;

96 (B) Instructions for voting absentee utilizing a federally  
97 approved system for voting by mail or electronically;

98 (C) Notice that a list of write-in candidates is available  
99 upon request; and

100 (D) Statement of the voter affirming the voter's current  
101 name and address and whether or not he or she received  
102 assistance in voting.

103 (f) The voter shall mark the ballot alone: *Provided*, That  
104 the voter may have assistance in voting according to the  
105 provisions of section six of this article.

106 (1) After the voter has voted the ballot or ballots to be  
107 returned by mail, the voter shall:

108 (A) Place the ballot or ballots in envelope no. 1 and seal  
109 that envelope;

110 (B) Place the sealed envelope no. 1 in envelope no. 2 and  
111 seal that envelope;

112 (C) Complete and sign the forms on envelope no. 2; and

113 (D) Return that envelope to the official designated to  
114 supervise and conduct absentee voting.

115 (2) If the ballot was transmitted electronically as provided  
116 in subdivision (2), subsection (e) of this section, the voter  
117 shall return the ballot in the same manner the ballot was  
118 received, or the voter may return the ballot by United States  
119 mail, along with a signed privacy waiver form.

120 (g) Except as provided in subsection (h) of this section,  
121 absentee ballots returned by United States mail or other  
122 express shipping service are to be accepted if:

123 (1) The ballot is received by the official designated to  
124 supervise and conduct absentee voting no later than the day  
125 after the election; or

126 (2) The ballot bears a postmark of the United States  
127 Postal Service dated no later than election day and the ballot  
128 is received by the official designated to supervise and  
129 conduct absentee voting no later than the hour at which the  
130 board of canvassers convenes to begin the canvass.

131 (h) Absentee ballots received through the United States  
132 mail from persons eligible to vote an absentee ballot under  
133 the provisions of subdivision (3), subsection (b), section one  
134 of this article, relating to uniform services and overseas

135 voters, are to be accepted if the ballot is received by the  
136 official designated to supervise and conduct absentee voting  
137 no later than the hour at which the board of canvassers  
138 convenes to begin the canvass.

139 (i) Voted ballots submitted electronically pursuant to  
140 subdivision (2), subsection (f) of this section are to be  
141 accepted if the ballot is received by the official designated to  
142 supervise and conduct absentee voting no later than the close  
143 of polls on election day: *Provided*, That the Secretary of  
144 State's office shall enter into an agreement with the Federal  
145 Voting Assistance Program of the United States Department  
146 of Defense to transmit the ballots to the county clerks at a  
147 time when two individuals of opposite political parties are  
148 available to process the received ballots.

149 (j) Ballots received after the proper time which cannot be  
150 accepted are to be placed unopened in an envelope marked  
151 for the purpose and kept secure for twenty-two months  
152 following the election, after which time they are to be  
153 destroyed without being opened.

154 (k) Absentee ballots which are hand delivered are to be  
155 accepted if they are received by the official designated to  
156 supervise and conduct absentee voting no later than the day  
157 preceding the election: *Provided*, That no person may hand  
158 deliver more than two absentee ballots in any election and  
159 any person hand delivering an absentee ballot is required to  
160 certify that he or she has not examined or altered the ballot.  
161 Any person who makes a false certification violates the  
162 provisions of article nine of this chapter and is subject to  
163 those provisions.

164 (l) Upon receipt of the sealed envelope, the official  
165 designated to supervise and conduct absentee voting shall:

166 (1) Enter onto the envelope any other required  
167 information;

168 (2) Enter the challenge, if any, to the ballot;

169 (3) Enter the required information into the permanent  
170 record of persons applying for and voting an absentee ballot  
171 in person; and

172 (4) Place the sealed envelope into a ballot box that is  
173 secured by two locks with a key to one lock kept by the  
174 president of the county commission and a key to the other  
175 lock kept by the county clerk.

176 (m) Upon receipt of a ballot submitted electronically  
177 pursuant to subdivision (2), subsection (f) of this section, the  
178 official designated to supervise and conduct absentee voting  
179 shall place the ballot in an envelope marked "Absentee by  
180 Electronic Means" with the completed waiver: *Provided,*  
181 That no ballots are to be processed without the presence of  
182 two individuals of opposite political parties.

183 (n) All ballots received electronically prior to the close of  
184 the polls on election day are to be tabulated in the manner  
185 prescribed for tabulating absentee ballots submitted by mail  
186 to the extent that those procedures are appropriate for the  
187 applicable voting system. The clerk of the county commission  
188 shall keep a record of absentee ballots sent and received  
189 electronically.

**§3-3-11. Preparation, number and handling of absent voters' ballots.**

1 (a) Absent voters' ballots are to be in all respects like  
2 other ballots. Not less than seventy days before the date on  
3 which any primary, general or special election is to be held,  
4 unless a lesser number of days is provided in any specific  
5 election law in which case the lesser number of days applies,  
6 the clerks of the county commissions of the several counties  
7 shall estimate and determine the number of absent voters'  
8 ballots of all kinds which will be required in their respective

9 counties for that election. The ballots for the election of all  
10 officers, or the ratification, acceptance or rejection of any  
11 measure, proposition or other public question to be voted on  
12 by the voters, are to be prepared and printed under the  
13 direction of the board of ballot commissioners constituted as  
14 provided in article one of this chapter. The several county  
15 boards of ballot commissioners shall prepare and have  
16 printed, in the number they may determine, absent voters'  
17 ballots that are to be printed under their directions as  
18 provided in this chapter and those ballots are to be delivered  
19 to the clerk of the county commission of the county not less  
20 than forty-six days before the day of the election at which  
21 they are to be used.

22 (b) The official designated to supervise and conduct  
23 absentee voting shall be responsible for the mailing,  
24 transmitting, receiving, delivering and otherwise handling of  
25 all absent voters' ballots. He or she shall keep a record, as  
26 may be prescribed by the Secretary of State, of all ballots  
27 delivered for the purpose of absentee voting, as well as all  
28 ballots, if any, marked before him or her and shall deliver to  
29 the commissioner of election a certificate stating the number  
30 of ballots delivered, transmitted, or mailed to absent voters  
31 and those marked before him or her, if any, and the names of  
32 the voters to whom those ballots have been delivered,  
33 transmitted, or mailed or by whom they have been marked,  
34 if marked before him or her.

#### **ARTICLE 4. VOTING MACHINES.**

##### **§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.**

1 (a) The ballot commissioners of any county in which  
2 voting machines are to be used in any election shall cause to  
3 be printed for use in the election the ballot labels for the  
4 voting machines and paper ballots for absentee voting, voting  
5 by persons unable to use the voting machine and provisional

6 ballots or if an electronic voting system or direct recording  
7 election equipment is to be used in an election, the ballot  
8 commissioners shall comply with requirements of section  
9 eleven, article four-a of this chapter. The labels shall be  
10 clearly printed in black ink on clear white material in a size  
11 that will fit the ballot frames. The paper ballots shall be  
12 printed in compliance with the provisions of this chapter  
13 governing paper ballots.

14 (b) The heading, the names and arrangement of offices and  
15 the printing and arrangement of names of the candidates for  
16 each office indicated must be placed on the ballot for the  
17 primary election as nearly as possible according to the  
18 provisions of sections thirteen and thirteen-a, article five of this  
19 chapter and for the general election according to the provisions  
20 of section two, article six of this chapter: *Provided*, That the  
21 staggering of the names of candidates in multicandidate races  
22 and the instructions to straight ticket voters prescribed by  
23 section two, article six of this chapter shall appear on paper  
24 ballots but shall not appear on ballot labels for voting machines  
25 which mechanically control crossover voting.

26 (c) Each question to be voted on must be placed at the  
27 end of the ballot and must be printed according to the  
28 provisions of the laws and rules governing the question.

29 (d) The ballot labels printed must total in number one and  
30 one-half times the total number of corresponding voting  
31 machines to be used in the several precincts of the county in  
32 the election. All the labels must be delivered to the clerk of  
33 the county commission at least twenty-eight days prior to the  
34 day of the election. The clerk of the county commission shall  
35 determine the number of paper ballots needed for absentee  
36 voting and to supply the precincts for provisional ballots and  
37 ballots to be cast by persons unable to use the voting  
38 machine. All required paper ballots shall be delivered to the  
39 clerk of the county commission at least forty-six days prior  
40 to the day of the election.



41 (e) When the ballot labels and absentee ballots are  
42 delivered, the clerk of the county commission shall examine  
43 them for accuracy, assure that the appropriate ballots and  
44 ballot labels are designated for each voting precinct and  
45 insert one set in each machine prior to the inspection of the  
46 machines as prescribed in section twelve of this article. The  
47 remainder of the ballot labels for each machine shall be  
48 retained by the clerk of the county commission for use in an  
49 emergency.

50 (f) In addition to all other equipment and supplies  
51 required by the provisions of this article, the ballot  
52 commissioners shall cause to be printed a supply of  
53 instruction cards, sample ballots and facsimile diagrams of  
54 the voting machine ballot adequate for the orderly conduct of  
55 the election in each precinct in their county. In addition, they  
56 shall provide appropriate facilities for the reception and  
57 safekeeping of the ballots of absent voters and of challenged  
58 voters and of the “independent” voters who shall, in primary  
59 elections, cast their votes on nonpartisan candidates and  
60 public questions submitted to the voters.

## **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

### **§3-5-13. Form and contents of ballots.**

1 The face of every primary election ballot shall conform  
2 as nearly as practicable to that used at the general election.

3 (1) The heading of every ballot is to be printed in display  
4 type. The heading is to contain a ballot title, the name of the  
5 county, the state, the words “Primary Election” and the  
6 month, day and year of the election. The ballot title of the  
7 political party ballots is to contain the words “Official Ballot  
8 of the (Name) Party” and the official symbol of the political  
9 party may be included in the heading. The ballot title of any  
10 separate paper ballot or portion of any electronic or voting

11 machine ballot for the Board of Education is to contain the  
12 words “Nonpartisan Ballot of Election of Members of the  
13 \_\_\_\_\_ County Board of Education”. The districts  
14 for which less than two candidates may be elected and the  
15 number of available seats are to be specified and the names  
16 of the candidates are to be printed without reference to  
17 political party affiliation and without designation as to a  
18 particular term of office. Any other ballot or portion of a  
19 ballot on a question is to have a heading which clearly states  
20 the purpose of the election according to the statutory  
21 requirements for that question.

22 (2) (A) For paper ballots, the heading of the ballot is to be  
23 separated from the rest of the ballot by heavy lines and the  
24 offices shall be arranged in columns with the following  
25 headings, from left to right across the ballot: “National  
26 Ticket”, “State Ticket”, “County Ticket” and, in a presidential  
27 election year, “National Convention” or, in a nonpresidential  
28 election year, “District Ticket”. The columns are to be  
29 separated by heavy lines. Within the columns, the offices are  
30 to be arranged in the order prescribed in section thirteen-a of  
31 this article.

32 (B) For voting machines, electronic voting devices and  
33 any ballot tabulated by electronic means, the offices are to  
34 appear in the same sequence as prescribed in section thirteen-  
35 a of this article and under the same headings as prescribed in  
36 subsection (a) of this section. The number of pages, columns  
37 or rows, where applicable, may be modified to meet the  
38 limitations of ballot size and composition requirements  
39 subject to approval by the Secretary of State.

40 (C) The title of each office is to be separated from  
41 preceding offices or candidates by a line and is to be printed  
42 in bold type no smaller than eight point. Below the office is  
43 to be printed the number of the district, if any, the number of  
44 the division, if any, and the words “Vote for \_\_\_\_\_” with  
45 the number to be nominated or elected or “Vote For Not

46 More Than \_\_\_\_\_” in multicandidate elections. For  
47 offices in which there are limitations relating to the number  
48 of candidates which may be nominated, elected or appointed  
49 to or hold office at one time from a political subdivision  
50 within the district or county in which they are elected, there  
51 is to be a clear explanation of the limitation, as prescribed by  
52 the Secretary of State, printed in bold type immediately  
53 preceding the names of the candidates for those offices on the  
54 ballot in every voting system. For counties in which the  
55 number of county commissioners exceeds three and the total  
56 number of members of the county commission is equal to the  
57 number of magisterial districts within the county, the office  
58 of county commission is to be listed separately for each  
59 district to be filled with the name of the magisterial district  
60 and the words “Vote for One” printed below the name of the  
61 office: *Provided*, That the office title and applicable  
62 instructions may span the width of the ballot so as it is  
63 centered among the respective columns.

64 (D) The location for indicating the voter’s choices on the  
65 ballot is to be clearly shown. For paper ballots, other than  
66 those tabulated electronically, the official primary ballot is to  
67 contain a square formed in dark lines at the left of each name  
68 on the ballot, arranged in a perpendicular column of squares  
69 before each column of names.

70 (3)(A) The name of every candidate certified by the  
71 Secretary of State or the board of ballot commissioners is to  
72 be printed in capital letters in no smaller than eight point type  
73 on the ballot for the appropriate precincts. Subject to the  
74 rules promulgated by the Secretary of State, the name of each  
75 candidate is to appear in the form set out by the candidate on  
76 the certificate of announcement, but in no case may the name  
77 misrepresent the identity of the candidate nor may the name  
78 include any title, position, rank, degree or nickname implying  
79 or inferring any status as a member of a class or group or  
80 affiliation with any system of belief.

81 (B) The city of residence of every candidate, the state of  
82 residence of every candidate residing outside the state, the  
83 county of residence of every candidate for an office on the  
84 ballot in more than one county and the magisterial district of  
85 residence of every candidate for an office subject to  
86 magisterial district limitations are to be printed in lower case  
87 letters beneath the names of the candidates.

88 (C) The arrangement of names within each office must be  
89 determined as prescribed in section thirteen-a of this article.

90 (D) If the number of candidates for an office exceeds the  
91 space available on a column or ballot page and requires that  
92 candidates for a single office be separated, to the extent  
93 possible, the number of candidates for the office on separate  
94 columns or pages are to be nearly equal and clear instructions  
95 given the voter that the candidates for the office are  
96 continued on the following column or page.

97 (4) When an insufficient number of candidates has filed  
98 for a party to make the number of nominations allowed for  
99 the office or for the voters to elect sufficient members to the  
100 board of Education or to executive committees, the vacant  
101 positions on the ballot shall be filled with the words "No  
102 Candidate Filed": *Provided*, That in paper ballot systems  
103 which allow for write-ins to be made directly on the ballot, a  
104 blank line shall be placed in any vacant position in the office  
105 of board of education or for election to any party executive  
106 committee. A line shall separate each candidate from every  
107 other candidate for the same office. Notwithstanding any  
108 other provision of this code, if there are multiple vacant  
109 positions on a ballot for one office, the multiple vacant  
110 positions which would otherwise be filled with the words  
111 "No Candidate Filed" may be replaced with a brief detailed  
112 description, approved by the Secretary of State, indicating  
113 that there are no candidates listed for the vacant positions.

114           (5) In presidential election years, the words “For election  
115 in accordance with the plan adopted by the party and filed  
116 with the Secretary of State” is to be printed following the  
117 names of all candidates for delegate to national convention.

118           (6) All paper ballots are to be printed in black ink on  
119 paper sufficiently thick so that the printing or marking cannot  
120 be discernible from the back: *Provided*, That no paper ballot  
121 voted pursuant to the provisions of 42 U.S.C. §1973, *et seq.*,  
122 the Uniformed and Overseas Citizens Absentee Voting Act  
123 of 1986, or Federal write-in absentee ballot may be rejected  
124 due to paper type, envelope type, or notarization requirement.  
125 Ballot cards and paper for printing ballots using electronically  
126 sensible ink are to meet minimum requirements of the  
127 tabulating systems and are to conform in size and weight to  
128 ensure ease in tabulation.

129           (7) Ballots are to contain perforated tabs at the top of the  
130 ballots and are to be printed with unique sequential numbers  
131 from one to the highest number representing the total number  
132 of ballots printed. On paper ballots, the ballot is to be bordered  
133 by a solid line at least one sixteenth of an inch wide and the  
134 ballot is to be trimmed to within one-half inch of that border.

135           (8) On the back of every official ballot or ballot card the  
136 words “Official Ballot” with the name of the county and the  
137 date of the election are to be printed. Beneath the date of the  
138 election there are to be two blank lines followed by the words  
139 “Poll Clerks”.

140           (9) The face of sample paper ballots and sample ballot  
141 labels are to be like other official ballots or ballot labels  
142 except that the word “sample” is to be prominently printed  
143 across the front of the ballot in a manner that ensures the  
144 names of candidates are not obscured and the word “sample”  
145 may be printed in red ink. No printing may be placed on the  
146 back of the sample.



## CHAPTER 75

**(H. B. 4247 - By Delegates Frazier,  
Marshall, Poore, Swartzmiller and Ferro)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2010.]

AN ACT to amend and reenact §3-4A-17 of the Code of West Virginia, 1931, as amended, relating to providing counties the discretion to accompany an electronic poll book with a printed poll book.

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

That §3-4A-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

#### **§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 may accompany the electronic poll book to each precinct.

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**CHAPTER 76**

**(Com. Sub. for H. B. 4647 - By Delegates  
Manchin, Frazier, Moore, Miley, Brown,  
Caputo, Wooton, Ferro and Wells)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

AN ACT to repeal §3-9-14 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-8-1, §3-8-1a, §3-8-2, §3-8-8 and §3-8-12 of said code, all relating to the regulation and control of elections; providing certain legislative findings; amending and deleting certain definitions; expanding reporting requirements for independent expenditures; providing for electronic filing of reports of independent expenditures; authorizing the Secretary of State to promulgate rules relating to reports of independent expenditures; retaining prohibition on corporate contribution; and repealing the ban on corporate independent expenditures.

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

That §3-9-14 of the Code of West Virginia, 1931, as amended, be repealed; that §3-8-1, §3-8-1a, §3-8-2, §3-8-8 and §3-8-12 of said code be amended and reenacted, all to read as follows:

**ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

- §3-8-1. Provisions to regulate and control elections.
- §3-8-1a. Definitions.
- §3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.



- §3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.
- §3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

### §3-8-1. Provisions to regulate and control elections.

1 (a) The Legislature finds that:

2 (1) West Virginia's population is 1,808,344, ranking 37th  
3 among the fifty states.

4 (2) State Senate districts have a population of  
5 approximately one hundred six thousand three hundred  
6 seventy-three, and the average Delegate district has a  
7 population of approximately thirty-one thousand, one  
8 hundred seventy-eight. The size of these districts is  
9 substantially smaller than the United States Senatorial and  
10 Congressional Districts.

11 (3) When the relatively small size of the State's  
12 legislative and other voting districts is combined with the  
13 economics and typical uses of various forms of electioneering  
14 communication, history shows that non-broadcast media is  
15 and will continue to be a widely used means of making  
16 campaign related communications to target relevant  
17 audiences. Consequently, non-broadcast communications are  
18 prevalent during elections.

19 (4) Disclosure provisions are appropriate legislative  
20 weapons against the reality or appearance of improper  
21 influence stemming from the dependence of candidates on  
22 large campaign contributions, and the ceilings imposed  
23 accordingly serve the basic governmental interest in  
24 safeguarding the integrity of the electoral process without  
25 directly impinging upon the rights of individual citizens and  
26 candidates to engage in political debate and discussion.

27       (5) Disclosure of expenditures serve a substantial  
28 governmental interest in informing the electorate and  
29 preventing the corruption of the political process.

30       (6) Disclosure by persons and entities that make  
31 expenditures for communications that expressly advocate the  
32 election or defeat of clearly identified candidates, or perform  
33 its functional equivalent, is a reasonable and minimally  
34 restrictive method of furthering First Amendment values by  
35 public exposure of the state election system.

36       (7) Failing to regulate non-broadcast media messages  
37 would permit those desiring to influence elections to avoid  
38 the principles and policies that are embodied in existing state  
39 law.

40       (8) The regulation of the various types of non-broadcast  
41 media in addition to broadcast media, is tailored to meet the  
42 circumstances found in the State of West Virginia.

43       (9) Non-broadcast media such as newspapers, magazines  
44 or other periodicals have proven to be effective means of  
45 election communication in West Virginia. Broadcast,  
46 satellite and non-broadcast media have all been used to  
47 influence election outcomes.

48       (10) Certain non-broadcast communications, such as  
49 newspaper inserts, can be more effective campaign methods  
50 than broadcast media because such communications can be  
51 targeted to registered voters or historical voters in the  
52 particular district. In contrast, broadcasted messages reach  
53 all of the general public, including person ineligible to vote  
54 in the district.

55       (11) Non-broadcast media communications in the final  
56 days of a campaign can be particularly damaging to the  
57 public's confidence in the election process because they  
58 reduce or make impossible an effective response.

59           (12) Identifying those funding non-broadcast media  
60 campaigns in the final days of a campaign may at least permit  
61 voters to evaluate the credibility of the message.

62           (13) In West Virginia, contributions up to the amounts  
63 specified in this article allow contributors to express their  
64 opinions, level of support and their affiliations.

65           (14) In West Virginia, campaign expenditures by entities  
66 and persons who are not candidates have been increasing.  
67 Public confidence is eroded when substantial amounts of  
68 such money, the source of which is hidden or disguised, is  
69 expended. This is particularly true during the final days of a  
70 campaign.

71           (15) In West Virginia, contributions to political  
72 organizations, defined in Section 527(e)(1) of the Internal  
73 Revenue Code of 1986, substantially larger than the amounts  
74 permitted to be received by a candidate's political committee  
75 have been recorded and are considered by the legislature to  
76 be large contributions.

77           (16) Independent expenditures intended to influence  
78 candidates' campaigns in the state are increasingly utilizing  
79 non-broadcast media to support or defeat candidates.

80           (17) Identification of persons or entities funding political  
81 advertisements assists in enforcement of the contribution and  
82 expenditure limitations established by this article and simply  
83 informs voters of the actual identities of persons or entities  
84 advocating the election or defeat of candidates.

85           (18) Identification of persons or entities funding political  
86 advertisements allows voters to evaluate the credibility of the  
87 message contained in the advertisement.

88 (19) Disclosure of the identity of persons or entities  
89 funding political communications regarding candidates  
90 bolsters the right of listeners to be fully informed.

91 (b) Political campaign contributions, receipts and  
92 expenditures of money, advertising, influence and control of  
93 employees, and other economic, political and social control  
94 factors incident to primary, special and general elections shall  
95 be regulated and controlled by the provisions of this article  
96 and other applicable provisions of this chapter.

### §3-8-1a. Definitions.

1 As used in this article, the following terms have the  
2 following definitions:

3 (1) "Ballot issue" means a constitutional amendment,  
4 special levy, bond issue, local option referendum, municipal  
5 charter or revision, an increase or decrease of corporate limits  
6 or any other question that is placed before the voters for a  
7 binding decision.

8 (2) "Broadcast, cable or satellite communication" means  
9 a communication that is publicly distributed by a television  
10 station, radio station, cable television system or satellite  
11 system.

12 (3) "Candidate" means an individual who:

13 (A) Has filed a certificate of announcement under section  
14 seven, article five of this chapter or a municipal charter;

15 (B) Has filed a declaration of candidacy under section  
16 twenty-three, article five of this chapter;

17 (C) Has been named to fill a vacancy on a ballot; or

18           (D) Has declared a write-in candidacy or otherwise  
19 publicly declared his or her intention to seek nomination or  
20 election for any state, district, county or municipal office or  
21 party office to be filled at any primary, general or special  
22 election.

23           (4) “Candidate’s committee” means a political committee  
24 established with the approval of or in cooperation with a  
25 candidate or a prospective candidate to explore the  
26 possibilities of seeking a particular office or to support or aid  
27 his or her nomination or election to an office in an election  
28 cycle. If a candidate directs or influences the activities of  
29 more than one active committee in a current campaign, those  
30 committees shall be considered one committee for the  
31 purpose of contribution limits.

32           (5) “Clearly identified” means that the name, nickname,  
33 photograph, drawing or other depiction of the candidate  
34 appears or the identity of the candidate is otherwise apparent  
35 through an unambiguous reference, such as “the Governor,”  
36 “your Senator” or “the incumbent” or through an  
37 unambiguous reference to his or her status as a candidate,  
38 such as “the Democratic candidate for Governor” or “the  
39 Republican candidate for Supreme Court of Appeals.”

40           (6) “Contribution” means a gift, subscription, loan,  
41 assessment, payment for services, dues, advance, donation,  
42 pledge, contract, agreement, forbearance or promise of  
43 money or other tangible thing of value, whether conditional  
44 or legally enforceable, or a transfer of money or other  
45 tangible thing of value to a person, made for the purpose of  
46 influencing the nomination, election or defeat of a candidate.  
47 An offer or tender of a contribution is not a contribution if  
48 expressly and unconditionally rejected or returned. A  
49 contribution does not include volunteer personal services  
50 provided without compensation: *Provided*, That a  
51 nonmonetary contribution is to be considered at fair market  
52 value for reporting requirements and contribution limitations.

53 (7) “Corporate political action committee” means a  
54 political action committee that is a separate segregated fund  
55 of a corporation that may only accept contributions from its  
56 restricted group as outlined by the rules of the State Election  
57 Commission.

58 (8) “Direct costs of purchasing, producing or  
59 disseminating electioneering communications” means:

60 (A) Costs charged by a vendor, including, but not limited  
61 to, studio rental time, compensation of staff and employees,  
62 costs of video or audio recording media and talent, material  
63 and printing costs and postage; or

64 (B) The cost of air time on broadcast, cable or satellite  
65 radio and television stations, the costs of disseminating  
66 printed materials, studio time, use of facilities and the  
67 charges for a broker to purchase air time.

68 (9) “Disclosure date” means either of the following:

69 (A) The first date during any calendar year on which any  
70 electioneering communication is disseminated after the  
71 person paying for the communication has spent a total of  
72 \$5,000 or more for the direct costs of purchasing, producing  
73 or disseminating electioneering communications; or

74 (B) Any other date during that calendar year after any  
75 previous disclosure date on which the person has made  
76 additional expenditures totaling \$5,000 or more for the direct  
77 costs of purchasing, producing or disseminating electioneering  
78 communications.

79 (10) “Election” means any primary, general or special  
80 election conducted under the provisions of this code or under  
81 the charter of any municipality at which the voters nominate  
82 or elect candidates for public office. For purposes of this

83 article, each primary, general, special or local election  
84 constitutes a separate election. This definition is not intended  
85 to modify or abrogate the definition of the term “nomination”  
86 as used in this article.

87 (11)(A) “Electioneering communication” means any paid  
88 communication made by broadcast, cable or satellite signal,  
89 or published in any newspaper, magazine or other periodical  
90 that:

91 (i) Refers to a clearly identified candidate for Governor,  
92 Secretary of State, Attorney General, Treasurer, Auditor,  
93 Commissioner of Agriculture, Supreme Court of Appeals or  
94 the Legislature;

95 (ii) Is publicly disseminated within:

96 (I) Thirty days before a primary election at which the  
97 nomination for office sought by the candidate is to be  
98 determined; or

99 (II) Sixty days before a general or special election at  
100 which the office sought by the candidate is to be filled; and

101 (iii) Is targeted to the relevant electorate: *Provided*, That  
102 for purposes of the general election of 2008 the amendments  
103 to this article are effective October 1, 2008.

104 (B) “Electioneering communication” does not include:

105 (i) A news story, commentary or editorial disseminated  
106 through the facilities of any broadcast, cable or satellite  
107 television or radio station, newspaper, magazine or other  
108 periodical publication not owned or controlled by a political  
109 party, political committee or candidate: *Provided*, That a  
110 news story disseminated through a medium owned or  
111 controlled by a political party, political committee or  
112 candidate is nevertheless exempt if the news is:

113 (I) A bona fide news account communicated in a  
114 publication of general circulation or through a licensed  
115 broadcasting facility; and

116 (II) Is part of a general pattern of campaign-related news  
117 that gives reasonably equal coverage to all opposing  
118 candidates in the circulation, viewing or listening area;

119 (ii) Activity by a candidate committee, party executive  
120 committee or caucus committee, or a political action  
121 committee that is required to be reported to the State Election  
122 Commission or the Secretary of State as an expenditure  
123 pursuant to section five of this article or the rules of the State  
124 Election Commission or the Secretary of State promulgated  
125 pursuant to such provision: *Provided*, That independent  
126 expenditures by a party executive committee or caucus  
127 committee or a political action committee required to be  
128 reported pursuant to subsection (b), section two of this article  
129 are not exempt from the reporting requirements of this  
130 section;

131 (iii) A candidate debate or forum conducted pursuant to  
132 rules adopted by the State Election Commission or the  
133 Secretary of State or a communication promoting that debate  
134 or forum made by or on behalf of its sponsor;

135 (iv) A communication paid for by any organization  
136 operating under Section 501(c)(3) of the Internal Revenue  
137 Code of 1986;

138 (v) A communication made while the Legislature is in  
139 session which, incidental to promoting or opposing a specific  
140 piece of legislation pending before the Legislature, urges the  
141 audience to communicate with a member or members of the  
142 Legislature concerning that piece of legislation;

143 (vi) A statement or depiction by a membership  
144 organization, in existence prior to the date on which the



145 individual named or depicted became a candidate, made in a  
146 newsletter or other communication distributed only to bona  
147 fide members of that organization;

148 (vii) A communication made solely for the purpose of  
149 attracting public attention to a product or service offered for  
150 sale by a candidate or by a business owned or operated by a  
151 candidate which does not mention an election, the office  
152 sought by the candidate or his or her status as a candidate; or

153 (viii) A communication, such as a voter's guide, which  
154 refers to all of the candidates for one or more offices, which  
155 contains no appearance of endorsement for or opposition to  
156 the nomination or election of any candidate and which is  
157 intended as nonpartisan public education focused on issues  
158 and voting history.

159 (12) "Expressly advocating" means any communication  
160 that:

161 (A) Uses phrases such as "vote for the Governor," "re-  
162 elect your Senator," "support the Democratic nominee for  
163 Supreme Court," "cast your ballot for the Republican  
164 challenger for House of Delegates," "Smith for House," "Bob  
165 Smith in '04," "vote Pro-Life" or "vote Pro-Choice"  
166 accompanied by a listing of clearly identified candidates  
167 described as Pro-Life or Pro-Choice, "vote against Old  
168 Hickory," "defeat" accompanied by a picture of one or more  
169 candidates, "reject the incumbent";

170 (B) Communications of campaign slogans or individual  
171 words, that can have no other reasonable meaning than to urge  
172 the election or defeat of one or more clearly identified  
173 candidates, such as posters, bumper stickers, advertisements,  
174 etc., which say "Smith's the One," "Jones '06," "Baker", etc; or

175 (C) Is susceptible of no reasonable interpretation other  
176 than as an appeal to vote for or against a specific candidate.

177       (13) “Financial agent” means any individual acting for  
178 and by himself or herself, or any two or more individuals  
179 acting together or cooperating in a financial way to aid or  
180 take part in the nomination or election of any candidate for  
181 public office, or to aid or promote the success or defeat of  
182 any political party at any election.

183       (14) “Fund-raising event” means an event such as a  
184 dinner, reception, testimonial, cocktail party, auction or  
185 similar affair through which contributions are solicited or  
186 received by such means as the purchase of a ticket, payment  
187 of an attendance fee or by the purchase of goods or services.

188       (15) “Independent expenditure” means an expenditure by  
189 a person:

190       (A) Expressly advocating the election or defeat of a  
191 clearly identified candidate; and

192       (B) That is not made in concert or cooperation with or at  
193 the request or suggestion of such candidate, his or her agents,  
194 the candidate’s authorized political committee or a political  
195 party committee or its agents.

196       Supporting or opposing the election of a clearly identified  
197 candidate includes supporting or opposing the candidates of  
198 a political party. An expenditure which does not meet the  
199 criteria for an independent expenditure is considered a  
200 contribution.

201       (16) “Membership organization” means a group that  
202 grants bona fide rights and privileges, such as the right to  
203 vote, to elect officers or directors and the ability to hold  
204 office, to its members and which uses a majority of its  
205 membership dues for purposes other than political purposes.  
206 “Membership organization” does not include organizations  
207 that grant membership upon receiving a contribution.

208           (17) “Name” means the full first name, middle name or  
209           initial, if any, and full legal last name of an individual and the  
210           full name of any association, corporation, committee or other  
211           organization of individuals, making the identity of any person  
212           who makes a contribution apparent by unambiguous  
213           reference.

214           (18) “Person” means an individual, corporation,  
215           partnership, committee, association and any other  
216           organization or group of individuals.

217           (19) “Political action committee” means a committee  
218           organized by one or more persons for the purpose of  
219           supporting or opposing the nomination or election of one or  
220           more candidates. The following are types of political action  
221           committees:

222           (A) A corporate political action committee, as that term  
223           is defined by subdivision (8) of this section;

224           (B) A membership organization, as that term is defined  
225           by subdivision(18) of this section;

226           (C) An unaffiliated political action committee, as that  
227           term is defined by subdivision (29) of this section.

228           (20) “Political committee” means any candidate  
229           committee, political action committee or political party  
230           committee.

231           (21) “Political party” means a political party as that term  
232           is defined by section eight, article one of this chapter or any  
233           committee established, financed, maintained or controlled by  
234           the party, including any subsidiary, branch or local unit  
235           thereof and including national or regional affiliates of the  
236           party.

237           (22) “Political party committee” means a committee  
238 established by a political party or political party caucus for  
239 the purposes of engaging in the influencing of the election,  
240 nomination or defeat of a candidate in any election.

241           (23) “Political purposes” means supporting or opposing  
242 the nomination, election or defeat of one or more candidates  
243 or the passage or defeat of a ballot issue, supporting the  
244 retirement of the debt of a candidate or political committee or  
245 the administration or activities of an established political  
246 party or an organization which has declared itself a political  
247 party and determining the advisability of becoming a  
248 candidate under the precandidacy financing provisions of this  
249 chapter.

250           (24) “Targeted to the relevant electorate” means a  
251 communication which refers to a clearly identified candidate  
252 for statewide office or the Legislature and which can be  
253 received by one hundred forty thousand or more individuals  
254 in the state in the case of a candidacy for statewide office,  
255 eight thousand two hundred twenty or more individuals in the  
256 district in the case of a candidacy for the State Senate and  
257 two thousand four hundred ten or more individuals in the  
258 district in the case of a candidacy for the House of Delegates.

259           (25) “Two-year election cycle” means the twenty-four  
260 month period that begins the day after a general election and  
261 ends on the day of the subsequent general election.

262           (26) “Unaffiliated political action committee” means a  
263 political action committee that is not affiliated with a  
264 corporation or a membership organization.

**§3-8-2. Accounts for receipts and expenditures in elections;  
requirements for reporting independent  
expenditures.**

1           (a) Except for: (1) Candidates for party committeeman and  
2           committeewoman; and (2) federal committees required to file  
3           under the provisions of 2 U.S.C.§434, all candidates for  
4           nomination or election and all persons supporting, aiding or  
5           opposing the nomination, election or defeat of any candidate  
6           shall keep for a period of six months records of receipts and  
7           expenditures which are made for political purposes. All of  
8           the receipts and expenditures are subject to regulation by the  
9           provisions of this article. Verified financial statements of the  
10          records and expenditures shall be made and filed as public  
11          records by all candidates and by their financial agents,  
12          representatives or any person acting for and on behalf of any  
13          candidate and by the treasurers of all political party  
14          committees.

15          (b) (1) In addition to any other reporting required by the  
16          provisions of this chapter, any person who makes  
17          independent expenditures in an aggregate amount or value in  
18          excess of \$1,000 during a calendar year shall file a disclosure  
19          statement, on a form prescribed by the Secretary of State, that  
20          contains all of the following information:

21               (A) The name of (i) the person making the expenditure;  
22               (ii) the name of any person sharing or exercising direction or  
23               control over the activities of the person making the  
24               expenditure; and (iii) the name of the custodian of the books  
25               and accounts of the person making the expenditure;

26               (B) If the person making the expenditure is not an  
27               individual, the principal place of business of the partnership,  
28               corporation, committee, association, organization or group  
29               which made the expenditure;

30               (C) The amount of each expenditure of more than \$1,000  
31               made during the period covered by the statement and the  
32               name of the person to whom the expenditure was made;

33 (D) The elections to which the independent expenditure  
34 pertain, the names, if known, of the candidates referred to or  
35 to be referred to therein, whether the expenditure is intended  
36 to support or oppose the identified candidates and the amount  
37 of the total expenditure reported pursuant to paragraph (C) of  
38 this subdivision spent to support or oppose each of the  
39 identified candidates;

40 (E) The name and address of any person who contributed  
41 a total of more than \$250 between the first day of the  
42 preceding calendar year, and the disclosure date, and whose  
43 contributions were made for the purpose of furthering the  
44 expenditure.

45 (F) With regard to the contributors required to be listed  
46 pursuant to paragraph (E) of this subdivision, the statement  
47 shall also include:

48 (i) The month, day and year that the contributions of any  
49 single contributor exceeded \$250;

50 (ii) If the contributor is a political action committee, the  
51 name and address the political action committee registered  
52 with the Secretary of State, county clerk or municipal clerk;

53 (iii) If the contributor is an individual, the name and  
54 address of the individual, his or her occupation, the name and  
55 address of the individual's current employer, if any, or, if the  
56 individual is self-employed, the name and address of the  
57 individual's business, if any;

58 (iv) A description of the contribution, if other than  
59 money; and

60 (v) The value in dollars and cents of the contribution.

61 (G)(1) A certification that such independent expenditure  
62 was not made in cooperation, consultation, or concert, with,

63 or at the request or suggestion of, any candidate or any  
64 authorized committee or agent of such candidate.

65 (2) Any person who makes a contribution for the purpose  
66 of funding an independent expenditure under this subsection  
67 shall, at the time the contribution is made, provide his or her  
68 name, address, occupation, his or her current employer, if  
69 any, or, if the individual is self-employed, the name of his or  
70 her business, if any, to the recipient of the contribution.

71 (3) The Secretary of State shall expeditiously prepare  
72 indices setting forth, on a candidate-by-candidate basis, all  
73 independent expenditures separately, made by, or on behalf  
74 of, or for, or against each candidate, as reported under this  
75 subsection, and for periodically publishing such indices on a  
76 timely pre-election basis.

77 (c) (1) A person, including a political committee, who  
78 makes or contracts to make independent expenditures  
79 aggregating \$1,000 or more for any statewide, legislative or  
80 multi-county judicial candidate or \$500 or more for any  
81 county office, single-county judicial candidate, committee  
82 supporting or opposing a candidate on the ballot in more than  
83 one county, or any municipal candidate on a municipal  
84 election ballot, after the fifteenth day, but more than twelve  
85 hours, before the date of an election, shall file a report on a  
86 form prescribed by the Secretary of State, describing the  
87 expenditures within twenty-four hours: *Provided*, That a  
88 person making expenditures in the amount of \$1,000 or more  
89 for any statewide or legislative candidate on or after the  
90 fifteenth day but more than twelve hours before the day of  
91 any election shall report such expenditures in accordance  
92 with section two-b of this article and shall not file an  
93 additional report as provided herein.

94 (2) Any person who files a report under subdivision (1)  
95 of this subsection, shall file an additional report within

96 twenty-four hours after each time the person makes or  
97 contracts to make independent expenditures aggregating an  
98 additional \$500 with respect to the same election, for any  
99 county office, single-county judicial candidate, committee  
100 supporting or opposing a candidate on the ballot in more than  
101 one county, or any municipal candidate on a municipal  
102 election ballot, as that to which the initial report relates.

103 (d) (1) A person, including a political committee, who  
104 makes or contracts to make independent expenditures  
105 aggregating \$10,000 or more at any time up to and including  
106 the fifteenth day before the date of an election shall file a  
107 report on a form prescribed by the Secretary of State,  
108 describing the expenditures within forty-eight hours.

109 (2) A person who files a report under subdivision (1) of  
110 this subsection, the person shall file an additional report  
111 within forty-eight hours after each time the person makes or  
112 contracts to make independent expenditures aggregating an  
113 additional \$10,000 with respect to the same election as that  
114 to which the initial report relates.

115 (e) Any communication paid for by an independent  
116 expenditure must include a clear and conspicuous public  
117 notice that:

118 (1) Clearly states that the communication is not  
119 authorized by the candidate or the candidate's committee;  
120 and

121 (2) Clearly identifies the person making the expenditure:  
122 *Provided*, That if the communication appears on or is  
123 disseminated by broadcast, cable or satellite transmission, the  
124 statement required by this subsection must be both spoken  
125 clearly and appear in clearly readable writing at the end of  
126 the communication.



127 (f) Any person who has spent a total of \$5,000 or more  
128 for the direct costs of purchasing, producing or disseminating  
129 electioneering communications during any calendar year  
130 shall maintain all financial records and receipts related to  
131 such expenditure for a period of six months following the  
132 filing of a disclosure pursuant to subsection (a) of this section  
133 and, upon request, shall make such records and receipts  
134 available to the Secretary of State or county clerk for the  
135 purpose of an audit as provided in section seven of this  
136 article.

137 (g) Any person who willfully fails to comply with this  
138 section is guilty of a misdemeanor and, upon conviction  
139 thereof, shall be fined not less than \$500, or confined in jail  
140 for not more than one year, or both fined and confined.

141 (h) (1) Any person who is required to file a statement  
142 under this section may file the statement by facsimile device  
143 or electronic mail, in accordance with such rules as the  
144 Secretary of State may promulgate.

145 (2) The Secretary of State shall make any document filed  
146 electronically pursuant to this subsection accessible to the  
147 public on the internet not later than twenty-four hours after  
148 the document is received by the secretary.

149 (3) In promulgating a rule under this subsection, the  
150 secretary shall provide methods, other than requiring a  
151 signature on the document being filed, for verifying the  
152 documents covered by the rule. Any document verified  
153 under any of the methods shall be treated for all purposes,  
154 including penalties for perjury, in the same manner as a  
155 document verified by signature.

156 (i) This section does not apply to candidates for federal  
157 office.

158 (j) The Secretary of State may promulgate emergency and  
159 legislative rules, in accordance with the provisions of chapter  
160 twenty-nine-a of this code, to establish guidelines for the  
161 administration of this section.

**§3-8-8. Corporation contributions forbidden; exceptions;  
penalties; promulgation of rules; additional powers  
of State Election Commission.**

1 (a) An officer, agent or person acting on behalf of any  
2 corporation, whether incorporated under the laws of this or  
3 any other state or of a foreign country, may not pay, give,  
4 lend or authorize to be paid, any money or other thing of  
5 value belonging to the corporation to any candidate or  
6 candidate's campaign for nomination or election to any  
7 statewide office or any other elective office in the state or any  
8 of its subdivisions.

9 (b) A person may not solicit or receive any payment,  
10 contribution or other thing from any corporation or from any  
11 officer, agent or other person acting on behalf of the  
12 corporation to any candidate or candidate's campaign for  
13 nomination or election to any statewide office or any other  
14 elective office in the state or any of its subdivisions.

15 (c)(1) The provisions of this section do not prohibit a  
16 corporation from soliciting, through any officer, agent or  
17 person acting on behalf of the corporation, contributions to a  
18 separate segregated fund to be used for political purposes.  
19 Any separate segregated fund is considered a political action  
20 committee for the purpose of this article and is subject to all  
21 reporting requirements applicable to political action  
22 committees;

23 (2) It is unlawful for:

24 (A) A corporation or separate segregated fund to make a  
25 primary or other election contribution or expenditure by

26 using money or anything of value secured: (i) By physical  
27 force, job discrimination or financial reprisal; (ii) by the  
28 threat of force, job discrimination or financial reprisal; or (iii)  
29 as a condition of employment;

30 (B) Any person soliciting a stockholder or executive or  
31 administrative personnel and members of their families for a  
32 contribution to a corporation or separate segregated fund to  
33 fail to inform the person solicited of the political purposes of  
34 the separate segregated fund at the time of the solicitation;

35 (C) Any person soliciting any other person for a  
36 contribution to a corporation or separate segregated fund to  
37 fail to inform the person solicited at the time of the  
38 solicitation of his or her right to refuse to contribute without  
39 any reprisal;

40 (D) A separate segregated fund established by a  
41 corporation: (i) To solicit contributions to the fund from any  
42 person other than the corporation's stockholders and their  
43 families and its executive or administrative personnel and  
44 their families; or (ii) to contribute any corporate funds;

45 (E) A separate segregated fund established by a  
46 corporation to receive contributions to the fund from any  
47 person other than the corporation's stockholders and their  
48 immediate families and its executive or administrative  
49 personnel and their immediate families;

50 (F) A corporation to engage in job discrimination or to  
51 discriminate in job promotion or transfer because of an  
52 employee's failure to make a contribution to the corporation  
53 or a separate segregated fund;

54 (G) A separate segregated fund to make any contribution,  
55 directly or indirectly, in excess of \$1,000 in connection with  
56 or on behalf of any campaign for nomination or election to

57 any elective office in the state or any of its subdivisions, or  
58 in connection with or on behalf of any committee or other  
59 organization or person engaged in furthering, advancing,  
60 supporting or aiding the nomination or election of any  
61 candidate for any such office;

62 (H) A corporation to pay, give or lend or to authorize  
63 payment, giving or lending of any moneys or other things of  
64 value belonging to the corporation to a separate segregated  
65 fund for the purpose of making a contribution to a candidate  
66 or a candidate's committee. This provision does not prohibit  
67 a separate segregated fund from using the property, real or  
68 personal, facilities and equipment of a corporation solely to  
69 establish, administer and solicit contributions to the fund,  
70 subject to the rules of the State Election Commission as  
71 provided in subsection (d) of this section: *Provided*, That  
72 any such corporation shall also permit any group of its  
73 employees represented by a bona fide political action  
74 committee to use the real property of the corporation solely  
75 to establish, administer and solicit contributions to the fund  
76 of the political action committee, subject to the rules of the  
77 State Election Commission promulgated in accordance with  
78 said subsection.

79 (3) For the purposes of this section, the term "executive  
80 or administrative personnel" means individuals employed by  
81 a corporation who are paid on a salary rather than hourly  
82 basis and who have policy-making, managerial, professional  
83 or supervisory responsibilities.

84 (d) Any person or corporation violating any provision of  
85 this section is guilty of a misdemeanor and, upon conviction  
86 thereof, shall be fined not more than \$10,000. A corporation  
87 may not reimburse any person the amount of any fine  
88 imposed pursuant to this section.

89 (e) To ensure uniform administration and application of  
90 the provisions of this section and of those of the Federal

91 Election Campaign Act Amendments of 1976 relating to  
92 corporate contributions, the State Election Commission shall  
93 propose rules for legislative approval in accordance with the  
94 provisions of article three, chapter twenty-nine-a of this code  
95 to implement the provisions of this section consistent, insofar  
96 as practicable, with the rules and regulations promulgated by  
97 the Federal Election Commission to carry out similar or  
98 identical provisions of 2 U.S.C. §441b.

99 (f) In addition to the powers and duties set forth in article  
100 one-a of this chapter, the State Election Commission has the  
101 following powers and duties:

102 (1) To investigate, upon complaint or on its own  
103 initiative, any alleged violations or irregularities of this  
104 article.

105 (2) To administer oaths and affirmations, issue subpoenas  
106 for the attendance of witnesses, issue subpoenas duces tecum  
107 to compel the production of books, papers, records and all  
108 other evidence necessary to any investigation.

109 (3) To involve the aid of any circuit court in the  
110 execution of its subpoena power.

111 (4) To report any alleged violations of this article to the  
112 appropriate prosecuting attorney having jurisdiction, which  
113 prosecuting attorney shall present to the grand jury such  
114 alleged violations, together with all evidence relating thereto,  
115 no later than the next term of court after receiving the report.

116 (g) The Attorney General shall, when requested, provide  
117 legal and investigative assistance to the State Election  
118 Commission.

119 (h) Any investigation, either upon complaint or initiative,  
120 shall be conducted in an executive session of the State

121 Election Commission and shall remain undisclosed except  
122 upon an indictment by a grand jury.

123 (i) Any person who discloses the fact of any complaint,  
124 investigation or report or any part thereof, or any proceedings  
125 thereon, is guilty of a misdemeanor and, upon conviction  
126 thereof, shall be fined not less than \$1,000, nor more than  
127 \$5,000, and shall be confined in jail not less than six months  
128 nor more than one year.

129 (j) The amendments to this section enacted during the  
130 second extraordinary session of 2008 are intended to conform  
131 to the existing proscription to constitutionally permissible  
132 limits and not to create a new offense or offenses.

133 (k) The effective date of the amendments to this section  
134 enacted during the second extraordinary legislative session of  
135 2008 is October 1, 2008.

**§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.**

1 (a) A person may not publish, issue or circulate, or cause  
2 to be published, issued or circulated, any anonymous letter,  
3 circular, placard, radio or television advertisement or other  
4 publication supporting or aiding the election or defeat of a  
5 clearly identified candidate.

6 (b) An owner, publisher, editor or employee of a  
7 newspaper or other periodical may not insert, either in its  
8 advertising or reading columns, any matter, paid for or to be  
9 paid for, which tends to influence the voting at any election,  
10 unless directly designating it as a paid advertisement and

11 stating the name of the person authorizing its publication and  
12 the candidate in whose behalf it is published.

13 (c) A person may not, in any room or building occupied  
14 for the discharge of official duties by any officer or employee  
15 of the state or a political subdivision of the state, solicit orally  
16 or by written communication delivered within the room or  
17 building, or in any other manner, any contribution of money  
18 or other thing of value for any party or political purpose,  
19 from any postmaster or any other officer or employee of the  
20 federal government, or officer or employee of the State, or a  
21 political subdivision of the State. An officer, agent, clerk or  
22 employee of the federal government, or of this state, or any  
23 political subdivision of the state, who may have charge or  
24 control of any building, office or room, occupied for any  
25 official purpose, may not knowingly permit any person to  
26 enter any building, office or room, occupied for any official  
27 purpose for the purpose of soliciting or receiving any  
28 political assessments from, or delivering or giving written  
29 solicitations for, or any notice of, any political assessments  
30 to, any officer or employee of the state, or a political  
31 subdivision of the state.

32 (d) Except as provided in section eight of this article, a  
33 person entering into any contract with the state or its  
34 subdivisions, or any department or agency of the state, either  
35 for rendition of personal services or furnishing any material,  
36 supplies or equipment or selling any land or building to the  
37 state, or its subdivisions, or any department or agency of the  
38 state, if payment for the performance of the contract or  
39 payment for the material, supplies, equipment, land or  
40 building is to be made, in whole or in part, from public funds  
41 may not, during the period of negotiation for or performance  
42 under the contract or furnishing of materials, supplies,  
43 equipment, land or buildings, directly or indirectly, make any  
44 contribution to any political party, committee or candidate for  
45 public office or to any person for political purposes or use;

46 nor may any person or firm solicit any contributions for any  
47 purpose during any period.

48 (e) A person may not, directly or indirectly, promise any  
49 employment, position, work, compensation or other benefit  
50 provided for, or made possible, in whole or in part, by act of  
51 the Legislature, to any person as consideration, favor or  
52 reward for any political activity for the support of or  
53 opposition to any candidate, or any political party in any  
54 election.

55 (f) Except as provided in section eight of this article, a  
56 person may not, directly or indirectly, make any contribution  
57 in excess of the value of \$1,000 in connection with any  
58 campaign for nomination or election to or on behalf of any  
59 statewide office, in connection with any other campaign for  
60 nomination or election to or on behalf of any other elective  
61 office in the state or any of its subdivisions, or in connection  
62 with or on behalf of any person engaged in furthering,  
63 advancing, supporting or aiding the nomination or election of  
64 any candidate for any of the offices.

65 (g) A political organization (as defined in Section  
66 527(e)(1) of the Internal Revenue Code of 1986) may not  
67 solicit or accept contributions until it has notified the  
68 Secretary of State of its existence and of the purposes for  
69 which it was formed. During the two-year election cycle, a  
70 political organization (as defined in Section 527 (e) (1) of the  
71 Internal Revenue Code of 1986) may not accept contributions  
72 totaling more than \$1,000 from any one person prior to the  
73 primary election and contributions totaling more than \$1,000  
74 from any one person after the primary and before the general  
75 election.

76 (h) It is unlawful for any person to create, establish or  
77 organize more than one political organization (as defined in  
78 Section 527(e)(1) of the Internal Revenue Code of 1986) with



79 the intent to avoid or evade the contribution limitations  
80 contained in subsection (g) of this section.

81 (i) Notwithstanding the provisions of subsection (f) of  
82 this section to the contrary, a person may not, directly or  
83 indirectly, make contributions to a state party executive  
84 committee or state party legislative caucus committee which,  
85 in the aggregate, exceed the value of \$1,000 in any calendar  
86 year.

87 (j) The limitations on contributions contained in this  
88 section do not apply to transfers between and among a state  
89 party executive committee or a state party's legislative  
90 caucus political committee from national committees of the  
91 same political party: *Provided*, That transfers permitted by  
92 this subsection may not exceed \$50,000 in the aggregate in  
93 any calendar year to any state party executive committee or  
94 state party legislative caucus political committee: *Provided*,  
95 *however*, That the moneys transferred may only be used for  
96 voter registration and get-out-the-vote activities of the state  
97 committees.

98 (k) A person may not solicit any contribution, other than  
99 contributions to a campaign for or against a county or local  
100 government ballot issue, from any nonelective salaried  
101 employee of the state government or of any of its  
102 subdivisions: *Provided*, That in no event may any person  
103 acting in a supervisory role solicit a person who is a  
104 subordinate employee for any contribution. A person may  
105 not coerce or intimidate any nonelective salaried employee  
106 into making a contribution. a person may not coerce or  
107 intimidate any nonsalaried employee of the state government  
108 or any of its subdivisions into engaging in any form of  
109 political activity. The provisions of this subsection may not  
110 be construed to prevent any employee from making a  
111 contribution or from engaging in political activity voluntarily  
112 without coercion, intimidation or solicitation.

113           (l) A person may not solicit a contribution from any other  
114 person without informing the other person at the time of the  
115 solicitation of the amount of any commission, remuneration  
116 or other compensation that the solicitor or any other person  
117 will receive or expect to receive as a direct result of the  
118 contribution being successfully collected. Nothing in this  
119 subsection may be construed to apply to solicitations of  
120 contributions made by any person serving as an unpaid  
121 volunteer.

122           (m) A person may not place any letter, circular, flyer,  
123 advertisement, election paraphernalia, solicitation material or  
124 other printed or published item tending to influence voting at  
125 any election in a roadside receptacle unless it is: (1)  
126 Approved for placement into a roadside receptacle by the  
127 business or entity owning the receptacle; and (2) contains a  
128 written acknowledgment of the approval. This subdivision  
129 does not apply to any printed material contained in a  
130 newspaper or periodical published or distributed by the  
131 owner of the receptacle. The term “roadside receptacle”  
132 means any container placed by a newspaper or periodical  
133 business or entity to facilitate home or personal delivery of a  
134 designated newspaper or periodical to its customers.

135           (n) Any person violating any provision of this section is  
136 guilty of a misdemeanor and, upon conviction thereof, shall  
137 be fined not more than \$1,000, or confined in jail for not  
138 more than one year, or, both fined and confined.

139           (o) The provisions of subsection (k) of this section,  
140 permitting contributions to a campaign for or against a  
141 county or local government ballot issue shall become  
142 operable on and after January 1, 2005.

143           (p) The limitations on contributions established by  
144 subsection (g) of this section do not apply to contributions  
145 made for the purpose of supporting or opposing a ballot  
146 issue, including a constitutional amendment.

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**CHAPTER 77**

**(H. B. 4036 - By Mr. Speaker,  
Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-10-3a, relating to the establishment of the Judicial Vacancy Advisory Commission; providing for commission membership and terms of appointment; requiring written policies and procedures of the commission; establishing a quorum requirement; requiring that certain proceedings of the commission be open to the public; requiring the disclosure of certain documents or materials; exempting certain meetings from the Open Governmental Proceedings Act; and exempting certain documents and materials from the Freedom of Information Act.

*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 §3-10-3a, to read as follows:

**ARTICLE 10. FILLING VACANCIES.**

**§3-10-3a. Judicial Vacancy Advisory Commission.**

- 1 (a) The Judicial Vacancy Advisory Commission is hereby
- 2 established to assist the Governor in filling judicial

3 vacancies. The commission shall meet and submit a list of no  
4 more than five nor less than two best qualified persons to the  
5 Governor within ninety days of the occurrence of a vacancy  
6 in the office of justice of the Supreme Court of Appeals,  
7 judge of an intermediate appellate court, judge of a circuit  
8 court, or judge of a family court.

9 (b) The commission shall consist of eight appointed  
10 members. Four public members shall be appointed by the  
11 Governor for six-year terms, except for the initial  
12 appointments which shall be staggered in accordance with  
13 subsection (c) of this section. Four attorney members shall  
14 be appointed by the Governor for six-year terms, except as  
15 provided in subsection (c) of this section, from a list of  
16 nominees provided by the Board of Governors of the West  
17 Virginia State Bar. The Board of Governors of the West  
18 Virginia State Bar shall nominate no more than twenty nor  
19 less than ten best qualified attorneys for appointment to the  
20 commission whenever there is a vacancy in the membership  
21 of the commission reserved for attorney members. The  
22 commission shall choose one of its appointed members to  
23 serve as chair for a three-year term. No more than four  
24 appointed members of the commission shall belong to the  
25 same political party. No more than three appointed members  
26 of the commission shall be residents of the same  
27 congressional district. All members of the commission shall  
28 be citizens of this state. Public members of the commission  
29 may not be licensed to practice law in West Virginia or any  
30 other jurisdiction.

31 (c) Of the initial appointments made to the commission,  
32 two public members and two attorney members shall be  
33 appointed for a term ending two years after the effective date  
34 of this section, one public member and one attorney member  
35 shall be appointed for a term ending four years after the  
36 effective date of this section, and one public member and one  
37 attorney member shall be appointed for a term ending six  
38 years after the effective date of this section.

39           (d) The Governor, or his or her designee, the President of  
40 the West Virginia State Bar, and the Dean of the West  
41 Virginia University College of Law shall serve as *ex officio*  
42 members of the commission.

43           (e) Members of the commission shall serve without  
44 compensation, except that commission members are entitled  
45 to reimbursement of travel and other necessary expenses  
46 actually incurred while engaged in official commission  
47 activities in accordance with the guidelines of the Travel  
48 Management Office of the Department of Administration, or  
49 its successor entity. The Governor's Office shall cooperate  
50 with the commission to ensure that all resources necessary to  
51 carrying out the official duties of the commission are  
52 provided, including staff assistance, equipment and materials.

53           (f) The commission shall adopt written policies that  
54 formalize and standardize all operating procedures and  
55 ethical practices of its members including, but not limited to,  
56 procedures for training commission members, publishing  
57 notice of judicial vacancies, recruiting qualified individuals  
58 for consideration by the commission, receiving applications  
59 from qualified individuals, notifying the public of judicial  
60 vacancies, notifying state or local groups and organizations  
61 of judicial vacancies, and soliciting public comment on  
62 judicial vacancies. The written policies of the commission  
63 are not subject to the provisions of chapter twenty-nine-a of  
64 this code, but shall be filed with the Secretary of State.

65           (g) A majority of the commission plus one shall  
66 constitute a quorum to do business.

67           (h) All organizational meetings of the commission shall  
68 be open to the public and subject to the requirements of  
69 article nine-a, chapter six of this code. An "organizational  
70 meeting" means an initial meeting to discuss the  
71 commission's procedures and requirements for a judicial  
72 vacancy. The commission shall hold at least one  
73 organizational meeting upon the occurrence of a judicial

74 vacancy. All other meetings of the commission are exempt  
75 from article nine-a, chapter six of this code.

76 (i) The commission shall make available to the public  
77 copies of any applications and any letters of recommendation  
78 written on behalf of any applicants. All other documents or  
79 materials created or received by the commission shall be  
80 confidential and exempt from the provisions of chapter  
81 twenty-nine-b of this code, except for the list of best qualified  
82 persons or accompanying memoranda submitted to the  
83 Governor in accordance with the provisions of subsection (j)  
84 of this section, which shall be available for public inspection,  
85 and the written policies required to be filed with the Secretary  
86 of State in accordance with subsection (f) of this section.

87 (j) The commission shall submit its list of best qualified  
88 persons to the Governor in alphabetical order. A  
89 memorandum may accompany the list of best qualified  
90 persons and state facts concerning each of the persons listed.  
91 The commission shall make copies of any list of best  
92 qualified persons and accompanying memoranda it submits  
93 to the Governor available for public inspection.



## CHAPTER 78

**(Com. Sub. for S. B. 557 - By Senators  
Kessler, Oliverio, D. Facemire and Minard**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §3-10-5 of the Code of West Virginia, 1931, as amended, clarifying the procedures for the filling of vacancies in the State Legislature.

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

That §3-10-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 10. FILLING VACANCIES.**

### **§3-10-5. Vacancies in State Legislature.**

1           (a) Any vacancy in the office of State Senator or member  
2 of the House of Delegates shall be filled by appointment by  
3 the Governor, from a list of three legally qualified persons  
4 submitted by the party executive committee of the party with  
5 which the person holding the office immediately preceding  
6 the vacancy was affiliated. Such list of qualified persons to  
7 fill the vacancy shall be submitted to the Governor within  
8 fifteen days after the vacancy occurs and the Governor shall  
9 duly make his or her appointment to fill the vacancy from the  
10 list of legally qualified person within five days after the list  
11 is received. If the list is not submitted to the Governor within  
12 the fifteen day period, the Governor shall appoint within five  
13 days thereafter a legally qualified person of the same political  
14 party as the person vacating the office.

15           (b) In the case of a member of the House of Delegates,  
16 the list shall be submitted by the party executive committee  
17 of the delegate district in which the vacating member resided  
18 at the time of his or her election or appointment. The  
19 appointment to fill a vacancy in the House of Delegates is for  
20 the unexpired term.

21           (c) In the case of a State Senator, the list shall be submitted  
22 by the party executive committee of the state senatorial district  
23 in which the vacating senator resided at the time of his or her  
24 election or appointment. If the unexpired term in the office of  
25 the State Senator will be for less than two years and two  
26 months, the appointment is for the unexpired term. If the

27 unexpired term will be for a period equal to or longer than two  
28 years and two months, the appointment is until the next general  
29 election and until the election and qualification of a successor  
30 to the person appointed, at which general election the vacancy  
31 shall be filled by election for the unexpired term. Notice of an  
32 election to fill a vacancy in the office of State Senator shall be  
33 given by the Governor by proclamation and shall be published  
34 before the election as a Class II-0 legal advertisement in  
35 compliance with the provisions of article three, chapter fifty-  
36 nine of this code, and the publication area for the publication  
37 shall be each county in the senatorial district. Nominations for  
38 candidates to fill a vacancy shall be made in the manner  
39 prescribed for nominating a candidate to fill a vacancy in the  
40 office of Governor to be voted for at a general election. The  
41 state senatorial district executive committee of the political  
42 party shall discharge the duties incident to State Senator  
43 nominations devolving upon the party state executive  
44 committee in nominating a candidate for a state office.

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## CHAPTER 79

**(Com. Sub. for H. B. 4577 - By Delegates  
Manypenny, Martin, Butcher, D. Poling,  
Canterbury, Stephens and Morgan)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §21-3C-1, §21-3C-2a, §21-3C-10a and §21-3C-11 of the Code of West Virginia, 1931, as amended, all relating to elevators; exempting platform lifts from the definition of elevator; prohibiting certain elevators from being installed in certain settings; requiring inspections on certain



elevators; creating different classifications of licensure; and providing rule-making authority to the Division of Labor.

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

That §21-3C-1, §21-3C-2a, §21-3C-10a and §21-3C-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 3C. ELEVATOR SAFETY.**

§21-3C-1. Definitions.

§21-3C-2a. Installation prohibited; exemptions; two-way communication required; key required.

§21-3C-10a. License requirements for elevator mechanics; contractors license requirements; supervision of elevator apprentices requirements.

§21-3C-11. Disposition of fees; legislative rules.

#### **§21-3C-1. Definitions.**

1           (1) “Accessibility equipment” means lifting devices  
2           designated to remove access barriers in public buildings and  
3           private residences for persons with physical challenges,  
4           including residential and limited use/limited application  
5           elevators, vertical platforms, inclined platform lifts and  
6           stairway chairlifts.

7           (2) “Certificate of acceptance” means a certificate issued  
8           by the Division of Labor certifying that a newly installed  
9           elevator has been inspected and was found to be installed in  
10          compliance with the safety standards set forth in the  
11          American Society of Mechanical Engineers Safety Code for  
12          Elevators and Escalators (ASME) A17.1-3, “Safety Code for  
13          Elevators” and ASME A18.1, “Safety Code for Platform  
14          Lifts and Stairway Chairlifts.”

15          (3) “Certificate of competency” means a certificate issued  
16          by the Division of Labor certifying that an individual is  
17          qualified to inspect elevators.

18           (4) “Certificate of operation” means a certificate issued  
19 by the Division of Labor certifying that an elevator has been  
20 inspected and is safe for operation.

21           (5) “Commissioner” means the Commissioner of the  
22 Division of Labor.

23           (6) “Division” means the Division of Labor.

24           (7) “Division inspector” means an employee or contractor  
25 of the division who has been examined and issued a  
26 certificate of competency and who only inspects elevators in  
27 state owned buildings.

28           (8) “Elevator” means all the machinery, construction,  
29 apparatus and equipment used in raising and lowering a car,  
30 cage or platform vertically between permanent rails or guides  
31 and includes all elevators, power dumbwaiters, escalators,  
32 gravity elevators and other lifting or lowering apparatus  
33 permanently installed between rails or guides, but does not  
34 include hand operated dumbwaiters, platform lifts for loading  
35 docks, manlifts of the platform type with a platform area not  
36 exceeding nine hundred square inches, construction hoists or  
37 other similar temporary lifting or lowering apparatus.

38           (9) “Elevator apprentice” means a person who meets the  
39 requirements set forth in legislative rule promulgated pursuant  
40 to this article.

41           (10) “Elevator mechanic” means a person who possesses  
42 an elevator mechanic’s license in accordance with the  
43 provisions of this article and who is engaged in the business  
44 of erecting, constructing, installing, altering, servicing, repairing  
45 or maintaining elevators or related conveyances covered by  
46 this article.

47           (11) “Freight elevator” means an elevator used for  
48 carrying freight and on which only the operator, by the  
49 permission of the employer, is allowed to ride.

50           (12) “Inspector” means both a division inspector and a  
51 private inspector.

52           (13) “License” means a license issued to an elevator  
53 mechanic pursuant to this article.

54           (14) “Private residence elevator” means a passenger  
55 elevator of which use is limited by size, capacity, rise and  
56 speed, and access is limited by its location, by the  
57 requirement of a key for its operation or by other restriction.

58           (15) “Passenger elevator” means an elevator that is  
59 designed to carry persons to its contract capacity.

60           (16) “Private inspector” means a person who has been  
61 examined and issued a certificate of competency to inspect  
62 elevators within this state.

**§21-3C-2a. Installation prohibited; exemptions; two-way  
communication required; key required.**

1           (a) On and after July 1, 2007, no private residence  
2 elevator may be installed in a nonresidential setting.

3           (b) A private residence elevator installed in a  
4 nonresidential setting which was in use on July 1, 2007, may  
5 continue in use so long as the elevator:

6           (1) Meets the specifications as set forth in the American  
7 Society of Mechanical Engineers (ASME) Safety Code for  
8 Elevators and Escalators A17.1 5.3 “Safety Code for  
9 Elevators”;

10           (2) Has a method of two-way communication between  
11 the car and each floor served by the elevator;

12           (3) Is operated automatically; and

13           (4) Is inspected annually by an inspector and is issued a  
14 certification of operation by the division.

15           (c) New residential elevators shall undergo an acceptance  
16 test performed by an inspector, and the inspector shall file a  
17 report of the test with the division.

18           (d) An elevator in a residential property shall be  
19 inspected by an inspector when the residential property is  
20 transferred, and the inspector shall file a report of the  
21 inspection with the division.

**§21-3C-10a. License requirements for elevator mechanics;  
contractors license requirements; supervision of  
elevator apprentices requirements.**

1           (a) A person may not engage or offer to engage in the  
2 business of erecting, constructing, installing, altering,  
3 servicing, repairing or maintaining elevators or related  
4 conveyances covered by this article in this state, unless he or  
5 she has a license issued by the Commissioner of Labor in  
6 accordance with this article.

7           (b) A person licensed under this article must:

8           (1) Have in his or her possession a copy of the license  
9 issued pursuant to this article on any job on which he or she  
10 is performing elevator mechanic work; and

11           (2) Be, or be employed by, a contractor licensed pursuant  
12 to the provisions of article eleven, chapter twenty-one of this  
13 code unless the work is performed by a historic resort hotel's

14 regular employees, for which the employees are paid regular  
15 wages and not a contract price, on property owned or leased  
16 by the historic resort hotel which is not intended for  
17 speculative sale or lease;

18 (c) To obtain a license a person must:

19 (1) Complete a four-year apprenticeship program,  
20 registered by the United States Department of Labor,  
21 qualifying for a commercial license;

22 (2) Complete a two-year apprenticeship program,  
23 registered by the United States Department of Labor,  
24 qualifying for an accessibility license. A person holding an  
25 accessibility license may only perform work on accessibility  
26 equipment; or

27 (3) Complete a certified apprenticeship program,  
28 registered by the United States Department of Labor  
29 established at a historic resort hotel, qualifying for a limited  
30 technician license. A person holding a limited technician  
31 license may only perform work at a historic resort hotel.

32 (d) For the purposes of section, "historic resort hotel" has  
33 the same meaning ascribed to it in section two, article  
34 twenty-five, chapter twenty-nine of this code.

35 (e) An elevator apprentice who is enrolled in a four-year  
36 apprenticeship program approved by the commissioner, and  
37 who is in good standing in the program, may work under the  
38 supervision of a licensed elevator mechanic, as follows:

39 (f) An apprentice who has not successfully completed the  
40 equivalent of at least one year of the program may work only  
41 under the direct supervision of a licensed elevator mechanic  
42 who is present on the premises and available to the apprentice  
43 at all times.

44 (2) An apprentice who has successfully completed the  
45 equivalent of at least one year of the program may:

46 (A) Work under the direct supervision of a licensed  
47 elevator mechanic as set forth in subdivision (1) of this  
48 subsection; and

49 (B) Perform the tasks set forth in this paragraph, only if  
50 delegated by and performed under the general supervision of  
51 a licensed elevator mechanic, who must, at a minimum, meet  
52 the apprentice on the job at the beginning of each day to  
53 delegate the specific tasks, and who remains responsible for  
54 the delegated tasks:

55 (i) Oiling, cleaning, greasing and painting;

56 (ii) Replacing of combplate teeth;

57 (iii) Reclamping and fixture maintenance;

58 (iv) Inspection, cleaning and lubricating of hoistway  
59 doors, car tops, bottoms and pits; and

60 (v) Observing operation of equipment.

**§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 submitting  
7 applications, taking examinations, and issuing and renewing  
8 licenses, certificates of competency and certificates of  
9 operation of the three licensure classifications set forth in  
10 section ten-a of this article;

11       (2) Qualifications and supervision requirements for  
12       elevator apprentices;

13       (3) Provisions for the granting of licenses without  
14       examination, to applicants who present satisfactory evidence  
15       of having the expertise required to perform work as defined  
16       in this article and who apply for licensure on or before July  
17       1, 2010: *Provided*, That if a license issued under the authority  
18       of this subsection subsequently lapses, the applicant may, at  
19       the discretion of the commissioner, be subject to all licensure  
20       requirements, 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 \$50.

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.



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**CHAPTER 80**

**(Com. Sub. for H. B. 4143 - By Delegates  
Morgan, Stevens, Staggers, Swartzmiller,  
Talbott, Martin, Givens, C. Miller,  
Hartman, Butcher and Rowan)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on April 1, 2010.]

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AN ACT to repeal §16-4C-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §16-4C-3, §16-4C-6, §16-4C-6a, §16-4C-8, §16-4C-9, §16-4C-10, §16-4C-12 and §16-4C-16 of said code, all relating to emergency medical services; revising definitions; revising powers and duties of the commissioner; revising rule-making authority; revising requirement to review statewide emergency medical services implementation plan; revising requirements to operate emergency medical vehicle; revising standards for emergency medical service personnel; requiring applicants to allow the State Police access to personal background information; removing nonutilized code sections; requiring certified persons to report violations; providing immunity from civil liability for reporting violations; clarifying procedures for complaint investigation, hearings, rights of appeal and judicial review; removing automatic stay on appeal; increasing criminal penalties; clarifying limitations on immunity in the absence of required insurance policy; and removing antiquated language.

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

That §16-4C-5a of the Code of West Virginia, 1931, as amended, be repealed; that §16-4C-3, §16-4C-6, §16-4C-6a, §16-

4C-8, §16-4C-9, §16-4C-10, §16-4C-12 and §16-4C-16 of said code be amended and reenacted, all to read as follows:

#### **ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.**

- §16-4C-3. Definitions.
- §16-4C-6. Powers and duties of commissioner.
- §16-4C-6a. Emergency medical services agency licensure.
- §16-4C-8. Standards for emergency medical service personnel.
- §16-4C-9. Complaints; investigations; due process procedure; grounds for disciplinary action.
- §16-4C-10. Procedures for hearing; right of appeal; judicial review.
- §16-4C-12. Violations; criminal penalties.
- §16-4C-16. Limitation of liability; mandatory errors and omissions insurance.

#### **§16-4C-3. Definitions.**

1 As used in this article, unless the context clearly requires  
2 a different meaning:

3 (a) “Ambulance” means any privately or publicly-owned  
4 vehicle or aircraft which is designed, constructed or  
5 modified; equipped or maintained; and operated for the  
6 transportation of patients, including, but not limited to,  
7 emergency medical services vehicles; rotary and fixed wing  
8 air ambulances; gsa kkk-A-1822 federal standard type I, type  
9 II and type III vehicles; and specialized multipatient medical  
10 transport vehicles operated by an emergency medical services  
11 agency;

12 (b) “Commissioner” means the Commissioner of the  
13 Bureau for Public Health;

14 (c) “Council” means the Emergency Medical Service  
15 Advisory Council created pursuant to this article;

16 (d) “Director” means the Director of the Office of  
17 Emergency Medical Service in the Bureau for Public Health.

18 (e) “Emergency Medical Services” means all services  
19 which are set forth in Public Law 93-154 “The Emergency

20 Medical Services Systems Act of 1973" and those included  
21 in and made a part of the emergency medical services plan of  
22 the Department of Health and Human Resources inclusive of,  
23 but not limited to, responding to the medical needs of an  
24 individual to prevent the loss of life or aggravation of illness  
25 or injury;

26 (f) "Emergency medical service agency" means any  
27 agency licensed under section six-a of this article to provide  
28 emergency medical services;

29 (g) "Emergency medical service personnel" means any  
30 person certified by the commissioner to provide emergency  
31 medical services as set forth by legislative rule;

32 (h) "Emergency medical service provider" means any  
33 authority, person, corporation, partnership or other entity,  
34 public or private, which owns or operates a licensed  
35 emergency medical services agency providing emergency  
36 medical service in this state;

37 (i) "Governing body" has the meanings ascribed to it as  
38 applied to a municipality in subdivision (1), subsection (b),  
39 section two, article one, chapter eight of this code;

40 (j) "Line officer" means the emergency medical service  
41 personnel, present at the scene of an accident, injury or  
42 illness, who has taken the responsibility for patient care;

43 (k) "Medical command" means the issuing of orders by  
44 a physician from a medical facility to emergency medical  
45 service personnel for the purpose of providing appropriate  
46 patient care;

47 (l) "Municipality" has the meaning ascribed to it in  
48 subdivision (1), subsection (a), section two, article one,  
49 chapter eight of this code;

50 (m) "Patient" means any person who is a recipient of the  
51 services provided by emergency medical services;

52 (n) "Service reciprocity" means the provision of  
53 emergency medical services to citizens of this state by  
54 emergency medical service personnel certified to render  
55 those services by a neighboring state;

56 (o) "Small emergency medical service provider" means  
57 any emergency medical service provider which is made up of  
58 less than twenty emergency medical service personnel; and

59 (p) "Specialized multipatient medical transport" means a  
60 type of ambulance transport provided for patients with  
61 medical needs greater than those of the average population,  
62 which may require the presence of a trained emergency  
63 medical technician during the transport of the patient:  
64 *Provided*, That the requirement of "greater medical need"  
65 may not prohibit the transportation of a patient whose need  
66 is preventive in nature.

#### **§16-4C-6. Powers and duties of commissioner.**

1 The commissioner has the following powers and duties:

2 (a) To propose rules for legislative approval in  
3 accordance with the provisions of article three, chapter  
4 twenty-nine-a of this code: *Provided*, That the rules have  
5 been submitted at least thirty days in advance for review by  
6 the Emergency Medical Services Advisory Council, who may  
7 act only in the presence of a quorum. The rules may include:

8 (1) Standards and requirements for certification and  
9 recertification of emergency medical service personnel,  
10 including, but not limited to:

11 (A) Age, training, testing and continuing education;

12 (B) Procedures for certification and recertification, and  
13 for denying, suspending, revoking, reinstating and limiting a  
14 certification or recertification;

15 (C) Levels of certification and the scopes of practice for  
16 each level;

17 (D) Standards of conduct; and

18 (E) Causes for disciplinary action and sanctions which  
19 may be imposed.

20 (2) Standards and requirements for licensure and  
21 licensure renewals of emergency medical service agencies,  
22 including:

23 (A) Operational standards, levels of service, personnel  
24 qualifications and training, communications, public access,  
25 records management, reporting requirements, medical  
26 direction, quality assurance and review, and other  
27 requirements necessary for safe and efficient operation;

28 (B) Inspection standards and establishment of  
29 improvement periods to ensure maintenance of the standards;

30 (C) Fee schedules for licensure, renewal of licensure and  
31 other necessary costs;

32 (D) Procedures for denying, suspending, revoking,  
33 reinstating or limiting an agency licensure;

34 (E) Causes for disciplinary action against agencies; and

35 (F) Administrative penalties, fines and other disciplinary  
36 sanctions which may be imposed on agencies;

37 (3) Standards and requirements for emergency medical  
38 service vehicles, including classifications and specifications;

39 (4) Standards and requirements for training institutions,  
40 including approval or accreditation of sponsors of continuing  
41 education, course curricula and personnel;

42 (5) Standards and requirements for a State Medical  
43 Direction System, including qualifications for a State  
44 Emergency Medical Services Medical Director and Regional  
45 Medical Directors, the establishment of a State Medical  
46 Policy and Care Committee and the designation of Regional  
47 Medical Command Centers;

48 (6) Provision of services by emergency medical services  
49 personnel in hospital emergency rooms; and

50 (7) Any other rules necessary to carry out the provisions  
51 of this article.

52 (b) To apply for, receive and expend advances, grants,  
53 contributions and other forms of assistance from the state or  
54 federal government or from any private or public agencies or  
55 foundations to carry out the provisions of this article.

56 (c) To design, develop and review a Statewide  
57 Emergency Medical Services Implementation Plan. The plan  
58 shall recommend aid and assistance and all other acts  
59 necessary to carry out the purposes of this article:

60 (1) To encourage local participation by area, county and  
61 community officials and regional emergency medical  
62 services boards of directors; and

63 (2) To develop a system for monitoring and evaluating  
64 emergency medical services programs throughout the state.

65 (d) To provide professional and technical assistance and  
66 to make information available to Regional Emergency  
67 Medical Services Boards of Directors and other potential

68 applicants or program sponsors of emergency medical  
69 services for purposes of developing and maintaining a  
70 statewide system of services.

71 (e) To assist local government agencies, Regional  
72 Emergency Medical Services Boards of Directors and other  
73 public or private entities in obtaining federal, state or other  
74 available funds and services.

75 (f) To cooperate and work with federal, state and local  
76 governmental agencies, private organizations and other  
77 entities as may be necessary to carry out the purposes of this  
78 article.

79 (g) To acquire in the name of the state by grant, purchase,  
80 gift, devise or any other methods appropriate real and  
81 personal property as may be reasonable and necessary to  
82 carry out the purposes of this article.

83 (h) To make grants and allocations of funds and property  
84 so acquired or which may have been appropriated to the  
85 agency to other agencies of state and local government as  
86 may be appropriate to carry out the purposes of this article.

87 (i) To expend and distribute by grant or bailment funds  
88 and property to all state and local agencies for the purpose of  
89 performing the duties and responsibilities of the agency all  
90 funds which it may have so acquired or which may have been  
91 appropriated by the Legislature of this state.

92 (j) To develop a program to inform the public concerning  
93 emergency medical services.

94 (k) To review and disseminate information regarding  
95 federal grant assistance relating to emergency medical  
96 services.

97 (l) To prepare and submit to the Governor and  
98 Legislature recommendations for legislation in the area of  
99 emergency medical services.

100 (m) To review, make recommendations for and assist in  
101 all projects and programs that provide for emergency medical  
102 services whether or not the projects or programs are funded  
103 through the Office of Emergency Medical Services. A  
104 review and approval shall be required for all emergency  
105 medical services projects, programs or services for which  
106 application is made to receive state or federal funds for their  
107 operation after the effective date of this act; and

108 (n) To take all necessary and appropriate action to  
109 encourage and foster the cooperation of all emergency  
110 medical service providers and facilities within this state.

**§16-4C-6a. Emergency medical services agency licensure.**

1 (a) Any person who proposes to establish or maintain an  
2 emergency medical services agency shall file an application  
3 with the commissioner which includes the identity of the  
4 applicant, any parent or affiliated entity, the proposed level  
5 of service and the number of emergency medical service  
6 response vehicles of the agency or proposed agency. The  
7 commissioner may require that additional information be  
8 included on each application.

9 (b) Upon receipt and review of the application the  
10 commissioner shall issue a license if he or she finds that the  
11 applicant meets the requirements and quality standards, to be  
12 established by the commissioner, for an emergency medical  
13 services agency license, and if the applicant has certified  
14 under penalty of perjury that he or she is current with all  
15 lawful obligations owed the State of West Virginia,  
16 excluding obligations owed in the current quarter, including,  
17 but not limited to, payment of taxes and workers'



18 compensation premiums: *Provided*, That the certification set  
19 forth in this paragraph is required for the original application  
20 and subsequent renewals.

**§16-4C-8. Standards for emergency medical service personnel.**

1 (a) Every ambulance operated by an emergency medical  
2 service agency shall carry at least two personnel. At least  
3 one person shall be certified in cardiopulmonary resuscitation  
4 or first aid and the person in the patient compartment shall be  
5 certified as an emergency medical technician-basic at a  
6 minimum except that in the case of a specialized multipatient  
7 medical transport, only one staff person is required and that  
8 person shall be certified, at a minimum, at the level of an  
9 emergency medical technician-basic. The requirements of  
10 this subsection will remain in effect until revised by the  
11 legislative rule to be promulgated pursuant to subsection (b)  
12 of this section.

13 (b) On or before May 28, 2010, the commissioner shall  
14 submit a proposed legislative rule to the Emergency Medical  
15 Services Advisory Council for review, and on or before June  
16 30, 2010, shall file the proposed legislative rule with the  
17 office of the Secretary of State, in accordance with the  
18 provisions of chapter twenty-nine-a, article three of this code,  
19 to establish certification standards for emergency medical  
20 vehicle operators and to revise the requirements for  
21 emergency medical service personnel.

22 (c) As of the effective date of the legislative rule to be  
23 promulgated pursuant to subsection (b) of this section,  
24 emergency medical service personnel who operate  
25 ambulances shall meet the requirements set forth in the  
26 legislative rule.

27 (d) Any person desiring emergency medical service  
28 personnel certification shall apply to the commissioner using

29 forms and procedures prescribed by the commissioner. Upon  
30 receipt of the application, the commissioner shall determine  
31 whether the applicant meets the certification requirements  
32 and may examine the applicant, if necessary to make that  
33 determination.

34 (e) The applicant shall submit to a national criminal  
35 background check, the requirement of which is declared to be  
36 not against public policy.

37 (1) The applicant shall meet all requirements necessary  
38 to accomplish the national criminal background check,  
39 including submitting fingerprints, and authorizing the West  
40 Virginia Office of Emergency Medical Services, the West  
41 Virginia State Police and the Federal Bureau of Investigation  
42 to use all records submitted and produced for the purpose of  
43 screening the applicant for certification.

44 (2) The results of the national criminal background check  
45 may not be released to or by a private entity.

46 (3) The applicant shall submit a fee of \$75 for initial  
47 certification and a fee of \$50 for recertification. The fees set  
48 forth in this subsection remain in effect until modified by  
49 legislative rule.

50 (f) An application for an original, renewal or temporary  
51 emergency medical service personnel certificate or  
52 emergency medical services agency license, shall be acted  
53 upon by the commissioner and the certificate or license  
54 delivered or mailed, or a copy of any order of the  
55 commissioner denying any such application delivered or  
56 mailed to the applicant, within fifteen days after the date  
57 upon which the complete application including test scores  
58 and background checks, if applicable, was received by the  
59 commissioner.

60           (g) Any person may report to the commissioner or the  
61 Director of the Office of Emergency Medical Services  
62 information he or she may have that appears to show that a  
63 person certified by the commissioner may have violated the  
64 provisions of this article or legislative rules promulgated  
65 pursuant to this article. A person who is certified by the  
66 commissioner, who knows of or observes another person  
67 certified by the commissioner violating the provisions of this  
68 article or legislative rules promulgated pursuant to this  
69 article, has a duty to report the violation to the commissioner  
70 or director. Any person who reports or provides information  
71 in good faith is immune from civil liability.

72           (h) The commissioner may issue a temporary emergency  
73 medical service personnel certificate to an applicant, with or  
74 without examination of the applicant, when he or she finds  
75 that issuance to be in the public interest. Unless suspended  
76 or revoked, a temporary certificate shall be valid initially for  
77 a period not exceeding one hundred twenty days and may not  
78 be renewed unless the commissioner finds the renewal to be  
79 in the public interest.

**§16-4C-9. Complaints; investigations; due process procedure;  
grounds for disciplinary action.**

1           (a) The commissioner may at any time upon his or her  
2 own motion, and shall, upon the written complaint of any  
3 person, cause an investigation to be conducted to determine  
4 whether grounds exist for disciplinary action under this  
5 article or legislative rules promulgated pursuant to this  
6 article.

7           (b) An investigator or other person who, under the  
8 direction of the commissioner or the director, gathers or  
9 reports information in good faith to the commissioner or the  
10 director, is immune from civil liability.

11 (c) After reviewing any information obtained through an  
12 investigation, the commissioner or director shall determine if  
13 probable cause exists that the licensee or certificate holder  
14 has violated any provision of this article or rules promulgated  
15 pursuant to this article.

16 (d) Upon a finding that probable cause exists that the  
17 licensee or certificate holder has violated any provision of  
18 this article or rules promulgated pursuant to this article, the  
19 commissioner or director shall provide a copy of the  
20 complaint to the licensee or certificate holder.

21 (e) The commissioner or the director may enter into a  
22 consent decree or hold a hearing for the suspension or  
23 revocation of the license or certification or the imposition of  
24 sanctions against the licensee or certificate holder.

25 (f) The commissioner or the director issue subpoenas and  
26 subpoenas duces tecum to obtain testimony and documents  
27 to aid in the investigation of allegations against any person or  
28 agency regulated by the article.

29 (g) The commissioner or the director may sign a consent  
30 decree or other legal document related to the complaint.

31 (h) The commissioner shall suspend or revoke any  
32 certificate, temporary certificate or license when he or she  
33 finds the holder has:

34 (1) Obtained a certificate, temporary certificate or license  
35 by means of fraud or deceit; or

36 (2) Been grossly incompetent, and/or grossly negligent as  
37 defined by the commissioner in accordance with rules or by  
38 prevailing standards of emergency medical services care; or

39 (3) Failed or refused to comply with the provisions of this  
40 article or any legislative rule promulgated by the

41 commissioner or any order or final decision of the  
42 commissioner; or

43 (4) Engaged in any act during the course of duty which  
44 has endangered or is likely to endanger the health, welfare or  
45 safety of the public.

46 (i) The commissioner or the director may, after notice and  
47 opportunity for hearing, deny or refuse to renew, suspend or  
48 revoke the license or certification of, impose probationary  
49 conditions upon or take disciplinary action against, any  
50 licensee or certificate holder for any violation of this article  
51 or any rule promulgated pursuant to this article, once a  
52 violation has been proven by a preponderance of the  
53 evidence.

54 (j) Disciplinary action may include:

55 (1) Reprimand;

56 (2) Probation;

57 (3) Administrative penalties and fines;

58 (4) Mandatory attendance at continuing education  
59 seminars or other training;

60 (5) Practicing under supervision or other restriction;

61 (6) Requiring the licensee or holder of a certificate to  
62 report to the commissioner or director for periodic interviews  
63 for a specified period of time;

64 (7) Other disciplinary action considered by the  
65 commissioner or director to be necessary to protect the  
66 public, including advising other parties whose legitimate  
67 interests may be at risk; or

68 (8) Other sanctions as set forth by legislative rule  
69 promulgated pursuant to this article.

70 (k) The commissioner shall suspend or revoke any  
71 certificate, temporary certificate or license if he or she finds  
72 the existence of any grounds which would justify the denial  
73 of an application for the certificate, temporary certificate or  
74 license if application were then being made for it.

**§16-4C-10. Procedures for hearing; right of appeal; judicial review.**

1 (a) Hearings are governed by the provisions of article  
2 five, chapter twenty-nine a of this code.

3 (b) The commissioner or director may conduct the  
4 hearing or elect to have an Administrative Law Judge  
5 conduct the hearing.

6 (c) If the hearing is conducted by an Administrative Law  
7 Judge, the Administrative Law Judge shall prepare a  
8 proposed written order at the conclusion of a hearing  
9 containing findings of fact and conclusions of law. The  
10 proposed order may contain proposed disciplinary actions if  
11 the commissioner or director so directs. The commissioner  
12 may accept, reject or modify the decision of the  
13 Administrative Law Judge.

14 (d) The commissioner or director has the authority to  
15 administer oaths, examine any person under oath and issue  
16 subpoenas and subpoenas duces tecum.

17 (e) If, after a hearing, the commissioner or director  
18 determines the licensee or holder of a certificate has violated  
19 any provision of this article or the legislative rules  
20 promulgated pursuant to this article, a formal written decision  
21 shall be prepared which contains findings of fact, conclusions

22 of law and a specific description of the disciplinary actions  
23 imposed.

24 (f) The order of the Commissioner or director is final  
25 unless vacated or modified upon judicial review.

26 (g) Any licensee or certificate holder adversely affected  
27 by a final order made and entered by the commissioner or  
28 director is entitled to judicial review. All of the pertinent  
29 provisions of section four, article five, chapter twenty-nine-a  
30 of this code apply to and govern the review with like effect  
31 as if the provisions of the section were set forth herein.

32 (h) The judgment of the circuit court is final unless  
33 reversed, vacated or modified on appeal to the Supreme  
34 Court of Appeals in accordance with the provisions of section  
35 one, article six, chapter twenty-nine-a of this code.

#### **§16-4C-12. Violations; criminal penalties.**

1 (a) When, as a result of an investigation under this article  
2 or otherwise, the commissioner or director has reason to  
3 believe that a licensee or certificate holder has committed a  
4 criminal offense, the commissioner or director may bring the  
5 information to the attention of an appropriate law-  
6 enforcement official.

7 (b) Any person who violates any law or rule or operates  
8 an ambulance with an insufficient number of emergency  
9 medical service personnel aboard when not lawfully  
10 permitted to do so, or who represents himself or herself as a  
11 certified emergency medical service personnel knowing the  
12 representation to be untrue, is guilty of a misdemeanor and,  
13 upon conviction thereof, shall be fined not less than \$100 nor  
14 more than \$1,000: *Provided*, That after July 1, 2010, the fine  
15 shall not be more than \$5,000.

**§16-4C-16. Limitation of liability; mandatory errors and omissions insurance.**

1 (a) Every person, corporation, ambulance service,  
2 emergency medical service provider, emergency ambulance  
3 authority, emergency ambulance service or other person  
4 which employs emergency medical service personnel with or  
5 without wages for ambulance service or provides ambulance  
6 service in any manner, shall obtain a policy of insurance  
7 insuring the person or entity and every employee, agent or  
8 servant, against loss from the liability imposed by law for  
9 damages arising from any error or omission in the provision  
10 of emergency medical services as enumerated by this article,  
11 in an amount no less than \$1,000,000 per incident.

12 (b) No emergency medical service personnel or  
13 emergency medical service provider is liable for civil  
14 damages or injuries in excess of the amounts for which the  
15 person or entity is actually insured, unless the damages or  
16 injuries are intentionally or maliciously inflicted.

17 (c) Every person or entity required by this section to  
18 obtain a policy of insurance shall furnish proof of the  
19 existence of the policy to the commissioner on or before  
20 January 1 of each calendar year.

21 (d) Any person or entity who fails to secure a policy of  
22 insurance before providing emergency medical services is not  
23 entitled to the limited liability created by subsection (b) of  
24 this section: *Provided*, That any physician, who gives  
25 instructions to emergency medical service personnel without  
26 being compensated, or who treats any patient transported in  
27 an ambulance or treats any patient prior to the transport,  
28 without being compensated, is entitled to the limited liability  
29 provided in subsection (b) of this section.



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**CHAPTER 81**

**(Com. Sub. for S. B. 518 - By Senators McCabe, Caruth, Browning, Barnes, Hall, Sypolt, Deem, Boley, Guills, K. Facemyer, Minard, Plymale, Wells, Stollings, Jenkins, Edgell, Williams, D. Facemire, Palumbo, Green, Tomblin (Mr. President), Yost, Fanning, Helmick, White, Kessler, Chafin, Laird, Unger, Snyder, Prezioso, Foster and Oliverio)**

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[Passed March 13, 2010; in effect July 1, 2010.]  
[Approved by the Governor on April 6, 2010.]

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AN ACT to amend and reenact §5B-2F-2 of the Code of West Virginia, 1931, as amended, relating to the duties of the Division of Energy and the Office of the Director for Energy Development.

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

That §5B-2F-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2F. DIVISION OF ENERGY.**

**§5B-2F-2. Purpose; office of Director for Energy Development; director to be member of Public Energy Authority; division to develop energy policy and development plan; contents of energy policy and development plan; and division to promote energy initiatives.**

1 (a) Effective July 1, 2007, the Division of Energy is  
2 created as a state agency under the Department of Commerce.  
3 The division may receive federal funds. The division shall be  
4 administered by a director, who shall be appointed by the  
5 Governor, by and with the advice and consent of the Senate,  
6 and shall continue to serve until his or her successor is  
7 appointed and qualified as provided. The director shall be  
8 selected with special preference and consideration given to  
9 his or her training, experience, capacity and interest in energy  
10 policy and development activities.

11 (b) Creation of the division is intended to provide  
12 leadership for developing energy policies emphasizing the  
13 increased efficiency of energy use, the increased  
14 development and production of new and existing domestic  
15 energy sources, the increased awareness of energy use on the  
16 environment and the economy, dependable, efficient and  
17 economical statewide energy systems capable of supporting  
18 the needs of the state, increased energy self-sufficiency  
19 where the ratio of indigenous to imported energy use is  
20 increased, reduce the ratio energy consumption to economic  
21 activity and maintain low-cost energy. The energy policies  
22 and development plans shall also provide direction for the  
23 private sector.

24 (c) The director shall administer the daily operations of the  
25 Public Energy Authority provided under the provisions of  
26 chapter five-d of this code. The director shall also have  
27 authority over the Office of Coalfield Community  
28 Development, created by the provisions of article two-a of  
29 this chapter, and the energy efficiency program existing  
30 under the West Virginia Development Office which are  
31 hereby transferred to the division. The director shall  
32 effectuate coordination of these entities relative to the  
33 purposes provided in this article.

34 (d) The division shall develop an energy policy and shall  
35 report the same back to the Governor and the Joint

36 Committee on Government and Finance before December 1,  
37 2007. The energy policy shall be a five-year plan setting  
38 forth the state's energy policies and shall provide a direction  
39 for the private sector. Prior to the expiration of the energy  
40 policy, the division shall begin review of the policy and  
41 submit a revised energy policy to the Governor and the Joint  
42 Committee on Government and Finance six months before  
43 the expiration of the policy.

44 (e) The director shall be a member of the Public Energy  
45 Authority and as such shall attend and participate in all  
46 official meetings and public hearings conducted under the  
47 auspices of the authority.

48 (f) The division shall prepare and submit an annual energy  
49 development plan to the Governor and the Joint Committee  
50 on Government and Finance on or before December 1, of  
51 each year. The development plan shall relate to the  
52 division's implementation of the energy policy and the  
53 activities of the division during the previous year. The  
54 development plan shall include any recommended legislation.  
55 The Public Energy Authority, the Office of Coalfield  
56 Community Development, the energy efficiency program, the  
57 Department of Environmental Protection and the Public  
58 Service Commission, in addition to their other duties  
59 prescribed by this code, shall assist the division and the  
60 director in the development of an energy policy and related  
61 development plans. The energy development plan shall set  
62 forth the plans for implementing the state's energy policy and  
63 shall provide a direction for the private sector. The energy  
64 development plan shall recognize the powers of the Public  
65 Energy Authority as to development and financing of projects  
66 under its jurisdiction and shall make such recommendations  
67 as are reasonable and practicable for the exercise of such  
68 powers.

69 (g) The division shall hold public hearings and meetings  
70 with notice to receive public input regarding proposed energy

71 policies and development plans. The energy policy and  
72 development plans required by subsections (d) and (f) of this  
73 section shall address increased efficiency of energy use,  
74 traditional and alternative energy, water as a resource and a  
75 component of energy production, energy distribution  
76 systems, the siting of energy facilities, the increased  
77 development and production of new and existing domestic  
78 energy sources, increased awareness of energy use on the  
79 environment and the economy, energy infrastructure, the  
80 development and implementation of renewable, clean,  
81 technically innovative and advanced energy projects in this  
82 state. Projects may include, without limitation, solar and  
83 wind energy, low-impact hydro power, geothermal, biomass,  
84 landfill gas, fuel cells, renewable hydrogen fuel technologies,  
85 waste coal, coal mine methane, coal gasification to ultraclean  
86 fuels, solid waste to fuel grade ethanol and coal liquefaction  
87 technologies.

88 (h) The division may propose rules for legislative approval  
89 in accordance with the provisions of article three, chapter  
90 twenty-nine-a of this code designed to implement an energy  
91 policy and development plan in accordance with the  
92 provisions of this chapter.

93 (i) The energy policy and development plans required by  
94 subsections (d) and (f) of this section shall identify and report  
95 on the energy infrastructure in this state and include without  
96 limitation energy infrastructure related to protecting the  
97 state's essential data, information systems and critical  
98 government services in times of emergency, inoperativeness  
99 or disaster. In consultation with the Director of the Division  
100 of Homeland Security and Emergency Management, the  
101 director of the division shall encourage the development of  
102 energy infrastructure and strategic resources that will ensure  
103 the continuity of governmental operations in situations of  
104 emergency, inoperativeness or disaster.

105 (j) In preparing or revising the energy policy and  
106 development plan, the division may rely upon internal staff  
107 reports or the advice of outside advisors or consultants and  
108 may procure such services with the consent of the Secretary  
109 of Commerce. The division may also involve national, state  
110 and local government leadership and energy experts.

111 (k) The division shall prepare an energy use database,  
112 including without limitation, end-use applications and  
113 infrastructure needs for different classes of energy users  
114 including residential, commercial and industrial users, data  
115 regarding the interdependencies and sources of electricity,  
116 oil, coal, water and gas infrastructure, data regarding energy  
117 use of schools and state-owned facilities and collect data on  
118 the impact of the energy policy and development plan on the  
119 decisions and strategies of energy users of the state.

120 (l) The division shall promote collaboration between the  
121 state's universities and colleges, private industry and  
122 nonprofit organizations to encourage energy research and  
123 leverage available federal energy research and development  
124 resources.

125 (m) The division shall promote initiatives to enhance the  
126 nation's energy security through research and development  
127 directed at transforming the state's energy resources into the  
128 resources that fuel the nation.

129 (n) The Performance Evaluation and Research Division of  
130 the Legislative Auditor's office shall perform an agency  
131 review of the Division of Energy in 2010 as part of its review  
132 of the Department of Commerce as set forth in article four,  
133 chapter ten of this code.

134 (o) The division shall work with the President of the  
135 United States and his or her administration to develop a plan  
136 that would allow West Virginia to become the leader in  
137 transitioning the United States to a new energy future.

138 (p) The division is to determine the best way for West  
139 Virginia to utilize its resources and any federal funding to  
140 develop the technologies that are necessary for such a  
141 transition.

142 (q) The division is to clearly articulate West Virginia's  
143 position on an energy solution for the United States that  
144 encompasses clean coal, natural gas, transtech energy  
145 technologies and renewable energy technologies.

146 (r) The division shall develop and distribute an  
147 informational program and policies that emphasize the  
148 importance of West Virginia energy resources and their  
149 positive impact on the eastern seaboard and the nation.

150 (s) The division shall monitor legal challenges to the  
151 energy industries in the state and submit a report quarterly to  
152 the Joint Committee on Government and Finance. The report  
153 shall contain information relating to any litigation that  
154 challenges any statute that could affect the production,  
155 distribution and utilization of natural resources of the state.

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## CHAPTER 82

**(S. B. 350 - By Senators Oliverio,  
McCabe, Browning, Green, Kessler,  
Foster, Stollings, D. Facemire, Prezioso,  
Plymale and Palumbo)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §24-2F-3 of the Code of West Virginia, 1931, as amended, relating to definitions used in the

alternative and renewable energy portfolio standard; recategorizing recycled energy as a renewable energy resource for the purposes of purchasing energy resource credits; and removing restriction that ethanol be produced from sources other than corn in order to be a renewable energy resource.

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

That §24-2F-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY  
PORTFOLIO STANDARD.**

**§24-2F-3. Definitions.**

1           Unless the context clearly requires a different meaning,  
2           as used in this article:

3           (1) “Advanced coal technology” means a technology that  
4           is used in a new or existing energy generating facility to  
5           reduce airborne carbon emissions associated with the  
6           combustion or use of coal and includes, but is not limited to,  
7           carbon dioxide capture and sequestration technology,  
8           supercritical technology, advanced supercritical technology  
9           as that technology is determined by the Public Service  
10          Commission, ultrasupercritical technology and pressurized  
11          fluidized bed technology and any other resource, method,  
12          project or technology certified by the commission as  
13          advanced coal technology.

14          (2) “Alternative and renewable energy portfolio standard”  
15          or “portfolio standard” means a requirement in any given  
16          year that requires an electric utility to own credits in an  
17          amount equal to a certain percentage of electric energy sold  
18          in the preceding calendar year by the electric utility to retail  
19          customers in this state.

20 (3) "Alternative energy resources" means any of the  
21 following resources, methods or technologies for the  
22 production or generation of electricity:

23 (A) Advanced coal technology;

24 (B) Coal bed methane;

25 (C) Natural gas;

26 (D) Fuel produced by a coal gasification or liquefaction  
27 facility;

28 (E) Synthetic gas;

29 (F) Integrated gasification combined cycle technologies;

30 (G) Waste coal;

31 (H) Tirederived fuel;

32 (I) Pumped storage hydroelectric projects; and

33 (J) Any other resource, method, project or technology  
34 certified as an alternative energy resource by the Public  
35 Service Commission.

36 (4) "Alternative and renewable energy resource credit" or  
37 "credit" means a tradable instrument that is used to establish,  
38 verify and monitor the generation of electricity from  
39 alternative and renewable energy resource facilities, energy  
40 efficiency or demand-side energy initiative projects or  
41 greenhouse gas emission reduction or offset projects.

42 (5) "Alternative energy resource facility" means a facility  
43 or equipment that generates electricity from alternative  
44 energy resources.



45           (6) “Commission” or “Public Service Commission” means  
46 the Public Service Commission of West Virginia as continued  
47 pursuant to section three, article one of this chapter.

48           (7) “Customer-generator” means an electric retail  
49 customer who owns and operates a customer-sited generation  
50 project utilizing an alternative or renewable energy resource  
51 or a net metering system in this state.

52           (8) “Electric utility” means any electric distribution  
53 company or electric generation supplier that sells electricity  
54 to retail customers in this state. Unless specifically provided  
55 for otherwise, for the purposes of this article, the term  
56 “electric utility” may not include rural electric cooperatives,  
57 municipally-owned electric facilities or utilities serving less  
58 than thirty thousand residential electric customers in West  
59 Virginia.

60           (9) “Energy efficiency or demand-side energy initiative  
61 project” means a project in this state that promotes customer  
62 energy efficiency or the management of customer  
63 consumption of electricity through the implementation of:

64           (A) Energy efficiency technologies, equipment,  
65 management practices or other strategies utilized by residential,  
66 commercial, industrial, institutional or government customers  
67 that reduce electricity consumption by those customers;

68           (B) Load management or demand response technologies,  
69 equipment, management practices, interruptible or curtailable  
70 tariffs, energy storage devices or other strategies in  
71 residential, commercial, industrial, institutional and  
72 government customers that shift electric load from periods of  
73 higher demand to periods of lower demand;

74           (C) Industrial by-product technologies consisting of the  
75 use of a by-product from an industrial process, including, but  
76 not limited to, the reuse of energy from exhaust gases or

77 other manufacturing by-products that can be used in the  
78 direct production of electricity at the customer's facility;

79 (D) Customer-sited generation, demand-response, energy  
80 efficiency or peak demand reduction capabilities, whether  
81 new or existing, that the customer commits for integration  
82 into the electric utility's demand-response, energy efficiency  
83 or peak demand reduction programs; or

84 (E) Infrastructure and modernization projects that help  
85 promote energy efficiency, reduce energy losses or shift load  
86 from periods of higher demand to periods of lower demand,  
87 including the modernization of metering and communications  
88 (also known as "smart grid"), distribution automation, energy  
89 storage, distributed energy resources and investments to  
90 promote the electrification of transportation.

91 (10) "Greenhouse gas emission reduction or offset  
92 project" means a project to reduce or offset greenhouse gas  
93 emissions from sources in this state other than the electric  
94 utility's own generating and energy delivery operations.  
95 Greenhouse gas emission reduction or offset projects include,  
96 but are not limited to:

97 (A) Methane capture and destruction from landfills, coal  
98 mines or farms;

99 (B) Forestation, afforestation or reforestation; and

100 (C) Nitrous oxide or carbon dioxide sequestration  
101 through reduced fertilizer use or no-till farming.

102 (11) "Net metering" means measuring the difference  
103 between electricity supplied by an electric utility and  
104 electricity generated from an alternative or renewable energy  
105 resource facility owned or operated by an electric retail  
106 customer when any portion of the electricity generated from  
107 the alternative or renewable energy resource facility is used

108 to offset part or all of the electric retail customer's  
109 requirements for electricity.

110 (12) "Reclaimed surface mine" means a surface mine, as  
111 that term is defined in section three, article three, chapter  
112 twenty-two of this code, that is reclaimed or is being  
113 reclaimed in accordance with state or federal law.

114 (13) "Renewable energy resource" means any of the  
115 following resources, methods, projects or technologies for the  
116 production or generation of electricity:

117 (A) Solar photovoltaic or other solar electric energy;

118 (B) Solar thermal energy;

119 (C) Wind power;

120 (D) Run of river hydropower;

121 (E) Geothermal energy, which means a technology by  
122 which electricity is produced by extracting hot water or steam  
123 from geothermal reserves in the earth's crust to power steam  
124 turbines that drive generators to produce electricity;

125 (F) Biomass energy, which means a technology by which  
126 electricity is produced from a nonhazardous organic material  
127 that is available on a renewable or recurring basis, including  
128 pulp mill sludge;

129 (G) Biologically derived fuel including methane gas,  
130 ethanol or biodiesel fuel;

131 (H) Fuel cell technology, which means any  
132 electrochemical device that converts chemical energy in a  
133 hydrogen-rich fuel directly into electricity, heat and water  
134 without combustion;

135 (I) Recycled energy, which means useful thermal,  
136 mechanical or electrical energy produced from: (i) Exhaust  
137 heat from any commercial or industrial process; (ii) waste  
138 gas, waste fuel or other forms of energy that would otherwise  
139 be flared, incinerated, disposed of or vented; and (iii)  
140 electricity or equivalent mechanical energy extracted from a  
141 pressure drop in any gas, excluding any pressure drop to a  
142 condenser that subsequently vents the resulting heat; and

143 (J) Any other resource, method, project or technology  
144 certified by the commission as a renewable energy resource.

145 (14) “Renewable energy resource facility” means a  
146 facility or equipment that generates electricity from  
147 renewable energy resources.

148 (15) “Waste coal” means a technology by which  
149 electricity is produced by the combustion of the by-product,  
150 waste or residue created from processing coal (such as gob).



## CHAPTER 83

**(Com. Sub. for S. B. 496 - By Senators  
Williams, Caruth, Stollings and Plymale)**

[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §22-1-9 of the Code of West Virginia, 1931, as amended, relating to the Environmental Protection Advisory Council; authorizing the council to review and make recommendations on rulemaking to the secretary; adding a member

to the council; and requiring Department of Environmental Protection consider the council's recommendations.

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

That §22-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.**

**§22-1-9. Environmental Protection Advisory Council.**

1 (a) There is created within the Department of  
2 Environmental Protection the Environmental Protection  
3 Advisory Council. The Environmental Protection Advisory  
4 Council consists of eight members. The secretary serves as  
5 an ex officio member of the council and as its chair. The  
6 remaining seven members are appointed by the Governor.  
7 Each member serves for a term of four years and may be  
8 reappointed. Vacancies on the council shall be filled within  
9 sixty days after the vacancy occurs.

10 (b) Two members of the council shall represent industries  
11 regulated by the department or their trade associations. Two  
12 members shall represent organizations advocating  
13 environmental protection. One member shall represent  
14 organizations representing local governments. One member  
15 shall represent public service districts. One member shall  
16 represent the largest coal miner's labor organization in the  
17 state. In making subsequent appointments this balance of  
18 membership shall be maintained.

19 (c) Appointed members shall be paid the same  
20 compensation and expense reimbursement as is paid to  
21 members of the Legislature for their interim duties as  
22 recommended by the Citizens Legislative Compensation

23 Commission and authorized by law for each day or portion  
24 thereof engaged in the discharge of official duties.

25 (d) The council shall meet at least once every quarter, at  
26 the call of the chair or upon the unanimous request of its  
27 members.

28 (e) The council shall:

29 (1) Consult with and advise the director on program and  
30 policy development, problem solving and other appropriate  
31 subjects;

32 (2) Identify and define problems associated with the  
33 implementation of the policy set forth in section one of this  
34 article;

35 (3) Provide and disseminate to industry and the public  
36 early identification of major federal program and regulatory  
37 changes;

38 (4) Provide a forum for the resolution of conflicts  
39 between constituency groups;

40 (5) To the extent possible, strive for consensus on the  
41 development of overall environmental policy; and

42 (6) Provide an annual report to the Joint Committee on  
43 Government and Finance on or before January 1 of each year  
44 relating to its findings with regard to the department's  
45 performance during the previous year. The report will  
46 specifically address the department's performance in  
47 accomplishing the nine purposes set forth in subsection (b),  
48 section one of this article.

49 (f) Notwithstanding any other provision of this code to  
50 the contrary, upon approval by majority vote of the  
51 Environmental Protection Advisory Council's members, the

52 council may submit recommendations for rulemaking to the  
53 Secretary of the Department of Environmental Protection.  
54 The secretary shall consider the council's recommendations  
55 for rule-making when developing agency rules to be  
56 submitted for legislative approval.

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## CHAPTER 84

**(S. B. 382 - By Senators Minard,  
Helmick, Green, Bowman and Plymale)**

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[Passed March 8, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2010.]

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AN ACT to amend and reenact §22-6-22 of the Code of West Virginia, 1931, as amended, relating to the reporting of certain geologic information obtained incidental to oil and gas drilling; requiring the filing of reports with the Department of Environmental Protection and the state Geological and Economic Survey; providing for the delivery of core samples and well cuttings to the state Geological and Economic Survey; and assuring the confidentiality of reports and other information provided.

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

That §22-6-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS  
WELLS; ADMINISTRATION;  
ENFORCEMENT.**

**§22-6-22. Well report, logs, core samples and cuttings to be filed; confidentiality and permitted use; authority to promulgate rules.**

1 (a) Within a reasonable time after the completion of the  
2 drilling of a shallow well or deep well, the well operator shall  
3 file with the secretary and with the state Geological and  
4 Economic Survey a completion report containing the  
5 following:

6 (1) The character, depth and thickness of geological  
7 formations encountered, including fresh water, coal seams,  
8 mineral beds, brine and oil and gas bearing formations; and

9 (2) Such other information as the secretary may require  
10 to effectuate the purposes of this chapter.

11 The secretary may promulgate such reasonable rules in  
12 accordance with article three, chapter twenty-nine-a of this  
13 code, as may be considered necessary to ensure that the  
14 character, depth and thickness of geological formations  
15 encountered are accurately logged: *Provided*, That the  
16 secretary shall not require logging by the use of an electrical  
17 logging device: *Provided, however*, That if electrical or  
18 mechanical or geophysical logs are recorded in the well, the  
19 secretary may request copies of these logs: *Provided further*,  
20 That mechanical or geophysical logs may not include vertical  
21 seismic profiles or two-dimensional or three-dimensional  
22 seismic information.

23 (b) If a well operator takes core samples, that activity  
24 shall be noted within the report, and, within sixty days after  
25 filing the completion report, the operator shall, subject to the  
26 terms of this article, provide the state Geological and  
27 Economic Survey with a complete set of cores, consisting of  
28 at least quarter slabs, correctly labeled and identified  
29 according to depth. The core samples requested by and



30 provided to the state Geological and Economic Survey may  
31 not contain any materials or documents made with regard to  
32 analyzing or interpreting the core samples.

33 (c) If a well operator catches cuttings during the drilling  
34 of any deep or shallow well, that activity shall be noted  
35 within the report and, within sixty days after filing the  
36 completion report, the operator shall, subject to the terms of  
37 this article, provide the state Geological and Economic  
38 Survey with a sample of the cuttings, correctly labeled and  
39 identified according to depth.

40 (d) Any information, reports, cuttings and core samples  
41 requested by and provided to the state Geological and  
42 Economic Survey by the operator shall be kept confidential  
43 at the written request of the operator for a specified amount  
44 of time as follows:

45 (1) Except for core samples, any logs, drill cuttings,  
46 reports and other information or materials that reveal trade  
47 secrets or other confidential business information relating to  
48 the competitive interests of the operator or the operator's  
49 privy may not be disclosed to the public for one year  
50 following delivery, unless the operator consents in writing to  
51 a shorter time. At the operator's written request, the period  
52 of confidentiality may be extended in annual increments:  
53 *Provided*, That the total period of confidentiality may not  
54 exceed three years.

55 (2) Any core samples may not be disclosed to the public  
56 for five years following delivery to the state Geological and  
57 Economic Survey, unless the operator consents in writing to  
58 a shorter time. At the operator's written request, the period  
59 of confidentiality may be extended for an additional five  
60 years: *Provided*, That the total period of confidentiality may  
61 not exceed ten years.

62 (e) Notwithstanding the provisions of subsection (d) of  
63 this section, the state Geological and Economic Survey may  
64 store and process confidential information within its minerals  
65 mapping or geographic information systems; however, that  
66 confidential information may not be revealed to the public  
67 until the lapsing of the period of confidentiality created  
68 pursuant to subsection (d) of this section. After the period of  
69 confidentiality has lapsed, statistics or other information  
70 generated as the result of storage and processing may be  
71 disclosed in the aggregate through articles, reports, maps, or  
72 lectures presented in accordance with generally accepted  
73 academic or scientific practices and in a manner to preclude  
74 the identification of a particular well or operator.



## CHAPTER 85

**(H. B. 4277 - By Delegates Boggs,  
Miley, Barker and Caputo)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §22-11-3 and §22-11-8 of the Code of West Virginia, 1931, as amended, all relating to authorizing the Secretary of the Department of Environmental Protection to issue National Pollutant Discharge Elimination System permits; defining terms; and correcting antiquated language.

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

That §22-11-3 and §22-11-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 11. WATER POLLUTION CONTROL ACT.**

§22-11-3. Definitions.

§22-11-8. Prohibitions; permits required.

**§22-11-3. Definitions.**

1 Unless the context in which used clearly requires a  
2 different meaning, as used in this article:

3 (1) "Activity" or "activities" means any activity or  
4 activities for which a permit is required by section seven of  
5 this article;

6 (2) "Board" means the environmental quality board,  
7 provided in article three, chapter twenty-two-b of this code;

8 (3) "Chief" means the director of the division of water  
9 and waste management of the Department of Environmental  
10 Protection;

11 (4) "Code" means the Code of West Virginia, 1931, as  
12 amended;

13 (5) "Department" means the Department of Environmental  
14 Protection;

15 (6) "Disposal system" means a system for treating or  
16 disposing of sewage, industrial wastes or other wastes, or the  
17 effluent therefrom, either by surface or underground  
18 methods, and includes sewer systems, the use of subterranean  
19 spaces, treatment works, disposal wells and other systems;

20 (7) "Disposal well" means any well drilled or used for the  
21 injection or disposal of treated or untreated sewage, industrial  
22 wastes or other wastes into underground strata;

23 (8) "Effluent limitation" means any restriction established  
24 on quantities, rates and concentrations of chemical, physical,

25 biological and other constituents which are discharged into  
26 the waters of this state;

27 (9) "Establishment" means an industrial establishment,  
28 mill, factory, tannery, paper or pulp mill, mine, colliery,  
29 breaker or mineral processing operation, quarry, refinery,  
30 well and each and every industry or plant or works in the  
31 operation or process of which industrial wastes, sewage or  
32 other wastes are produced;

33 (10) "Industrial user" means those industries identified in  
34 the standard industrial classification manual, United States  
35 Bureau of the Budget, 1967, as amended and supplemented,  
36 under the category "division d--manufacturing" and other  
37 classes of significant waste producers identified under  
38 regulations issued by the director or the administrator of the  
39 United States environmental protection agency;

40 (11) "Industrial wastes" means any liquid, gaseous, solid  
41 or other waste substance, or a combination thereof, resulting  
42 from or incidental to any process of industry, manufacturing,  
43 trade or business, or from or incidental to the development,  
44 processing or recovery of any natural resources; and the  
45 admixture with such industrial wastes of sewage or other  
46 wastes, as hereinafter defined, is also "industrial waste"  
47 within the meaning of this article;

48 (12) "Other wastes" means garbage, refuse, decayed  
49 wood, sawdust, shavings, bark and other wood debris and  
50 residues resulting from secondary processing; sand, lime,  
51 cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids,  
52 chemicals, heat or all other materials and substances not  
53 sewage or industrial wastes which may cause or might  
54 reasonably be expected to cause or to contribute to the  
55 pollution of any of the waters of the state;

56 (13) "Outlet" means the terminus of a sewer system or  
57 the point of emergence of any water-carried sewage,

58 industrial wastes or other wastes, or the effluent therefrom,  
59 into any of the waters of this state, and includes a point  
60 source;

61 (14) "Person", "persons" or "applicant" means any  
62 industrial user, public or private corporation, institution,  
63 association, firm or company organized or existing under the  
64 laws of this or any other state or country; State of West  
65 Virginia; governmental agency, including federal facilities;  
66 political subdivision; county commission; municipal  
67 corporation; industry; sanitary district; public service district;  
68 drainage district; soil conservation district; watershed  
69 improvement district; partnership; trust; estate; person or  
70 individual; group of persons or individuals acting  
71 individually or as a group; or any legal entity whatever;

72 (15) "Point source" means any discernible, confined and  
73 discrete conveyance, including, but not limited to, any pipe,  
74 ditch, channel, tunnel, conduit, well, discrete fissure,  
75 container, rolling stock or vessel or other floating craft, from  
76 which pollutants are or may be discharged;

77 (16) "Pollutant" means industrial wastes, sewage or other  
78 wastes as defined in this section;

79 (17) "Pollution" means the man-made or man-induced  
80 alteration of the chemical, physical, biological and  
81 radiological integrity of the waters of the state;

82 (18) "Publicly owned treatment works" means any  
83 treatment works owned by the state or any political  
84 subdivision thereof, any municipality or any other public  
85 entity, for the treatment of pollutants;

86 (19) "Secretary" means the Secretary of the Department  
87 of Environmental Protection or such other person to whom  
88 the secretary has delegated authority or duties pursuant to  
89 section six or eight, article one of this chapter;

90 (20) "Sewage" means water-carried human or animal  
91 wastes from residences, buildings, industrial establishments  
92 or other places, together with such groundwater infiltration  
93 and surface waters as may be present;

94 (21) "Sewer system" means pipelines or conduits,  
95 pumping stations, force mains and all other constructions,  
96 facilities, devices and appliances appurtenant thereto, used  
97 for collecting or conducting sewage, industrial wastes or  
98 other wastes to a point of disposal or treatment;

99 (22) "Treatment works" means any plant, facility, means,  
100 system, disposal field, lagoon, pumping station, constructed  
101 drainage ditch or surface water intercepting ditch, diversion  
102 ditch above or below the surface of the ground, settling tank  
103 or pond, earthen pit, incinerator, area devoted to sanitary  
104 landfills or other works not specifically mentioned herein,  
105 installed for the purpose of treating, neutralizing, stabilizing,  
106 holding or disposing of sewage, industrial wastes or other  
107 wastes or for the purpose of regulating or controlling the  
108 quality and rate of flow thereof;

109 (23) "Water resources", "water" or "waters" means any  
110 and all water on or beneath the surface of the ground,  
111 whether percolating, standing, diffused or flowing, wholly or  
112 partially within this state, or bordering this state and within  
113 its jurisdiction, and includes, without limiting the generality  
114 of the foregoing, natural or artificial lakes, rivers, streams,  
115 creeks, branches, brooks, ponds (except farm ponds,  
116 industrial settling basins and ponds and water treatment  
117 facilities), impounding reservoirs, springs, wells,  
118 watercourses and wetlands; and

119 (24) "Well" means any shaft or hole sunk, drilled, bored  
120 or dug into the earth or into underground strata for the  
121 extraction or injection or placement of any liquid or gas, or  
122 any shaft or hole sunk or used in conjunction with such  
123 extraction or injection or placement. The term "well" does

124 not include any shaft or hole sunk, drilled, bored or dug into  
125 the earth for the sole purpose of core drilling or pumping or  
126 extracting therefrom potable, fresh or usable water for  
127 household, domestic, industrial, agricultural or public use.

**§22-11-8. Prohibitions; permits required.**

1 (a) The secretary may, after public notice and opportunity  
2 for public hearing, issue a permit for the discharge or  
3 disposition of any pollutant or combination of pollutants into  
4 waters of this state upon condition that the discharge or  
5 disposition meets or will meet all applicable state and federal  
6 water quality standards and effluent limitations and all other  
7 requirements of this article and article three, chapter twenty-  
8 two-b of this code.

9 (b) It is unlawful for any person, unless the person holds  
10 a permit therefor from the department, which is in full force  
11 and effect, to:

12 (1) Allow sewage, industrial wastes or other wastes, or  
13 the effluent therefrom, produced by or emanating from any  
14 point source, to flow into the waters of this state;

15 (2) Make, cause or permit to be made any outlet, or  
16 substantially enlarge or add to the load of any existing outlet,  
17 for the discharge of sewage, industrial wastes or other wastes,  
18 or the effluent therefrom, into the waters of this state;

19 (3) Acquire, construct, install, modify or operate a  
20 disposal system or part thereof for the direct or indirect  
21 discharge or deposit of treated or untreated sewage, industrial  
22 wastes or other wastes, or the effluent therefrom, into the  
23 waters of this state, or any extension to or addition to the  
24 disposal system;

25 (4) Increase in volume or concentration any sewage,  
26 industrial wastes or other wastes in excess of the discharges

27 or disposition specified or permitted under any existing  
28 permit;

29 (5) Extend, modify or add to any point source, the  
30 operation of which would cause an increase in the volume or  
31 concentration of any sewage, industrial wastes or other  
32 wastes discharging or flowing into the waters of the state;

33 (6) Construct, install, modify, open, reopen, operate or  
34 abandon any mine, quarry or preparation plant, or dispose of  
35 any refuse or industrial wastes or other wastes from the mine  
36 or quarry or preparation plant: *Provided*, That the department's  
37 permit is only required wherever the aforementioned activities  
38 cause, may cause or might reasonably be expected to cause a  
39 discharge into or pollution of waters of the state, except that  
40 a permit is required for any preparation plant: *Provided*,  
41 *however*, That unless waived in writing by the secretary,  
42 every application for a permit to open, reopen or operate any  
43 mine, quarry or preparation plant or to dispose of any refuse  
44 or industrial wastes or other wastes from the mine or quarry  
45 or preparation plant shall contain a plan for abandonment of  
46 the facility or operation, which plan shall comply in all  
47 respects to the requirements of this article. The plan of  
48 abandonment is subject to modification or amendment upon  
49 application by the permit holder to the secretary and approval  
50 of the modification or amendment by the secretary; or

51 (7) Operate any disposal well for the injection or  
52 reinjection underground of any industrial wastes, including,  
53 but not limited to, liquids or gases, or convert any well into  
54 such a disposal well or plug or abandon any such disposal  
55 well.

56 (c) Where a person has a number of outlets emerging into  
57 the waters of this state in close proximity to one another, the  
58 outlets may be treated as a unit for the purposes of this  
59 section, and only one permit issued for all the outlets.





# CHAPTER 86

**(Com. Sub. for H. B. 4534 - By Delegates  
Caputo, Manchin, Longstreth, Wooton,  
Hamilton, Miley, Moore, Frazier,  
Fleischauer, Hunt and Brown)**

[Passed March 11, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 19, 2010.]

AN ACT to amend and reenact §17C-4-1 of the Code of West Virginia, 1931, as amended, relating to increasing the criminal penalty for failing to stop and render aid after a motor vehicle crash; clarifying intent requirement; extending suspension period; and naming the code section “Erin’s Law”.

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

That §17C-4-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 4. CRASHES.**

### **\*§17C-4-1. Crashes involving death or personal injuries; Erin’s Law.**

- 1           (a) The driver of any vehicle involved in a crash resulting
- 2           in injury to or death of any person shall immediately stop the

**\*CLERK’S NOTE:** This section was also amended by S. B. 354 (Chapter 173) which passed prior to this act.

3 vehicle at the scene of the crash or as close to the scene as  
4 possible and return to and remain at the scene of the crash  
5 until he or she has complied with the requirements of section  
6 three of this article: *Provided*, That the driver may leave the  
7 scene of the crash as may reasonably be necessary for the  
8 purpose of rendering assistance to an injured person as  
9 required by said section three. Every such stop shall be made  
10 without obstructing traffic more than is necessary.

11 (b) Any person knowingly violating the provisions of  
12 subsection (a) of this section after being involved in a crash  
13 resulting in the death of any person is guilty of a felony and,  
14 upon conviction thereof, shall be fined by not more than  
15 \$5,000 or imprisoned in a correctional facility for not less  
16 than one year nor more than five years, or both fined and  
17 confined.

18 (c) Any person knowingly violating the provisions of  
19 subsection (a) of this section after being involved in a crash  
20 resulting in physical injury to any person is guilty of a  
21 misdemeanor and, upon conviction thereof, shall be punished  
22 by confinement in jail for not more than one year, or fined  
23 not more than \$1,000, or both.

24 (d) The commissioner shall revoke the license or permit  
25 or operating privilege to drive of any resident or nonresident  
26 person convicted pursuant to the provisions of this section for  
27 a period of one year from the date of conviction or the date  
28 of release from incarceration, whichever is later.

29 (e) This section may be known and cited as "Erin's Law".

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**CHAPTER 87**

**(Com. Sub. for S. B. 494 - By Senators  
Kessler and Chafin)**

[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2010.]

AN ACT to amend and reenact §44-3-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §44-3A-35 of said code; and to amend said code by adding thereto a new section, designated §51-10A-6, all relating to fiduciary matters; updating references from the commissioner of accounts to the fiduciary commissioner; requiring fiduciary commissioner to file status reports and settle accounts of certain cases with county clerks; requiring county clerks to file the status report with county commissions; and prohibiting bail bonding companies or bail bond enforcers from providing fiduciary bonds unless licenced by the Insurance Commissioner.

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

That §44-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44-3A-35 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §51-10A-6, all to read as follows:

**Chapter**

**44. Administration of Estates and Trusts.**

**51. Courts and Their Officers.**

**CHAPTER 44. ADMINISTRATION OF ESTATES & TRUSTS.**

## Article

- 3. **Fiduciary Commissioners; Powers and Duties.**
- 3A. **Optional Procedure for Proof and Allowance of Claims Against Estates of Decedents; County Option.**

### **ARTICLE 3. FIDUCIARY COMMISSIONERS; POWERS AND DUTIES.**

#### **§44-3-1. Fiduciary commissioners.**

1       The office previously known as commissioner of  
2 accounts is hereby abolished. The office of fiduciary  
3 commissioner is hereby created and any reference in this  
4 code to a commissioner of accounts shall, after the effective  
5 date of this section, mean fiduciary commissioner. Fiduciary  
6 commissioners shall be attorneys admitted to the practice of  
7 law in this state, or shall meet the qualifications of fiduciary  
8 supervisors as set forth in article three-a of this chapter:  
9 *Provided*, That persons who are serving as commissioners of  
10 accounts upon the effective date of this article shall be  
11 continued in office as fiduciary commissioners for not more  
12 than one year from the effective date of this article for the  
13 purpose of settling estates not settled on the effective date of  
14 this article.

15       The county commission of each county shall appoint not  
16 more than four fiduciary commissioners. In counties in  
17 which there exists a separate tribunal for police and fiscal  
18 purposes, that tribunal shall appoint the fiduciary  
19 commissioners. In either case, not more than two of the  
20 fiduciary commissioners may be from the same political  
21 party.

22       The fiduciary commissioner shall report to and settle  
23 accounts with the county clerk. On or before the last day of  
24 March, June, September and December, the fiduciary  
25 commissioner shall file with the county clerk a report on the  
26 status and disposition of every active case referred to the

27 fiduciary commissioner. In the next succeeding term of the  
28 county commission, the county clerk shall provide a copy of  
29 the report to the county commission, and shall inform the  
30 county commission of any cases referred to a fiduciary  
31 commissioner in which the fiduciary commissioner has not  
32 fulfilled duties relating to the case in accordance with  
33 deadlines established by law. The county commission shall  
34 take appropriate action to ensure that all deadlines established  
35 by law will be observed, including, if necessary, the removal  
36 of fiduciary commissioners who consistently fail to meet  
37 such deadlines.

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND  
ALLOWANCE OF CLAIMS AGAINST  
ESTATES OF DECEDENTS; COUNTY  
OPTION.**

**§44-3A-35. Fiduciary commissioners.**

1 The county commission of each county shall appoint not  
2 more than four fiduciary commissioners, except that in  
3 counties in which there exists a separate tribunal for police  
4 and fiscal purposes, such tribunal shall appoint such  
5 commissioners: *Provided*, That the county commission or  
6 such separate tribunal shall avoid reference of estates to such  
7 commissioners, unless such reference is necessary.

8 The fiduciary commissioner shall report to and settle  
9 accounts with the county clerk. On or before the last day of  
10 March, June, September and December, the fiduciary  
11 commissioner shall file with the county clerk a report on the  
12 status and disposition of every active case referred to the  
13 fiduciary commissioner. In the next succeeding term of the  
14 county commission, the county clerk shall provide a copy of  
15 the report to the county commission, and shall inform the  
16 county commission of any cases referred to a fiduciary  
17 commissioner in which the fiduciary commissioner has not

18 fulfilled duties relating to the case in accordance with  
 19 deadlines established by law. The county commission shall  
 20 take appropriate action to ensure that all deadlines established  
 21 by law will be observed, including, if necessary, the removal  
 22 of fiduciary commissioners who consistently fail to meet  
 23 such deadlines.

## **CHAPTER 51. COURTS & THEIR OFFICERS.**

### **ARTICLE 10A. BAIL BOND ENFORCERS.**

#### **§51-10A-6. Prohibition against providing fiduciary bonds in estates; exception.**

1 A bail bonding company or a bail bond enforcer may not  
 2 provide fiduciary bonds for an estate unless the bail bonding  
 3 company or bail bond enforcer is licensed with the Insurance  
 4 Commissioner to act as an agent for an insurance company  
 5 that provides surety or fiduciary bonds.

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## **CHAPTER 88**

**(Com. Sub. for H. B. 4155 - By Delegates  
 Varner, Kominar, Cann, Campbell,  
 White, M. Poling, Mahan, Ferro,  
 Perdue, Boggs and Pethtel)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
 [Approved by the Governor on March 26, 2010.]

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AN ACT to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended, relating to permitting revenues allocated to volunteer and part-time fire departments to be used

for Workers' Compensation premiums, certain life insurance premiums, educational training supplies and fire prevention promotional materials; and revising references.

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

That §8-15-8b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

**§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.**

1 Revenues allocated to volunteer and part volunteer fire  
2 companies and departments may be expended only for the  
3 items listed in subdivisions (1) through (15) of this section.

4 Funds received from the state for volunteer and part  
5 volunteer fire companies and departments, pursuant to  
6 sections fourteen-d and thirty-three, article three, and section  
7 seven, article twelve-c, all of chapter thirty-three of this code,  
8 may not be commingled with funds received from any other  
9 source. Expenditures may be made for the following:

10 (1) Personal protective equipment, including protective  
11 head gear, bunker coats, pants, boots, combination of bunker  
12 pants and boots, coats and gloves;

13 (2) Equipment for compliance with the national fire  
14 protection standard or automotive fire apparatus, NFPA-1901;

15 (3) Compliance with insurance service office  
16 recommendations relating to fire departments;

17 (4) Rescue equipment, communications equipment and  
18 ambulance equipment: *Provided*, That no moneys received  
19 from the municipal pensions and protection fund or the fire  
20 protection fund may be used for equipment for personal  
21 vehicles owned or operated by volunteer fire company or  
22 department members;

23 (5) Capital improvements reasonably required for  
24 effective and efficient fire protection service and  
25 maintenance of the capital improvements;

26 (6) Retirement of debts;

27 (7) Payment of utility bills;

28 (8) Payment of the cost of immunizations, including any  
29 laboratory work incident to the immunizations, for  
30 firefighters against hepatitis-b and other blood borne  
31 pathogens: *Provided*, That the vaccine shall be purchased  
32 through the state immunization program or from the lowest  
33 cost vendor available: *Provided, however*, That volunteer and  
34 part volunteer fire companies and departments shall seek to  
35 obtain no cost administration of the vaccinations through  
36 local boards of health: *Provided further*, That in the event  
37 any volunteer or part volunteer fire company or department  
38 is unable to obtain no cost administration of the vaccinations  
39 through a local board of health, the company or department  
40 shall seek to obtain the lowest cost available for the  
41 administration of the vaccinations from a licensed health care  
42 provider;

43 (9) Any filing fee required to be paid to the Legislative  
44 Auditor's Office under section fourteen, article four, chapter  
45 twelve of this code relating to sworn statements of annual  
46 expenditures submitted by volunteer or part volunteer fire  
47 companies or departments that receive state funds or grants;

48 (10) Property/casualty insurance premiums for protection  
49 and indemnification against loss or damage or liability;



- 50 (11) Operating expenses reasonably required in the  
51 normal course of providing effective and efficient fire  
52 protection service, which include, but are not limited to,  
53 gasoline, bank fees, postage and accounting costs;
- 54 (12) Dues paid to national, state and county associations;
- 55 (13) Workers' Compensation premiums;
- 56 (14) Life insurance premiums to provide a benefit not to  
57 exceed \$20,000 for firefighters; and
- 58 (15) Educational and training supplies and fire prevention  
59 promotional materials, not to exceed \$500 per year.

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## CHAPTER 89

**(Com. Sub. for H. B. 4166 - By Delegates  
Hamilton, Klempa, Miley, Duke,  
Ellem, Wells and Manchin)**

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[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2010.]

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AN ACT to amend and reenact §8-15-17 of the Code of West Virginia, 1931, as amended, relating to paid firefighters who seek subsequent employment with other paid fire departments; authorizing applicants over the age of thirty-five who seek subsequent employment with a paid fire department to apply under certain circumstances; and limiting subsequent hiring or reinstatement effects on seniority considerations.

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

That §8-15-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

**§8-15-17. Form of application; age and residency requirements; exceptions.**

1 (a) The Firemen's Civil Service Commission in each  
2 municipality shall require individuals applying for admission  
3 to any competitive examination provided for under the civil  
4 service provisions of this article or under the rules of the  
5 commission to file in its office, within a reasonable time prior  
6 to the proposed examination, a formal application in which  
7 the applicant shall state under oath or affirmation:

8 (1) His or her full name, residence and post-office  
9 address;

10 (2) His or her United States citizenship, age and the place  
11 and date of his or her birth;

12 (3) His or her state of health, and his or her physical  
13 capacity for the public service;

14 (4) His or her business and employments and residences  
15 for at least three previous years; and

16 (5) Any other information as may reasonably be required,  
17 touching upon the applicant's qualifications and fitness for  
18 the public service.

19 (b) Blank forms for the applications shall be furnished by  
20 the commission, without charge, to all individuals requesting  
21 the same.

22           (c) The commission may require, in connection with the  
23 application, certificates of citizens, physicians and others,  
24 having pertinent knowledge concerning the applicant, as the  
25 good of the service may require.

26           (d) Except as provided in subsections (e) and (f) of this  
27 section, no application for original appointment shall be  
28 received if the individual applying is less than eighteen years  
29 of age or more than thirty-five years of age at the date of his  
30 or her application.

31           (e) In the event any applicant formerly served upon the  
32 paid fire department of the municipality to which he or she  
33 makes application, for a period of more than one year, and  
34 resigned from the department at a time when there were no  
35 charges of misconduct or other misfeasance pending against  
36 the applicant, within a period of two years next preceding the  
37 date of his or her application, and at the time of his or her  
38 application resides within the corporate limits of the  
39 municipality in which the paid fire department to which he or  
40 she seeks appointment by reinstatement is located, then the  
41 individual shall be eligible for appointment by reinstatement  
42 in the discretion of the Firemen's Civil Service Commission,  
43 even though the applicant shall be over the age of thirty-five  
44 years, and the applicant, providing his or her former term of  
45 service so justifies, may be appointed by reinstatement to the  
46 paid fire department without a competitive examination, but  
47 the applicant shall undergo a medical examination; and if the  
48 individual shall be so appointed by reinstatement to the paid  
49 fire department, he or she shall be the lowest in rank in the  
50 department next above the probationers of the department  
51 and may not be entitled to seniority considerations.

52           (f) If an individual is presently employed by one paid fire  
53 department and is over the age of thirty-five, he or she may  
54 make an application to another paid fire department if:

55           (1) The paid fire department to which he or she is  
56 applying is serving a municipality that has elected to

57 participate in the West Virginia Municipal Police Officers  
58 and Firefighters Retirement System created in article twenty-  
59 two-a, chapter eight of this code: *Provided*, That any  
60 individual applying pursuant to this subdivision is to be  
61 classified as a new employee for retirement purposes and no  
62 prior employment service can be transferred to the West  
63 Virginia Municipal Police Officers and Firefighters  
64 Retirement System; or

65 (2)The paid fire department to which he or she is  
66 applying is serving a municipality that has elected to  
67 participate in the West Virginia Public Employees Retirement  
68 System created in article ten, chapter five of this code:  
69 *Provided*, That any individual applying pursuant to this  
70 subdivision is to be classified as a new employee for  
71 retirement purposes and no prior employment service can be  
72 transferred to the West Virginia Public Employees  
73 Retirement System, except for individuals and their prior  
74 employment service already credited to them in the West  
75 Virginia Public Employees Retirement System pursuant to  
76 article ten, chapter five of this code.

77 (g) Individuals who are authorized to apply to a paid fire  
78 department pursuant to subsection (f) of this section shall be  
79 in the lowest rank of the department and may not be entitled  
80 to seniority considerations.

81 (h) Any applicant for original appointment must have  
82 been a resident for one year, during some period of time prior  
83 to the date of his or her application, of the municipality in  
84 which he or she seeks to become a member of the paid fire  
85 department: *Provided*, That if the commission determines it  
86 necessary it may consider for original appointment applicants  
87 who are not residents of the municipality but who have been  
88 residents of the county in which the municipality or any  
89 portion of the territory thereof is located for a period of at  
90 least one year.

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**CHAPTER 90****(S. B. 664 - By Senator Palumbo)**

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[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §44A-3-1 and §44A-3-2 of the Code of West Virginia, 1931, as amended, all relating to the duties and reports of the guardian of a protected person; providing that the guardian owes a fiduciary duty to act in the best interests of the protected person; requiring the guardian to make provision for social interactions between the protected person and the protected person's friends and family; requiring the periodic guardian reports to include a summary of the guardian's efforts and activities on behalf of the protected person; and including the guardian's efforts to facilitate the protected persons involvement in social activities and social interaction with friends and family as a part of the guardian's periodic reports.

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

That §44A-3-1 and §44A-3-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

§44A-3-1. Duties of guardian of protected person.

§44A-3-2. Reports by guardian of protected person.

**ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP  
ADMINISTRATION.****§44A-3-1. Duties of guardian of protected person.**

1           (a) The guardian of a protected person owes a fiduciary  
2 duty to the protected person and is responsible for obtaining  
3 provision for and making decisions with respect to the  
4 protected person's support, care, health, habilitation,  
5 education, therapeutic treatment, social interactions with  
6 friends and family, and, if not inconsistent with an order of  
7 commitment or custody, to determine the protected person's  
8 residence.

9           (b) A guardian shall maintain sufficient contact of not  
10 less than once very six months with the protected person to  
11 know of the protected person's capabilities, limitations,  
12 needs, and opportunities.

13           (c) A guardian shall be required to seek prior court  
14 authorization to change the protected person's residence to  
15 another state, to terminate or consent to a termination of the  
16 protected person's parental rights, to initiate a change in the  
17 protected person's marital status, to deviate from a protected  
18 person's living will or medical power of attorney, or to  
19 revoke or amend a durable power of attorney executed by the  
20 protected person.

21           (d) A guardian shall exercise authority only to the extent  
22 necessitated by the protected person's limitations, and, where  
23 feasible, shall encourage the protected person to participate  
24 in decisions, to act on his or her own behalf, and to develop  
25 or regain the capacity to manage personal affairs.

26           (e) A guardian shall, to the extent known, consider the  
27 express desires and personal values of the protected person  
28 when making decisions, and shall otherwise act in the  
29 protected person's best interests and exercise reasonable care,  
30 diligence, and prudence.

31           (f) Upon the petition of an interested party or upon its  
32 own motion, the court or Mental Hygiene Commissioner may  
33 order the guardian to take appropriate action to address the

34 needs and best interests of the protected person as required  
35 by this section.

**§44A-3-2. Reports by guardian of protected person.**

1 (a) Any guardian appointed pursuant to the provisions of  
2 this chapter shall file periodic reports, in accordance with  
3 section eleven of this article including:

4 (1) A description of the current mental, physical, and  
5 social condition of the protected person;

6 (2) A description of the protected person's living  
7 arrangements during the reported period;

8 (3) The medical, educational, vocational, and other  
9 professional services provided to the protected person and the  
10 guardian's opinion as to the adequacy of the protected person's  
11 care;

12 (4) A summary of the guardian's visits with the protected  
13 person, the guardian's social interactions with the protected  
14 persons, the guardian's efforts and activities on behalf of the  
15 protected person, including the guardian's efforts facilitating  
16 on behalf of the protected person social interactions with  
17 friends and families, and the guardian's efforts facilitating the  
18 protected person engagement in social activities;

19 (5) A statement of whether the guardian agrees with the  
20 current treatment or habilitation plan;

21 (6) A recommendation as to the need for continued  
22 guardianship and any recommended changes in the scope of  
23 the guardianship;

24 (7) Any other information requested by the court or  
25 useful in the opinion of the guardian;

26 (8) The compensation requested and the reasonable and  
27 necessary expenses incurred by the guardian; and

28           (9) A verification signed by the guardian stating that all  
29 of the information contained in the report is true and correct  
30 to the best of his or her knowledge.

31           (b) The court may order the guardian to attend a hearing  
32 on the report by motion of the court or Mental Hygiene  
33 Commissioner, or upon the petition of any interested person.  
34 A report of the guardian may be incorporated into and made  
35 a part of the accounting of the conservator.

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## CHAPTER 91

**(Com. Sub. for H. B. 4187 - By Delegates  
Barker and Wells)**

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[Amended and again passed March 20, 2010, as a result of the  
objections of the Governor; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

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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; and continuation of the annual certification fee.

*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 by  
3 section five, article XII of the Constitution of West Virginia. For  
4 the purposes of this section, the net proceeds of the fines,  
5 penalties and forfeitures are considered the proceeds remaining  
6 after deducting therefrom those sums appropriated by the  
7 Legislature for defraying the cost of administering this article.  
8 All permit application fees collected under this article shall be  
9 paid into the State Treasury into a special fund designated the  
10 Hazardous Waste Management Fund. In making the  
11 appropriation for defraying the cost of administering this article,  
12 the Legislature shall first take into account the sums included in  
13 that special fund prior to deducting additional sums as may be  
14 needed from the fines, penalties and forfeitures collected  
15 pursuant to this article.

16 (b) Effective on July 1, 2003, there is imposed an annual  
17 certification fee for facilities that manage hazardous waste, as  
18 defined by the federal Resource Conservation and Recovery  
19 Act, as amended. The secretary shall propose a rule for  
20 legislative approval in accordance with the provisions of  
21 article three, chapter twenty-nine-a of this code to establish  
22 the certification fee. The rule shall be a product of a  
23 negotiated rule-making process with the facilities subject to  
24 the rule. The rule shall, at a minimum, establish different fee  
25 rates for facilities based on criteria established in the rule.  
26 The total amount of fees generated raise no more funds than  
27 are necessary and adequate to meet the matching  
28 requirements for all federal grants which support the  
29 hazardous waste management program, but shall not exceed  
30 \$700,000 per year.

31 (c) The revenues collected from the annual certification  
32 fee shall be deposited in the State Treasury to the credit of the  
33 Hazardous Waste Management Fee Fund, which is continued.  
34 Moneys of the fund, together with any interest or other return  
35 earned on the fund, shall be expended to meet the matching  
36 requirements of federal grant programs which support the

37 hazardous waste management program. Expenditures from  
38 the fund are for the purposes set forth in this article and are  
39 not authorized from collections, but are to be made only in  
40 accordance with appropriation by the Legislature and in  
41 accordance with the provisions of article three, chapter  
42 twelve of this code and upon the fulfillment of the provisions  
43 set forth in article two, chapter five-a of this code. Amounts  
44 collected which are found, from time to time, to exceed the  
45 funds needed for purposes set forth in this article may be  
46 transferred to other accounts by appropriation of the Legislature.

47 (d) The fee provided in subsection (b) of this section and  
48 the fund established in subsection (c) of this section shall  
49 terminate on June 30, 2015. The department shall, by  
50 December 31 of each year, report to the Joint Committee on  
51 Government and Finance regarding moneys collected into the  
52 Hazardous Waste Management Fee Fund and expenditures  
53 by the agency, including any federal matching moneys  
54 received and providing an accounting on the collection of the  
55 fee by type of permit activity, funds being expended and  
56 current and future projected balances of the fund.



## CHAPTER 92

**(Com. Sub. for H. B. 4176 - By Delegates  
Perdue, Border, Hatfield, Staggers,  
Moore, Moye and Rodighiero)**

[Passed March 11, 2010; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §16-1A-1, §16-1A-2, §16-1A-3,  
§16-1A-4 and §16-1A-5 of the Code of West Virginia, 1931, as

amended; and to amend said code by adding thereto five new sections, designated §16-1A-6, §16-1A-7, §16-1A-8, §16-1A-9 and §16-1A-10, all relating to providing for uniform credentialing for health care practitioners; establishing a single statewide credentialing verification organization and a uniform recredentialing calendar; setting forth legislative findings, defining terms; increasing the membership of the advisory committee; authorizing the Secretary and Insurance Commissioner to, no later than July 1, 2015, select and contract with a qualified credentialing verification organization that will be the sole source for primary source verification for all credentialing entities; reviewing operations of the statewide credentialing verification organization; setting forth qualifications for a credentialing verification organization; giving preference to a credentialing verification organization organized within this state; suspending mandatory use of statewide credentialing verification organization by credentialing entities by the Secretary and Insurance Commissioner for certain failures of the statewide credentialing verification organization; setting forth an application process; providing for the confidentiality of information and exceptions; setting forth legislative rule-making authority; providing for the establishment by rule of penalties; and granting immunity to credentialing entity for reliance upon information provided by the statewide credentialing verification organization.

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

That §16-1A-1, §16-1A-2, §16-1A-3, §16-1A-4 and §16-1A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto five new sections, designated §16-1A-6, §16-1A-7, §16-1A-8, §16-1A-9 and §16-1A-10, all to read as follows:

**ARTICLE 1A. UNIFORM CREDENTIALING FOR HEALTH CARE PRACTITIONERS.**

- §16-1A-1. Legislative findings; purpose.
- §16-1A-2. Development of uniform credentialing application forms and the credentialing process.
- §16-1A-3. Definitions.
- §16-1A-4. Advisory committee.
- §16-1A-5. Credentialing Verification Organization.
- §16-1A-6. Contract with statewide credentialing verification organization; requirements.
- §16-1A-7. Verification process; suspension of requirements.
- §16-1A-8. Release and uses of information collected; confidentiality.
- §16-1A-9. Rulemaking; fees; penalties.
- §16-1A-10. Immunity.

### **§16-1A-1. Legislative findings; purpose.**

1           (a) The Legislature finds:

2           (1) Credentialing, required by hospitals, insurance  
3 companies, prepaid health plans, third party administrators,  
4 provider networks and other health care entities, is necessary  
5 to assess and verify the education, training and experience of  
6 health care practitioners to ensure that qualified professionals  
7 treat the citizens of this state.

8           (2) Although uniform credentialing and recredentialing  
9 application forms have been created to reduce duplication  
10 and increase efficiency, each credentialing entity continues  
11 to perform primary source verification for the practitioners  
12 who apply to that entity for affiliation. Moreover, because  
13 credentialing entities do not follow a common calendar,  
14 practitioners are required to respond to requests throughout  
15 the year from various credentialing entities seeking  
16 essentially similar information. This duplication of primary  
17 source verification is time consuming and costly.

18           (3) The Secretary of the Department of Health and  
19 Human Resources and the Insurance Commissioner share  
20 regulatory authority over the entities requiring credentialing.

21           (b) The purpose of this article is to continue the advisory  
22 committee previously established to assist in developing a  
23 uniform credentialing process through the development of

24 legislative rules to govern how a single credentialing  
25 verification organization will operate in this state and, except  
26 with respect to health care facilities, the establishment of a  
27 common credentialing calendar.

**§16-1A-2. Development of uniform credentialing application forms and the credentialing process.**

1 Notwithstanding any provision of this code to the  
2 contrary, the Secretary of the Department of Health and  
3 Human Resources and the Insurance Commissioner shall  
4 jointly propose rules for legislative approval in accordance  
5 with the provisions of article three, chapter twenty-nine-a of  
6 this code governing the development and use of uniform  
7 application forms for credentialing, recredentialing or  
8 updating information of health care practitioners required to  
9 use the forms and the improvement of the credentialing  
10 process, including creation of a credentialing verification  
11 organization and a uniform recredentialing calendar.

**§16-1A-3. Definitions.**

1 For the purposes of this article, the following definitions  
2 apply:

3 (a) “Credentialing” means the process used to assess and  
4 validate the qualifications of a health care practitioner,  
5 including, but not limited to, an evaluation of licensure status,  
6 education, training, experience, competence and professional  
7 judgment.

8 (b) “Credentialing entity” means any health care facility,  
9 as that term is defined in subsection (j), section two, article  
10 two-d of this chapter, or payor or network that requires  
11 credentialing of health care practitioners.

12 (c) “Credentialing Verification Organization” means an  
13 entity that performs primary source verification of a health

14 care practitioner's training, education, experience; "statewide  
15 credentialing verification organization" means the  
16 credentialing verification organization selected pursuant to  
17 the provisions of section five of this article.

18 (d) "Health care practitioner" or "practitioner" means a  
19 person required to be credentialed using the uniform forms  
20 set forth in the rule promulgated pursuant to the authority  
21 granted in section two, article one-a of this chapter.

22 (e) "Insurance Commissioner" or "Commissioner" means  
23 the Insurance Commissioner of the State of West Virginia as  
24 set forth in article two, chapter thirty-three of this code.

25 (f) "Joint Commission" formerly known as the Joint  
26 Commission on Accreditation of Healthcare Organizations or  
27 JCAHO, is a private sector, United States-based, not-for-  
28 profit organization that operates voluntary accreditation  
29 programs for hospitals and other health care organizations.

30 (g) "National Committee for Quality Assurance" or  
31 "NCQA" is a private, 501(c)(3) not-for-profit organization  
32 that evaluates and certifies credentialing verification  
33 organizations.

34 (h) "Network" means an organization that represents or  
35 contracts with a defined set of health care practitioners under  
36 contract to provide health care services to a payor's enrollees.

37 (i) "Payor" means a third party administrator as defined  
38 in section two, article forty-six, chapter thirty-three of this  
39 code and including third party administrators that are  
40 required to be registered pursuant to section thirteen, article  
41 forty-six, chapter thirty-three of this code, any insurance  
42 company, health maintenance organization, health care  
43 corporation or any other entity required to be licensed under  
44 chapter thirty-three of this code and that, in return for

45 premiums paid by or on behalf of enrollees, indemnifies such  
46 enrollees or reimburses health care practitioners for medical  
47 or other services provided to enrollees by health care  
48 practitioners.

49 (j) “Primary source verification procedure” means the  
50 procedure used by a credentialing verification organization  
51 to, in accordance with national committee for quality  
52 assurance standards, collect, verify and maintain the accuracy  
53 of documents and other credentialing information submitted  
54 in connection with a health care practitioner’s application to  
55 be credentialed.

56 (k) “Secretary” means the Secretary of the West Virginia  
57 Department of Health and Human Resources as set forth in  
58 chapter sixteen, article one of this code.

59 (l) “Uniform application form” or “uniform form” means  
60 the blank uniform credentialing or recredentialing form  
61 developed and set forth in a joint procedural rule  
62 promulgated pursuant to section two of this article.

#### **§16-1A-4. Advisory committee.**

1 (a) The Secretary of the Department of Health and Human  
2 Resources and the Insurance Commissioner shall jointly  
3 establish an advisory committee to assist them in the  
4 development and implementation of the uniform credentialing  
5 process in this state. The advisory committee shall consist of  
6 fourteen appointed members. Six members shall be appointed  
7 by the Secretary of the Department of Health and Human  
8 Resources: One member shall represent a hospital with one  
9 hundred beds or less; one member shall represent a hospital  
10 with more than one hundred beds; one member shall represent  
11 another type of health care facility requiring credentialing; one  
12 member shall be a person currently credentialing on behalf of  
13 health care practitioners; and two of the members shall

14 represent the health care practitioners subject to credentialing.  
15 Five members shall be representative of the entities regulated  
16 by the Insurance Commissioner that require credentialing and  
17 shall be appointed by the Insurance Commissioner: One  
18 member shall represent an indemnity health care insurer; one  
19 member shall represent a preferred provider organization; one  
20 member shall represent a third party administrator; one  
21 member shall represent a health maintenance organization  
22 accredited by URAC; and one member shall represent a health  
23 maintenance organization accredited by the national committee  
24 on quality assurance. The Secretary of the Department of Health  
25 and Human Resources and the Insurance Commissioner, or the  
26 designee of either or both, shall be nonvoting ex officio  
27 members. Upon the effective date of this legislation, the state  
28 hospital association, the state association of licensing boards  
29 and state medical association shall each designate to the  
30 department one person to represent their respective  
31 associations and members and those designees shall be  
32 appointed to the advisory committee by the secretary of the  
33 department.

34 (b) At the expiration of the initial terms, successors will  
35 be appointed to terms of three years. Members may serve an  
36 unlimited number of terms. When a vacancy occurs as a  
37 result of the expiration of a term or otherwise, a successor of  
38 like qualifications shall be appointed. Representatives of the  
39 hospital association, the association of licensing boards and  
40 the state medical association shall serve for three-year terms.

41 (c) The advisory committee shall meet at least annually  
42 to review the status of uniform credentialing in this state, and  
43 may make further recommendations to the Secretary of the  
44 Department of Health and Human Resources and the  
45 Insurance Commissioner as are necessary to carry out the  
46 purposes of this article. Any uniform forms and the list of  
47 health care practitioners required to use the uniform forms as  
48 set forth in legislative rule proposed pursuant to section two  
49 of this article may be amended as needed by procedural rule.



**§16-1A-5. Credentialing Verification Organization.**

1           The Secretary and the Insurance Commissioner shall,  
2           with the advice of the advisory committee, take such steps as  
3           are necessary to select and contract with a credentialing  
4           verification organization that will, beginning no later than  
5           July 1, 2015, be the sole source for primary source  
6           verification for all credentialing entities. The credentialing  
7           verification organization selected shall be responsible for the  
8           receipt of all uniform applications, the primary source  
9           verification of the information provided on such applications,  
10          and the updating and maintenance of all information  
11          generated by such activities. The dates on which the use of  
12          this statewide credentialing verification organization is  
13          mandatory with respect to the credentialing of the different  
14          classes of health care practitioners shall be determined by  
15          emergency and legislative rules promulgated pursuant to the  
16          authority in section ten of this article.

**§16-1A-6. Contract with statewide credentialing verification organization; requirements.**

1           The Secretary and Insurance Commissioner shall assure  
2           that:

3           (1) Any contract executed with a credentialing  
4           verification organization shall be for an initial contract period  
5           of at least three years, subject to renewals, and the Secretary  
6           and Insurance Commissioner shall, in consultation with the  
7           advisory committee, periodically review the statewide  
8           credentialing verification organization's operations no less often  
9           than prior to every renewal.

10          (2) A credentialing verification organization selected  
11          pursuant to this article must, at a minimum, be certified by  
12          the national committee for quality assurance, be able to  
13          demonstrate compliance with the joint commission's

14 standards for credentialing and with all federal and state  
15 credentialing regulations, and maintain an errors and  
16 omissions insurance policy in amounts deemed to be  
17 adequate by the Secretary and Insurance Commissioner.

18 (3) Preference shall be given to credentialing verification  
19 organizations organized within the State of West Virginia.

**§16-1A-7. Verification process; suspension of requirements.**

1 (a) The statewide credentialing verification organization  
2 shall provide electronic access to the uniform credentialing  
3 application forms developed pursuant to section two of this  
4 article.

5 (b) A health care practitioner seeking to be credentialed  
6 must attest to and submit a completed uniform application  
7 form to the statewide credentialing verification organization  
8 and must provide any additional information requested by  
9 such credentialing verification organization: *Provided*, That  
10 a failure to comply with a reasonable request for additional  
11 information within thirty days may be grounds for the  
12 statewide credentialing verification organization to submit its  
13 report to any credentialing entity with identification of  
14 matters deemed to be incomplete.

15 (c) Except as provided in subsection (d) of this section,  
16 a credentialing entity may not require a person seeking to be  
17 credentialed or recredentialed to provide verification of any  
18 information contained in the uniform application: *Provided*,  
19 That nothing in this article is considered to prevent a  
20 credentialing entity from collecting or inquiring about  
21 information unavailable from or through the statewide  
22 credentialing verification organization or from making  
23 inquires to the National Practitioner Data Bank.

24 (d) A credentialing entity other than a health care facility  
25 must issue a credentialing decision within sixty days after

26 receiving the statewide credentialing verification  
27 organization's completed report and, with respect to  
28 affirmative credentialing decisions, payments pursuant to the  
29 contract shall be retroactive to the date of the decision.

30 (e) If the statewide credentialing verification organization  
31 fails to maintain national committee for quality assurance  
32 certification or, in the opinion of the Secretary and Insurance  
33 Commissioner, is unable to satisfy compliance with the joint  
34 commission's standards or federal and state credentialing  
35 regulations, the Secretary and Insurance Commissioner may,  
36 under terms and conditions deemed necessary to maintain the  
37 integrity of the credentialing process, notify credentialing  
38 entities that the requirement, relating to the mandatory use of  
39 the statewide credentialing verification organization, is being  
40 suspended.

41 (f) Notwithstanding any other provision of this code,  
42 credentialing entities may contract with the statewide  
43 credentialing verification organization or another credentialing  
44 verification organization to perform credentialing services, such  
45 as site visits to health care practitioners' offices, in addition to  
46 those services for which the statewide credentialing verification  
47 organization is the sole source.

**§16-1A-8. Release and uses of information collected;  
confidentiality.**

1 (a) Upon execution of a release by the health care  
2 practitioner, the statewide credentialing verification  
3 organization shall, under terms established in rule, provide  
4 the credentialing entity with electronic access to data  
5 generated.

6 (b) In order to assure that information in its files is  
7 current, the statewide credentialing verification organization  
8 shall establish processes to update information as required by  
9 credentialing entities.

10 (c) Except as provided in subsection (d) of this section,  
11 all information collected by the statewide credentialing  
12 verification organization from any source is confidential in  
13 nature, is exempt from disclosure pursuant to subpoena or  
14 discovery, is exempt from disclosure under the provisions of  
15 article one, chapter twenty-nine-b of this code, and shall be  
16 used solely by a credentialing entity to review the  
17 professional background, competency and qualifications of  
18 each health care practitioner applying to be credentialed.

19 (d) Credentialing information received by a credentialing  
20 entity from the statewide credentialing verification  
21 organization shall not be disclosed except:

22 (1) In appeals of credentialing decisions or to peer review  
23 and quality improvement committees: *Provided*, That such  
24 information shall be afforded the same protection from  
25 disclosure as is provided to other records used in proceedings  
26 subject to section three, article three-c, chapter thirty of this  
27 code;

28 (2) In any matter in which an action or order of a  
29 professional licensing board or other state or federal  
30 regulatory authority is at issue, including any proceeding  
31 brought by or on behalf of a health care practitioner or patient  
32 or by a regulatory body that challenges the actions, omissions  
33 or conduct of a credentialing entity with respect to  
34 credentialing decision; or

35 (3) When authorized by the health care practitioner to  
36 whom the credentialing information relates: *Provided*, That  
37 the health care practitioner's authorization shall only permit  
38 disclosure of information that he or she provided directly to  
39 the statewide credentialing verification organization.

40 (e) Upon the expiration of the contract with a statewide  
41 credentialing verification organization, all information

42 collected in connection with the duties under such contract  
43 shall be delivered to the Secretary and Insurance  
44 Commissioner to the extent allowed by law and subject to  
45 any legal requirements applicable to the sources of such  
46 information.

47 (f) The statewide credentialing verification organization  
48 may enter into contractual agreements to define the data type  
49 and form of information to be provided to users and to give  
50 users assurances of the integrity of the information collected.

**§16-1A-9. Rulemaking; fees; penalties.**

1 The Secretary and Insurance Commissioner, in  
2 consultation with the advisory committee, shall propose rules  
3 for legislative approval in accordance with the provisions of  
4 article three, chapter twenty-nine-a of this code on or before  
5 June 1, 2011. The legislative rules must include, but shall not  
6 be limited to, the following matters:

7 (1) Performance standards for the evaluation of the  
8 statewide credentialing verification organization;

9 (2) The manner in which the statewide credentialing  
10 verification organization must demonstrate compliance with  
11 credentialing standards and regulations;

12 (3) Penalties, including monetary sanctions, for violations  
13 of any provisions of this article;

14 (4) Duties of the statewide credentialing verification  
15 organization and the timelines for completion of its  
16 verification duties and services;

17 (5) Procedures for maintaining healthcare practitioner  
18 files;

19 (6) The payment system to cover the costs of the  
20 credentialing program;

21 (7) The use and confidentiality of data generated,  
22 collected and maintained by the statewide credentialing  
23 verification organization;

24 (8) Except with respect to health care facilities, the  
25 methodology for determination and communication of the  
26 common recredentialing date for a practitioner; and

27 (9) Procedures and criteria for the bidding and selection  
28 of the statewide credentialing verification organization.

#### **§16-1A-10. Immunity.**

1 (a) If the statewide credentialing verification organization  
2 certifies that information in an application has been verified  
3 according to its primary source verification procedures, any  
4 negligence by the statewide credentialing verification  
5 organization in its collection and verification of such  
6 information may not be imputed to a credentialing entity that  
7 receives such information and, further, such credentialing  
8 entity is not liable for damages arising from its reliance on  
9 such information in its credentialing process unless the  
10 credentialing entity knew or should have known such  
11 information was incorrect: *Provided*, That a credentialing  
12 entity is otherwise liable as provided by law for damages  
13 arising from its credentialing decisions.

14 (b) This article may not be interpreted as requiring a  
15 credentialing entity as defined in this article, to grant medical  
16 staff appointment to any practitioner nor may it be interpreted  
17 as requiring a credentialing entity to permit any practitioner  
18 to provide patient care or as requiring a payor or network to  
19 reimburse a practitioner for services.

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**CHAPTER 93**

**(Com. Sub. for S. B. 422 - By Senators  
Foster, Unger and Laird)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §16-4D-4 of the Code of West Virginia, 1931, as amended, relating to limiting liability for anticipated automatic external defibrillator users who are not health care providers.

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

That §16-4D-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4D. AUTOMATED EXTERNAL DEFIBRILLATORS.**

**§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 as a health care provider, as  
14 defined in section two, article two-d of this chapter; or

15           (3) The person is an unanticipated operator who  
16 gratuitously and in good faith rendered emergency medical  
17 care.



## CHAPTER 94

**(Com. Sub. for S. B. 597 - By Senators  
Kessler, Prezioso, Boley and Green)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to repeal § 16-2I-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact § 16-2I-2, § 16-2I-8 and § 16-2I-9 of said code, all relating to physician assisted abortions; requiring prior notice to the patient of the opportunity to view any ultrasound image utilized and in conjunction with the abortion procedure; providing the contents of a form to be provided to and signed by the female undergoing the abortion relating to her right to view or not view the ultrasound image; revising administrative remedies for physicians and their agents that do not comply with the provisions of the Woman's Right to Know Act; removing civil liability and civil remedies associated with failure to comply with the Woman's Right to Know Act; and providing for severability.



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

That §16-2I-10 of the Code of West Virginia, 1931, as amended, be repealed; and that §16-2I-2, §16-2I-8 and §16-2I-9 be amended and reenacted, all to read as follows:

§16-2I-2. Informed consent.

§16-2I-8. Administrative remedies.

§16-2I-9. Severability.

**§16-2I-2. Informed consent.**

1 No abortion may be performed in this state except with  
2 the voluntary and informed consent of the female upon whom  
3 the abortion is to be performed. Except in the case of a  
4 medical emergency, consent to an abortion is voluntary and  
5 informed if, and only if:

6 (a) The female is told the following, by telephone or in  
7 person, by the physician or the licensed health care  
8 professional to whom the responsibility has been delegated  
9 by the physician who is to perform the abortion at least  
10 twenty-four hours before the abortion:

11 (1) The particular medical risks associated with the  
12 particular abortion procedure to be employed, including,  
13 when medically accurate, the risks of infection, hemorrhage,  
14 danger to subsequent pregnancies and infertility;

15 (2) The probable gestational age of the embryo or fetus  
16 at the time the abortion is to be performed; and

17 (3) The medical risks associated with carrying her child  
18 to term.

19 The information required by this subsection may be  
20 provided by telephone without conducting a physical  
21 examination or tests of the patient, in which case the

22 information required to be provided may be based on facts  
23 supplied by the female to the physician or other licensed  
24 health care professional to whom the responsibility has been  
25 delegated by the physician and whatever other relevant  
26 information is reasonably available to the physician or other  
27 licensed health care professional to whom the responsibility  
28 has been delegated by the physician. It may not be provided  
29 by a tape recording, but must be provided during a  
30 consultation in which the physician or licensed health care  
31 professional to whom the responsibility has been delegated  
32 by the physician is able to ask questions of the female and the  
33 female is able to ask questions of the physician or the  
34 licensed health care professional to whom the responsibility  
35 has been delegated by the physician.

36 If a physical examination, tests or the availability of other  
37 information to the physician or other licensed health care  
38 professional to whom the responsibility has been delegated  
39 by the physician subsequently indicate, in the medical  
40 judgment of the physician or the licensed health care  
41 professional to whom the responsibility has been delegated  
42 by the physician, a revision of the information previously  
43 supplied to the patient, that revised information may be  
44 communicated to the patient at any time before the  
45 performance of the abortion procedure.

46 Nothing in this section may be construed to preclude  
47 provision of required information in a language understood  
48 by the patient through a translator.

49 (b) The female is informed, by telephone or in person, by  
50 the physician who is to perform the abortion, or by an agent  
51 of the physician, at least twenty-four hours before the  
52 abortion procedure:

53 (1) That medical assistance benefits may be available for  
54 prenatal care, childbirth and neonatal care through  
55 governmental or private entities;

56           (2) That the father, if his identity can be determined, is  
57     liable to assist in the support of her child based upon his  
58     ability to pay even in instances in which the father has  
59     offered to pay for the abortion;

60           (3) That she has the right to review the printed materials  
61     described in section three of this article, that these materials  
62     are available on a state-sponsored website and the website  
63     address; and

64           (4) That the female will be presented with a form which  
65     she will be required to execute prior to the abortion procedure  
66     that is available pursuant to section three of this article, and  
67     that the form to be presented will inform her of the  
68     opportunity to view the ultrasound image and her right to  
69     view or decline to view the ultrasound image, if an  
70     ultrasound is performed.

71           The physician or an agent of the physician shall orally  
72     inform the female that the materials have been provided by  
73     the State of West Virginia and that they describe the embryo  
74     or fetus and list agencies and entities which offer alternatives  
75     to abortion.

76           If the female chooses to view the materials other than on  
77     the website, then they shall either be provided to her at least  
78     twenty-four hours before the abortion or mailed to her at least  
79     seventy-two hours before the abortion by first class mail in an  
80     unmarked envelope.

81           The information required by this subsection may be  
82     provided by a tape recording if provision is made to record or  
83     otherwise register specifically whether the female does or  
84     does not choose to have the printed materials given or mailed  
85     to her.

86 (c) The form required pursuant to subdivision (4),  
87 subsection (b) of this section shall include the following  
88 information: (1) It is a female's decision whether or not to  
89 undergo any ultrasound imaging procedure in consultation  
90 with her health care provider; (2) If an ultrasound is  
91 performed in conjunction with the performance of an  
92 abortion procedure, the female has the right to view or to  
93 decline to view the image; and (3) That the woman has been  
94 previously informed of her opportunity to view the  
95 ultrasound image and her right to view or decline to view the  
96 ultrasound image. The woman shall certify her choice on this  
97 form prior to the abortion procedure being performed.

98 The female shall certify in writing, before the abortion,  
99 that the information described in subsections (a) and (b) of  
100 this section has been provided to her and that she has been  
101 informed of her opportunity to review the information  
102 referred to in subdivision (3), subsection (b) of this section.

103 Before performing the abortion procedure, the physician  
104 who is to perform the abortion or the physician's agent shall  
105 obtain a copy of the executed certification required by the  
106 provisions of subsections (b) and (c) of this section.

#### **§16-2I-8. Administrative remedies.**

1 Any physician or agent thereof who willfully violates the  
2 provisions of this article may be subject to sanctions as levied  
3 by the licensing board governing his or her profession.

#### **§16-2I-9. Severability.**

1 If any one or more provision, section, subsection,  
2 sentence, clause, phrase or word of this article or the  
3 application thereof to any person or circumstance is found to  
4 be unconstitutional, the same is hereby declared to be  
5 severable and the balance of this article shall remain effective

6 notwithstanding such unconstitutionality. The Legislature  
7 hereby declares that it would have passed this article, and  
8 each provision, section, subsection, sentence, clause, phrase  
9 or word thereof, irrespective of the fact that any one or more  
10 provision, section, subsection, sentence, clause, phrase or  
11 word be declared unconstitutional.

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## CHAPTER 95

**(Com. Sub. for H. B. 4182 -  
By Delegate Spencer)**

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[Passed March 13 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 26, 2010.]

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AN ACT to amend and reenact §16-5V-2, §16-5V-6, §16-5V-7, §16-5V-8, §16-5V-18, §16-5V-19, §16-5V-20 and §16-5V-21 of the Code of West Virginia, 1931, as amended, all relating to the Emergency Medical Services Retirement System Act; modifying definitions; making technical changes; procedures for the transfer of contributions; clarifying actuarial valuation period; clarifying employer contribution amount; specifying procedures for the correction of errors; providing onset date for receipt of disability benefits; and providing for the termination of disability benefits when a retirant refuses to submit to a medical examination or provide certification from a physician of continued disability.

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

That §16-5V-2, §16-5V-6, §16-5V-7, §16-5V-8, §16-5V-18, §16-5V-19, §16-5V-20 and §16-5V-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 5V. EMERGENCY MEDICAL SERVICES  
RETIREMENT SYSTEM ACT.**

§16-5V-2. Definitions.

§16-5V-6. Members.

§16-5V-7. Creation of Fund; investments; actuarial valuations.

§16-5V-8. Members' contributions; employer contributions; correction of errors.

§16-5V-18. Refunds to certain, members upon discharge or resignation; deferred retirement; forfeitures.

§16-5V-19. Awards and benefits for disability – Duty related.

§16-5V-20. Same – Due to other causes.

§16-5V-21. Same – Physical examinations; termination of disability.

**§16-5V-2. Definitions.**

1 As used in this article, unless a federal law or regulation  
2 or the context clearly requires a different meaning:

3 (a) “Accrued benefit” means on behalf of any member  
4 two and six-tenths percent per year of the member’s final  
5 average salary for the first twenty years of credited service.  
6 Additionally, two percent per year for twenty-one through  
7 twenty-five years and one percent per year for twenty-six  
8 through thirty years will be credited with a maximum benefit  
9 of sixty-seven percent. A member’s accrued benefit may not  
10 exceed the limits of Section 415 of the Internal Revenue  
11 Code and is subject to the provisions of section twelve of this  
12 article.

13 (1) The board may upon the recommendation of the  
14 board’s actuary increase the employees’ contribution rate to  
15 ten and five-tenths percent should the funding of the plan not  
16 reach seventy percent funded by July 1, 2012. The board  
17 shall decrease the contribution rate to eight and one-half  
18 percent once the plan funding reaches the seventy percent  
19 support objective as of any later actuarial valuation date.

20 (2) Upon reaching the seventy-five percent actuarial  
21 funded level, as of an actuarial valuation date, the board shall  
22 increase the two and six-tenths percent to two and three-

23 quarter percent for the first twenty years of credited service.  
24 The maximum benefit will also be increased from sixty-seven  
25 percent to seventy percent.

26 (b) "Accumulated contributions" means the sum of all  
27 retirement contributions deducted from the compensation of  
28 a member, or paid on his or her behalf as a result of covered  
29 employment, together with regular interest on the deducted  
30 amounts.

31 (c) "Active military duty" means full-time active duty  
32 with any branch of the Armed Forces of the United States,  
33 including service with the National Guard or reserve military  
34 forces when the member has been called to active full-time  
35 duty and has received no compensation during the period of  
36 that duty from any board or employer other than the Armed  
37 Forces.

38 (d) "Actuarial equivalent" means a benefit of equal value  
39 computed upon the basis of the mortality table and interest  
40 rates as set and adopted by the board in accordance with the  
41 provisions of this article.

42 (e) "Annual compensation" means the wages paid to the  
43 member during covered employment within the meaning of  
44 Section 3401(a) of the Internal Revenue Code, but  
45 determined without regard to any rules that limit the  
46 remuneration included in wages based upon the nature or  
47 location of employment or services performed during the  
48 plan year plus amounts excluded under Section 414(h)(2) of  
49 the Internal Revenue Code and less reimbursements or other  
50 expense allowances, cash or noncash fringe benefits or both,  
51 deferred compensation and welfare benefits. Annual  
52 compensation for determining benefits during any  
53 determination period may not exceed \$100,000 as adjusted  
54 for cost-of-living in accordance with Section 401(a)(17)(B)  
55 of the Internal Revenue Code.

- 56 (f) “Annual leave service” means accrued annual leave.
- 57 (g) “Annuity starting date” means the first day of the  
58 month for which an annuity is payable after submission of a  
59 retirement application. For purposes of this subsection, if  
60 retirement income payments commence after the normal  
61 retirement age, “retirement” means the first day of the month  
62 following or coincident with the latter of the last day the  
63 member worked in covered employment or the member’s  
64 normal retirement age and after completing proper written  
65 application for “retirement” on an application supplied by the  
66 board.
- 67 (h) “Board” means the Consolidated Public Retirement  
68 Board.
- 69 (i) “County commission or political subdivision” has the  
70 meaning ascribed to it in this code.
- 71 (j) “Covered employment” means either: (1)  
72 Employment as a full-time emergency medical technician,  
73 emergency medical technician/paramedic or emergency  
74 medical services/registered nurse and the active performance  
75 of the duties required of emergency medical services officers;  
76 or (2) the period of time during which active duties are not  
77 performed but disability benefits are received under this  
78 article; or (3) concurrent employment by an emergency  
79 medical services officer in a job or jobs in addition to his or  
80 her employment as an emergency medical services officer  
81 where the secondary employment requires the emergency  
82 medical services officer to be a member of another retirement  
83 system which is administered by the Consolidated Public  
84 Retirement Board pursuant to this code: *Provided*, That the  
85 emergency medical services officer contributes to the fund  
86 created in this article the amount specified as the member’s  
87 contribution in section eight of this article.



88 (k) "Credited service" means the sum of a member's  
89 years of service, active military duty, disability service and  
90 accrued annual and sick leave service.

91 (l) "Dependent child" means either:

92 (1) An unmarried person under age eighteen who is:

93 (A) A natural child of the member;

94 (B) A legally adopted child of the member;

95 (C) A child who at the time of the member's death was  
96 living with the member while the member was an adopting  
97 parent during any period of probation; or

98 (D) A stepchild of the member residing in the member's  
99 household at the time of the member's death; or

100 (2) Any unmarried child under age twenty-three:

101 (A) Who is enrolled as a full-time student in an  
102 accredited college or university;

103 (B) Who was claimed as a dependent by the member for  
104 federal income tax purposes at the time of member's death;  
105 and

106 (C) Whose relationship with the member is described in  
107 paragraph (A), (B) or (C), subdivision (1) of this subsection.

108 (m) "Dependent parent" means the father or mother of  
109 the member who was claimed as a dependent by the member  
110 for federal income tax purposes at the time of the member's  
111 death.

112 (n) "Disability service" means service received by a  
113 member, expressed in whole years, fractions thereof or both,  
114 equal to one half of the whole years, fractions thereof, or

115 both, during which time a member receives disability benefits  
116 under this article.

117 (o) “Early retirement age” means age forty-five or over  
118 and completion of twenty years of contributory service.

119 (p) “Effective date” means January 1, 2008.

120 (q) “Emergency medical services officer” means an  
121 individual employed by the state, county or other political  
122 subdivision as a medical professional who is qualified to  
123 respond to medical emergencies, aids the sick and injured and  
124 arranges or transports to medical facilities, as defined by the  
125 West Virginia Office of Emergency Medical Services. This  
126 definition is construed to include employed ambulance  
127 providers and other services such as law enforcement, rescue  
128 or fire department personnel who primarily perform these  
129 functions and are not provided any other credited service  
130 benefits or retirement plans. These persons may hold the  
131 rank of emergency medical technician/basic, emergency  
132 medical technician/paramedic, emergency medical services/  
133 registered nurse, or others as defined by the West Virginia  
134 Office of Emergency Medical Services and the Consolidated  
135 Public Retirement Board.

136 (r) “Employer error” means an omission,  
137 misrepresentation or violation of relevant provisions of the  
138 West Virginia Code or of the West Virginia Code of State  
139 Rules or the relevant provisions of both the West Virginia  
140 Code and of the West Virginia Code of State Rules by the  
141 participating public employer that has resulted in an  
142 underpayment or overpayment of contributions required. A  
143 deliberate act contrary to the provisions of this article by a  
144 participating public employer does not constitute employer  
145 error.

146 (s) “Final average salary” means the average of the  
147 highest annual compensation received for covered

148 employment by the member during any five consecutive plan  
149 years within the member's last ten years of service while  
150 employed, prior to any disability payment. If the member did  
151 not have annual compensation for the five full plan years  
152 preceding the member's attainment of normal retirement age  
153 and during that period the member received disability  
154 benefits under this article, then "final average salary" means  
155 the average of the monthly salary determined paid to the  
156 member during that period as determined under section  
157 twenty-two of this article multiplied by twelve. "Final  
158 average salary" does not include any lump sum payment for  
159 unused, accrued leave of any kind or character.

160 (t) "Full-time employment" means permanent  
161 employment of an employee by a participating public  
162 employer in a position which normally requires twelve  
163 months per year service and requires at least one thousand  
164 forty hours per year service in that position.

165 (u) "Fund" means the West Virginia Emergency Medical  
166 Services Retirement Fund created by this article.

167 (v) "Hour of service" means:

168 (1) Each hour for which a member is paid or entitled to  
169 payment for covered employment during which time active  
170 duties are performed. These hours shall be credited to the  
171 member for the plan year in which the duties are performed;  
172 and

173 (2) Each hour for which a member is paid or entitled to  
174 payment for covered employment during a plan year but  
175 where no duties are performed due to vacation, holiday,  
176 illness, incapacity including disability, layoff, jury duty,  
177 military duty, leave of absence or any combination thereof  
178 and without regard to whether the employment relationship  
179 has terminated. Hours under this subdivision shall be

180 calculated and credited pursuant to West Virginia Division of  
181 Labor rules. A member will not be credited with any hours  
182 of service for any period of time he or she is receiving  
183 benefits under section nineteen or twenty of this article; and

184 (3) Each hour for which back pay is either awarded or  
185 agreed to be paid by the employing county commission or  
186 political subdivision, irrespective of mitigation of damages.  
187 The same hours of service shall not be credited both under  
188 subdivision (1) or (2) of this subsection and under this  
189 subdivision. Hours under this paragraph shall be credited to  
190 the member for the plan year or years to which the award or  
191 agreement pertains, rather than the plan year in which the  
192 award, agreement or payment is made.

193 (w) "Member" means a person first hired as an  
194 emergency medical services officer by an employer which is  
195 a participating public employer of the Public Employees  
196 Retirement System or the Emergency Medical Services  
197 Retirement System after the effective date of this article, as  
198 defined in subsection (p) of this section, or an emergency  
199 medical services officer of an employer which is a  
200 participating public employer of the Public Employees  
201 Retirement System first hired prior to the effective date and  
202 who elects to become a member pursuant to this article. A  
203 member shall remain a member until the benefits to which he  
204 or she is entitled under this article are paid or forfeited.

205 (x) "Monthly salary" means the W-2 reportable  
206 compensation received by a member during the month.

207 (y) "Normal form" means a monthly annuity which is one  
208 twelfth of the amount of the member's accrued benefit which  
209 is payable for the member's life. If the member dies before  
210 the sum of the payments he or she receives equals his or her  
211 accumulated contributions on the annuity starting date, the  
212 named beneficiary shall receive in one lump sum the

213 difference between the accumulated contributions at the  
214 annuity starting date and the total of the retirement income  
215 payments made to the member.

216 (z) "Normal retirement age" means the first to occur of  
217 the following:

218 (1) Attainment of age fifty years and the completion of  
219 twenty or more years of regular contributory service,  
220 excluding active military duty, disability service and accrued  
221 annual and sick leave service;

222 (2) While still in covered employment, attainment of at  
223 least age fifty years and when the sum of current age plus  
224 regular contributory years of service equals or exceeds  
225 seventy years;

226 (3) While still in covered employment, attainment of at  
227 least age sixty years and completion of ten years of regular  
228 contributory service; or

229 (4) Attainment of age sixty-two years and completion of  
230 five or more years of regular contributory service.

231 (aa) "Participating public employer" means any county  
232 commission or political subdivision in the state which has  
233 elected to cover its emergency medical services officers, as  
234 defined in this article, under the West Virginia Emergency  
235 Medical Services Retirement System.

236 (bb) "Political subdivision" means a county, city or town  
237 in the state; any separate corporation or instrumentality  
238 established by one or more counties, cities or towns, as  
239 permitted by law; any corporation or instrumentality  
240 supported in most part by counties, cities or towns; and any  
241 public corporation charged by law with the performance of a  
242 governmental function and whose jurisdiction is coextensive

243 with one or more counties, cities or towns: *Provided*, That  
244 any public corporation established under section four, article  
245 fifteen, chapter seven of this code is considered a political  
246 subdivision solely for the purposes of this article.

247 (cc) “Plan” means the West Virginia Emergency Medical  
248 Services Retirement System established by this article.

249 (dd) “Plan year” means the twelve-month period  
250 commencing on January 1 of any designated year and ending  
251 the following December 31.

252 (ee) “Public Employees Retirement System” means the  
253 West Virginia Public Employee’s Retirement System created  
254 by West Virginia Code.

255 (ff) “Regular interest” means the rate or rates of interest  
256 per annum, compounded annually, as the board adopts in  
257 accordance with the provisions of this article.

258 (gg) “Required beginning date” means April 1 of the  
259 calendar year following the later of: (1) The calendar year in  
260 which the member attains age seventy and one-half; or (2) the  
261 calendar year in which he or she retires or otherwise  
262 separates from covered employment.

263 (hh) “Retirant” means any member who commences an  
264 annuity payable by the plan.

265 (ii) “Retirement income payments” means the monthly  
266 retirement income payments payable under the plan.

267 (jj) “Spouse” means the person to whom the member is  
268 legally married on the annuity starting date.

269 (kk) “Surviving spouse” means the person to whom the  
270 member was legally married at the time of the member’s  
271 death and who survived the member.

272 (ll) "Totally disabled" means a member's inability to  
273 engage in substantial gainful activity by reason of any  
274 medically determined physical or mental impairment that can  
275 be expected to result in death or that has lasted or can be  
276 expected to last for a continuous period of not less than  
277 twelve months.

278 For purposes of this subsection:

279 (1) A member is totally disabled only if his or her  
280 physical or mental impairment or impairments is so severe  
281 that he or she is not only unable to perform his or her  
282 previous work as an emergency medical services officer but  
283 also cannot, considering his or her age, education and work  
284 experience, engage in any other kind of substantial gainful  
285 employment which exists in the state regardless of whether:  
286 (A) The work exists in the immediate area in which the  
287 member lives; (B) a specific job vacancy exists; or (C) the  
288 member would be hired if he or she applied for work. For  
289 purposes of this article, substantial gainful employment is the  
290 same definition as used by the United States Social Security  
291 Administration.

292 (2) "Physical or mental impairment" is an impairment  
293 that results from an anatomical, physiological or  
294 psychological abnormality that is demonstrated by medically  
295 accepted clinical and laboratory diagnostic techniques. The  
296 board may require submission of a member's annual tax  
297 return for purposes of monitoring the earnings limitation.

298 (mm) "Year of service" means a member shall, except in  
299 his or her first and last years of covered employment, be  
300 credited with years of service credit based upon the hours of  
301 service performed as covered employment and credited to the  
302 member during the plan year based upon the following  
303 schedule:

304 **Hours of Service Year of Service Credited.**

305	Less than 500 .....	0
306	500 to 999 .....	1/3
307	1,000 to 1,499 .....	2/3
308	1,500 or more .....	1

309 During a member’s first and last years of covered  
 310 employment, the member shall be credited with one twelfth  
 311 of a year of service for each month during the plan year in  
 312 which the member is credited with an hour of service for  
 313 which contributions were received by the fund. A member is  
 314 not entitled to credit for years of service for any time period  
 315 during which he or she received disability payments under  
 316 section nineteen or twenty of this article. Except as  
 317 specifically excluded, years of service include covered  
 318 employment prior to the effective date.

319 Years of service which are credited to a member prior to  
 320 his or her receipt of accumulated contributions upon  
 321 termination of employment pursuant to section eighteen of  
 322 this article or section thirty, article ten, chapter five of this  
 323 code, shall be disregarded for all purposes under this plan  
 324 unless the member repays the accumulated contributions with  
 325 interest pursuant to section eighteen of this article or has prior  
 326 to the effective date made the repayment pursuant to section  
 327 eighteen, article ten, chapter five of this code.

**§16-5V-6. Members.**

1 (a) Any emergency medical services officer first  
 2 employed by a county or political subdivision in covered  
 3 employment after the effective date of this article shall be a  
 4 member of this retirement plan as a condition of employment



5 and upon membership does not qualify for membership in  
6 any other retirement system administered by the board, so  
7 long as he or she remains employed in covered employment.

8 (b) Any emergency medical services officer employed in  
9 covered employment by an employer which is currently a  
10 participating public employer of the Public Employees  
11 Retirement System shall notify in writing both the county  
12 commission in the county or officials in the political  
13 subdivision in which he or she is employed and the board of  
14 his or her desire to become a member of the plan by  
15 December 31, 2007. Any emergency medical services officer  
16 who elects to become a member of the plan ceases to be a  
17 member or have any credit for covered employment in any  
18 other retirement system administered by the board and shall  
19 continue to be ineligible for membership in any other  
20 retirement system administered by the board so long as the  
21 emergency medical services officer remains employed in  
22 covered employment by an employer which is currently a  
23 participating public employer of this plan: *Provided*, That  
24 any emergency medical services officer who does not  
25 affirmatively elect to become a member of the plan continues  
26 to be eligible for any other retirement system as is, from time  
27 to time, offered to other county employees but is ineligible  
28 for this plan regardless of any subsequent termination of  
29 employment and rehire.

30 (c) Any emergency medical services officer who was  
31 employed as an emergency medical services officer prior to  
32 the effective date, but was not employed on the effective date  
33 of this article, shall become a member upon rehire as an  
34 emergency medical services officer. For purposes of this  
35 section, the member's years of service and credited service  
36 prior to the effective date shall not be counted for any  
37 purposes under this plan unless the emergency medical  
38 services officer has not received the return of his or her  
39 accumulated contributions in the Public Employees

40 Retirement System pursuant to section thirty, article ten,  
41 chapter five of this code. The member may request in  
42 writing to have his or her accumulated contributions and  
43 employer contributions from covered employment in the  
44 Public Employees Retirement System transferred to the plan.  
45 If the conditions of this subsection are met, all years of the  
46 emergency medical services officer's covered employment  
47 shall be counted as years of service for the purposes of this  
48 article.

49 (d) Any emergency medical services officer employed in  
50 covered employment on the effective date of this article who  
51 has timely elected to transfer into this plan as provided in  
52 subsection (b) of this section shall be given credited service  
53 at the time of transfer for all credited service then standing to  
54 the emergency medical services officer's service credit in the  
55 Public Employees Retirement System regardless of whether  
56 the credited service (as that term is defined in section two,  
57 article ten, chapter five of this code) was earned as an  
58 emergency medical services officer. All credited service  
59 standing to the transferring emergency medical services  
60 officer's credit in the Public Employees Retirement System  
61 at the time of transfer into this plan shall be transferred into  
62 the plan created by this article and the transferring emergency  
63 medical services officer shall be given the same credit for the  
64 purposes of this article for all service transferred from the  
65 Public Employees Retirement System as that transferring  
66 emergency medical services officer would have received  
67 from the Public Employees Retirement System as if the  
68 transfer had not occurred. In connection with each  
69 transferring emergency medical services officer receiving  
70 credit for prior employment as provided in this subsection, a  
71 transfer from the Public Employees Retirement System to  
72 this plan shall be made pursuant to the procedures described  
73 in this article: *Provided*, That any member of this plan who  
74 has elected to transfer from the Public Employees Retirement  
75 System into this plan pursuant to subsection (b) of this

76 section may not, after having transferred into and becoming  
77 an active member of this plan, reinstate to his or her credit in  
78 this plan any service credit relating to periods in which the  
79 member was not in covered employment as an emergency  
80 medical services officer and which service was withdrawn  
81 from the Public Employees Retirement System prior to his or  
82 her elective transfer into this plan.

83 (e) Once made, the election made under this section is  
84 irrevocable. All emergency medical services officers  
85 employed by an employer which is a participating public  
86 employer of the Public Employees Retirement System after  
87 the effective date and emergency medical services officers  
88 electing to become members as described in this section shall  
89 be members as a condition of employment and shall make the  
90 contributions required by this article.

91 (f) Notwithstanding any other provisions of this article,  
92 any individual who is a leased employee is not eligible to  
93 participate in the plan. For purposes of this plan, a “leased  
94 employee” means any individual who performs services as an  
95 independent contractor or pursuant to an agreement with an  
96 employee leasing organization or similar organization. If a  
97 question arises regarding the status of an individual as a  
98 leased employee, the board has final power to decide the  
99 question.

**§16-5V-7. Creation of Fund; investments; actuarial valuations.**

1 (a) There is hereby created the “West Virginia  
2 Emergency Medical Services Retirement Fund” for the  
3 benefit of the members of the retirement system created  
4 pursuant to this article and the dependents of any deceased or  
5 retired member of the system.

6 (b) All moneys paid into and accumulated in the fund,  
7 except amounts designated by the board for payment of

8 benefits as provided in this article, shall be held in trust and  
9 invested in the consolidated pensions fund administered by  
10 the West Virginia Investment Management Board as  
11 provided by law.

12 (c) The board shall employ a competent actuary or  
13 actuarial firm to prepare an actuarial valuation of the assets  
14 and liabilities of the fund. The actuarial valuation period  
15 shall coincide with the fiscal year of the state.

**§16-5V-8. Members' contributions; employer contributions;  
correction of errors.**

1 (a) There shall be deducted from the monthly salary of  
2 each member and paid into the fund an amount equal to eight  
3 and one-half percent of his or her monthly salary. An  
4 additional amount shall be paid to the fund by the county  
5 commission or political subdivision in which the member is  
6 employed in covered employment in an amount determined  
7 by the board: *Provided*, That in no year may the total of the  
8 employer contributions provided in this section, to be paid by  
9 the county commission or political subdivision, exceed ten  
10 and one-half percent of the total payroll for the members in  
11 the employ of the county commission or political  
12 subdivision.

13 (b) Any active member who has concurrent employment  
14 in an additional job or jobs and the additional employment  
15 requires the emergency medical services officer to be a  
16 member of another retirement system which is administered  
17 by the Consolidated Public Retirement Board pursuant to  
18 article ten-d, chapter five of this code shall contribute to the  
19 fund the sum of eight and one-half percent of his or her  
20 monthly salary earned as an emergency medical services  
21 officer as well as the sum of eight and one-half percent of his  
22 or her monthly salary earned from any additional  
23 employment which additional employment requires the

24 emergency medical services officer to be a member of  
25 another retirement system which is administered by the  
26 Consolidated Public Retirement Board pursuant to article ten-  
27 d, chapter five of this code. An additional percent of the  
28 monthly salary of each member shall be paid to the fund by  
29 the concurrent employer by which the member is employed  
30 in an amount determined by the board: *Provided*, That in no  
31 year may the total of the employer contributions provided in  
32 this section, to be paid by the concurrent employer, exceed  
33 ten and one-half percent of the payroll for the concurrent  
34 member employees.

35 (c) All required deposits shall be remitted to the board no  
36 later than fifteen days following the end of the calendar  
37 month for which the deposits are required. If the board upon  
38 the recommendation of the board actuary finds that the  
39 benefits provided by this article can be actuarially funded  
40 with a lesser contribution, then the board shall reduce the  
41 required member and employer contributions proportionally.  
42 Any county commission or political subdivision which fails  
43 to make any payment due the Emergency Medical Services  
44 Retirement Fund by the fifteenth day following the end of  
45 each calendar month in which contributions are due may be  
46 required to pay the actuarial rate of interest lost on the total  
47 amount owed for each day the payment is delinquent.  
48 Accrual of the loss of earnings owed by the delinquent  
49 county commission or political subdivision commences after  
50 the fifteenth day following the end of the calendar month in  
51 which contributions are due and continues until receipt of the  
52 delinquent amount. Interest compounds daily and the  
53 minimum surcharge is \$50.

54 (d) If any change or employer error in the records of any  
55 participating public employer or the retirement system results  
56 in any member receiving from the system more or less than  
57 he or she would have been entitled to receive had the records  
58 been correct, the board shall correct the error and as far as is

59 practicable shall adjust the payment of the benefit in a  
60 manner that the actuarial equivalent of the benefit to which  
61 the member was correctly entitled shall be paid. Any  
62 employer error resulting in an underpayment to the retirement  
63 system may be corrected by the member remitting the  
64 required employee contribution and the participating public  
65 employer remitting the required employer contribution.  
66 Interest shall accumulate in accordance with the Legislative  
67 Rule 162 CSR 7 retirement board reinstatement interest, and  
68 any accumulating interest owed on the employee and  
69 employer contributions resulting from the employer error  
70 shall be the responsibility of the participating public  
71 employer. The participating public employer may remit total  
72 payment and the employee reimburse the participating public  
73 employer through payroll deduction over a period equivalent  
74 to the time period during which the employer error occurred.

**§16-5V-18. Refunds to certain members upon discharge or  
resignation; deferred retirement; forfeitures.**

1 (a) Any member who terminates covered employment  
2 and is not immediately eligible to receive disability or  
3 retirement income benefits under this article is, by written  
4 request filed with the board, entitled to receive from the fund  
5 the member's accumulated contributions. Except as provided  
6 in subsection (b) of this section, upon withdrawal, the  
7 member shall forfeit his or her accrued benefit and cease to  
8 be a member.

9 (b) Any member who ceases employment in covered  
10 employment and active participation in this plan and who  
11 thereafter becomes reemployed in covered employment may  
12 not receive any credited service for any prior withdrawn  
13 accumulated contributions from either this plan or the Public  
14 Employees Retirement System unless following his or her  
15 return to covered employment and active participation in this

16 plan, the member redeposits in the fund the amount of the  
17 accumulated contributions withdrawn from previous covered  
18 employment, together with interest on the accumulated  
19 contributions at the rate determined by the board from the  
20 date of withdrawal to the date of redeposit. Upon repayment  
21 he or she shall receive the same credit on account of his or  
22 her former covered employment as if no refund had been  
23 made.

24 The repayment authorized by this subsection shall be  
25 made in a lump sum within sixty months of the emergency  
26 medical services officer's reemployment in covered  
27 employment or, if later, within sixty months of the effective  
28 date of this article.

29 (c) A member of this plan who has elected to transfer  
30 from the Public Employees Retirement System into this plan  
31 pursuant to subsection (b), section six of this article may not,  
32 after having transferred into and become an active member of  
33 this plan, reinstate to his or her credit in this plan any service  
34 credit relating to periods of nonemergency medical services  
35 officer service withdrawn from the Public Employees  
36 Retirement System prior to his or her elective transfer into  
37 this plan.

38 (d) Every member who completes sixty months of  
39 covered employment is eligible, upon cessation of covered  
40 employment, to either withdraw his or her accumulated  
41 contributions in accordance with this section or to choose not  
42 to withdraw his or her accumulated contribution and to  
43 receive retirement income payments upon attaining early or  
44 normal retirement age.

45 (e) Notwithstanding any other provision of this article,  
46 forfeitures under the plan may not be applied to increase the  
47 benefits any member would otherwise receive under the plan.

**§16-5V-19. Awards and benefits for disability -- Duty related.**

1 (a) Any member who after the effective date of this article  
2 and during covered employment: (1) Has been or becomes  
3 totally disabled by injury, illness or disease; and (2) the disability  
4 is a result of an occupational risk or hazard inherent in or  
5 peculiar to the services required of members; or (3) the disability  
6 was incurred while performing emergency medical services  
7 functions during either scheduled work hours or at any other  
8 time; and (4) in the opinion of two physicians after medical  
9 examination, one of whom shall be named by the board, the  
10 member is by reason of the disability unable to perform  
11 adequately the duties required of an emergency medical services  
12 officer, is entitled to receive and shall be paid from the fund in  
13 monthly installments the compensation set forth under either  
14 subsection (b) or (c) of this section.

15 (b) If the member is totally disabled, the member shall  
16 receive ninety percent of his or her average full monthly  
17 compensation for the twelve-month period preceding the  
18 member's disability or the shorter period if the member has  
19 not worked twelve months.

20 (c) If the member remains totally disabled until attaining  
21 sixty-five years of age, the member shall then receive the  
22 retirement benefit provided in sections sixteen and seventeen  
23 of this article.

24 (d) The disability benefit payments will begin the first  
25 day of the month following termination of employment and  
26 receipt of the disability retirement application by the  
27 Consolidated Public Retirement Board.

**§16-5V-20. Same -- Due to other causes.**



1 (a) Any member who after the effective date of this  
2 article and during covered employment: (1) Has been or  
3 becomes totally disabled from any cause other than those set  
4 forth in section nineteen of this article and not due to vicious  
5 habits, intemperance or willful misconduct on his or her part;  
6 and (2) in the opinion of two physicians after medical  
7 examination, one of whom shall be named by the board, he  
8 or she is by reason of the disability unable to perform  
9 adequately the duties required of an emergency medical  
10 services officer, is entitled to receive and shall be paid from  
11 the fund in monthly installments, the compensation set forth  
12 in, either subsection (b) or (c) of this section.

13 (b) If the member is totally disabled, he or she shall  
14 receive sixty-six and two-thirds percent of his or her average  
15 monthly compensation for the twelve-month period  
16 preceding the disability, or the shorter period, if the member  
17 has not worked twelve months.

18 (c) If the member remains totally disabled until attaining  
19 sixty years of age, then the member shall receive the  
20 retirement benefit provided in sections sixteen and seventeen  
21 of this article.

22 (d) The board shall propose legislative rules for  
23 promulgation in accordance with the provisions of article  
24 three, chapter twenty-nine-a of this code concerning member  
25 disability payments so as to ensure that the payments do not  
26 exceed one hundred percent of the average current salary for  
27 the position last held by the member.

28 (e) The disability benefit payments will begin the first  
29 day of the month following termination of employment and  
30 receipt of the disability retirement application by the  
31 Consolidated Public Retirement Board: *Provided*, That no

32 member may receive disability benefit payments set forth in  
33 this section before January 1, 2011.

**§16-5V-21. Same – Physical examinations; termination of disability.**

1 (a) The board may require any member who has applied  
2 for or is receiving disability benefits under this article to  
3 submit to a physical examination, mental examination or  
4 both, by a physician or physicians selected or approved by  
5 the board and may cause all costs incident to the examination  
6 and approved by the board to be paid from the fund. The  
7 costs may include hospital, laboratory, X-ray, medical and  
8 physicians' fees. A report of the findings of any physician  
9 shall be submitted in writing to the board for its  
10 consideration. If, from the report, independent information,  
11 or from the report and any hearing on the report, the board is  
12 of the opinion and finds that: (1) The member has become  
13 reemployed as an emergency medical services officer; (2) a  
14 physician who has examined the member has found that  
15 considering the opportunities for emergency medical services  
16 in West Virginia, the member could be so employed as an  
17 emergency medical services officer; or (3) other facts exist to  
18 demonstrate that the member is no longer totally disabled,  
19 then the disability benefits shall cease. Benefits shall cease  
20 once the member has been found to be no longer totally  
21 disabled. The board shall require annual recertification.

22 (b) If a retirant refuses to submit to a medical examination  
23 or submit a statement by his or her physician certifying  
24 continued disability in any period, his or her disability annuity  
25 may be discontinued by the board until the retirant complies. If  
26 the refusal continues for one year, all the retirant's rights in and  
27 to the annuity may be revoked by the board.

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## CHAPTER 96

**(S. B. 612 - By Senators Plymale  
Unger, Bowman, D. Facemire, Minard,  
Snyder, Kessler, Wells, Yost, Jenkins  
and Prezioso)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on April 6, 2010.]

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AN ACT to amend and reenact §29-22-18 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29-22-18c; and to amend and reenact §31-15-16a of said code, all relating to funding of higher education capital projects; authorizing the Governor to certify certain revised lists of capital improvement projects; authorizing the Economic Development Authority to issue bonds in certain amounts and for certain purposes; specifying that the Economic Development Authority may grant second-in-priority and third-in-priority liens on proceeds of the State Lottery Fund up to a certain amount in favor of the bonds; increasing the amount paid annually to the Higher Education Improvement Fund from \$10 million to \$15 million; and making other technical corrections.

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

That §29-22-18 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 §29-22-18c; and that §31-15-16a of said code be amended and reenacted, all to read as follows:

**Chapter****29. Miscellaneous Boards and Officers.****31. Corporations.****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.

§29-22-18c. Increase in allocation to Higher Education Improvement Fund from State Excess Lottery Revenue Fund.

**§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  
2 State Treasury which shall be designated and known as the  
3 State Lottery Fund. The fund consists of all appropriations  
4 to the fund and all interest earned from investment of the  
5 fund and any gifts, grants or contributions received by the  
6 fund. All revenues received from the sale of lottery tickets,  
7 materials and games shall be deposited with the State  
8 Treasurer and placed into the State Lottery Fund. The  
9 revenue shall be disbursed in the manner provided in this  
10 section for the purposes stated in this section and shall not be  
11 treated by the Auditor and Treasurer as part of the general  
12 revenue of the 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.

23           (e) The excess of the aggregate of the gross amount  
24 received from all lotteries over the sum of the amounts  
25 allocated by subsections (c) and (d) of this section shall be  
26 allocated as net profit. In the event that the percentage  
27 allotted for operations and administration generates a surplus,  
28 the surplus shall be allowed to accumulate to an amount not  
29 to exceed \$250,000. On a monthly basis, the director shall  
30 report to the Joint Committee on Government and Finance of  
31 the Legislature any surplus in excess of \$250,000 and remit  
32 to the State Treasurer the entire amount of those surplus  
33 funds in excess of \$250,000 which shall be allocated as net  
34 profit.

35           (f) After first satisfying the requirements for funds  
36 dedicated to the School Building Debt Service Fund in  
37 subsection (h) of this section to retire the bonds authorized to  
38 be issued pursuant to section eight, article nine-d, chapter  
39 eighteen of this code, then satisfying the requirements for  
40 funds dedicated to the Education, Arts, Sciences and Tourism  
41 Debt Service Fund, in subsection (i) of this section to retire  
42 the bonds authorized to be issued pursuant to section eleven-  
43 a, article six, chapter five of this code and section sixteen-a,  
44 article fifteen, chapter thirty-one of this code, and then

45 satisfying the requirements for funds dedicated to the  
46 Community and Technical College Capital Improvement  
47 Fund in subsection (j) of this section to retire the bonds for  
48 community and technical college capital improvements  
49 authorized to be issued pursuant to section eight, article ten,  
50 chapter eighteen-b of this code, any and all remaining funds  
51 in the State Lottery Fund shall be made available to pay debt  
52 service in connection with any revenue bonds issued pursuant  
53 to section eighteen-a of this article, if and to the extent  
54 needed for such purpose from time to time. The Legislature  
55 shall annually appropriate all of the remaining amounts  
56 allocated as net profits in subsection (e) of this section, in  
57 such proportions as it considers beneficial to the citizens of  
58 this state, to: (1) The Lottery Education Fund created in  
59 subsection (g) of this section; (2) the School Construction  
60 Fund created in section six, article nine-d, chapter eighteen of  
61 this code; (3) the Lottery Senior Citizens Fund created in  
62 subsection (k) of this section; and (4) the Division of Natural  
63 Resources created in section three, article one, chapter twenty  
64 of this code and the West Virginia Development Office as  
65 created in section one, article two, chapter five-b of this code,  
66 in accordance with subsection (l) of this section. No transfer  
67 to any account other than the School Building Debt Service  
68 Fund, the Education, Arts, Sciences and Tourism Debt  
69 Service Fund, the Community and Technical College Capital  
70 Improvement Fund, the Economic Development Project Fund  
71 created under section eighteen-a, article twenty-two, chapter  
72 twenty-nine of this code, or any fund from which debt service  
73 is paid under subsection (c), section eighteen-a of this article  
74 may be made in any period of time in which a default exists  
75 in respect to debt service on bonds issued by the School  
76 Building Authority, the State Building Commission, the  
77 Higher Education Policy Commission, the Economic  
78 Development Authority or which are otherwise secured by  
79 lottery proceeds. No additional transfer may be made to any  
80 account other than the School Building Debt Service Account  
81 and the Education, Arts, Sciences and Tourism Debt Service

82 Fund, and the Community and Technical College Capital  
83 Improvement Fund, when net profits for the preceding twelve  
84 months are not at least equal to one hundred fifty percent of  
85 debt service on bonds issued by the School Building  
86 Authority, the State Building Commission, the Higher  
87 Education Policy Commission and the Economic  
88 Development Authority which are secured by net profits.

89 (g) There is continued a special revenue fund in the State  
90 Treasury which shall be designated and known as the Lottery  
91 Education Fund. The fund shall consist of the amounts  
92 allocated pursuant to subsection (f) of this section, which  
93 shall be deposited into the Lottery Education Fund by the  
94 State Treasurer. The Lottery Education Fund shall also  
95 consist of all interest earned from investment of the Lottery  
96 Education Fund and any other appropriations, gifts, grants,  
97 contributions or moneys received by the Lottery Education  
98 Fund from any source. The revenues received or earned by  
99 the Lottery Education Fund shall be disbursed in the manner  
100 provided below and may not be treated by the Auditor and  
101 Treasurer as part of the general revenue of the state.  
102 Annually, the Legislature shall appropriate the revenues  
103 received or earned by the Lottery Education Fund to the state  
104 system of public and higher education for these educational  
105 programs it considers beneficial to the citizens of this state.

106 (h) On or before the twenty-eighth day of each month, as  
107 long as revenue bonds or refunding bonds are outstanding,  
108 the lottery director shall allocate to the School Building Debt  
109 Service Fund created pursuant to the provisions of section  
110 six, article nine-d, chapter eighteen of this code, as a first  
111 priority from the net profits of the lottery for the preceding  
112 month, an amount equal to one tenth of the projected annual  
113 principal, interest and coverage ratio requirements on any and  
114 all revenue bonds and refunding bonds issued, or to be  
115 issued, on or after April 1, 1994, as certified to the lottery

116 director in accordance with the provisions of section six,  
117 article nine-d, chapter eighteen of this code. In no event shall  
118 the monthly amount allocated exceed \$1.8 million nor may  
119 the total allocation of the net profits to be paid into the  
120 School Building Debt Service Fund, as provided in this  
121 section, in any fiscal year exceed the lesser of the principal  
122 and interest requirements certified to the lottery director or  
123 \$18 million. In the event there are insufficient funds  
124 available in any month to transfer the amount required to be  
125 transferred pursuant to this subsection to the School Debt  
126 Service Fund, the deficiency shall be added to the amount  
127 transferred in the next succeeding month in which revenues  
128 are available to transfer the deficiency. A lien on the  
129 proceeds of the State Lottery Fund up to a maximum amount  
130 equal to the projected annual principal, interest and coverage  
131 ratio requirements, not to exceed \$27 million annually, may  
132 be granted by the School Building Authority in favor of the  
133 bonds it issues which are secured by the net lottery profits.  
134 When the school improvement bonds, secured by profits  
135 from the lottery and deposited in the School Debt Service  
136 Fund, mature, the profits shall become available for debt  
137 service on additional school improvement bonds as a first  
138 priority from the net profits of the lottery or may at the  
139 discretion of the authority be placed into the School  
140 Construction Fund created pursuant to the provisions of  
141 section six, article nine-d, chapter eighteen of this code.

142 (i) Beginning on or before July 28, 1996, and continuing  
143 on or before the twenty-eighth day of each succeeding month  
144 thereafter, as long as revenue bonds or refunding bonds  
145 issued in accordance with section eleven-a, article six,  
146 chapter five or section sixteen-a, article fifteen, chapter  
147 thirty-one of this code are outstanding, the lottery director  
148 shall allocate to the Education, Arts, Sciences and Tourism  
149 Debt Service Fund, created pursuant to the provisions of  
150 section eleven-a, article six, chapter five of this code, as a



151 second priority from the net profits of the lottery for the  
152 preceding month, an amount equal to one tenth of the  
153 projected annual principal, interest and coverage ratio  
154 requirements on any and all revenue bonds and refunding  
155 bonds issued, or to be issued, on or after April 1, 1996, as  
156 certified to the lottery director in accordance with the  
157 provisions of section eleven-a, article six, chapter five or  
158 section sixteen-a, article fifteen, chapter thirty-one of this  
159 code. In no event may the monthly amount allocated exceed  
160 \$1 million nor may the total allocation paid into the  
161 Education, Arts, Sciences and Tourism Debt Service Fund, as  
162 provided in this section, in any fiscal year exceed the lesser  
163 of the principal and interest requirements certified to the  
164 lottery director or \$10 million. In the event there are  
165 insufficient funds available in any month to transfer the  
166 amount required pursuant to this subsection to the Education,  
167 Arts, Sciences and Tourism Debt Service Fund, the  
168 deficiency shall be added to the amount transferred in the  
169 next succeeding month in which revenues are available to  
170 transfer the deficiency. A second-in-priority lien on the  
171 proceeds of the State Lottery Fund up to a maximum amount  
172 equal to the projected annual principal, interest and coverage  
173 ratio requirements, not to exceed \$15 million annually, may  
174 be granted by the State Building Commission or the  
175 Economic Development Authority in favor of the bonds  
176 issued in accordance with section eleven-a, article six,  
177 chapter five or section sixteen-a, article fifteen, chapter  
178 thirty-one of this code.

179 (j) Beginning on or before July 28, 2008, and continuing  
180 on or before the twenty-eighth day of each succeeding month  
181 thereafter, as long as revenue bonds or refunding bonds are  
182 outstanding, the lottery director shall allocate to the  
183 Community and Technical College Capital Improvement  
184 Fund, created pursuant to section eight, article ten, chapter  
185 eighteen-b of this code, as a third priority from net profits of  
186 the lottery for the preceding month, an amount equal to one

187 tenth of the projected annual principal, interest and coverage  
188 ratio requirements on any and all revenue bonds and  
189 refunding bonds issued or to be issued, on or after April 1,  
190 2008, as certified by the lottery director in accordance with  
191 the provisions of that section. In no event may the monthly  
192 amount allocated exceed \$500,000 nor may the total  
193 allocation paid to the Community and Technical Capital  
194 Improvement Fund, as provided in this section, in any fiscal  
195 year exceed the lesser of the principal and interest  
196 requirements certified to the lottery director or \$5 million. In  
197 the event there are insufficient funds available in any month  
198 to transfer the amount required pursuant to this subsection to  
199 the Community and Technical College Capital Improvement  
200 Fund, the deficiency shall be added to the amount transferred  
201 in the next succeeding month in which revenues are available  
202 to transfer the deficiency.

203 (1) A third-in-priority lien on the proceeds of the State  
204 Lottery Fund up to a maximum amount equal to the projected  
205 annual principal, interest and coverage ratio requirements,  
206 not exceeding \$7.5 million annually, may be granted by the  
207 Higher Education Policy Commission in favor of the bonds  
208 it issues which are secured by the net lottery profits.

209 (2) When the community and technical college capital  
210 improvement bonds secured by profits from the lottery and  
211 deposited in the Community and Technical College Capital  
212 Improvement Fund mature, the profits shall become available  
213 for debt service on additional community and technical  
214 college capital improvement bonds as a third priority from  
215 the net profits of the lottery.

216 (3) The Council for Community and Technical College  
217 Education shall approve all community and technical college  
218 capital improvement projects prior to the distribution of bond  
219 proceeds.

220           (4) Prior to the issuance of community and technical  
221 college revenue bonds pursuant to this subsection, the lottery  
222 director shall transfer \$5 million to the Community and  
223 Technical College Improvement Fund, less any amounts  
224 needed for initial debt service payments, to be used on a cash  
225 basis for community and technical college capital  
226 improvements and capital projects.

227           (k) There is continued a special revenue fund in the State  
228 Treasury which shall be designated and known as the Lottery  
229 Senior Citizens Fund. The fund shall consist of the amounts  
230 allocated pursuant to subsection (f) of this section, which  
231 amounts shall be deposited into the Lottery Senior Citizens  
232 Fund by the State Treasurer. The Lottery Senior Citizens  
233 Fund shall also consist of all interest earned from investment  
234 of the Lottery Senior Citizens Fund and any other  
235 appropriations, gifts, grants, contributions or moneys  
236 received by the Lottery Senior Citizens Fund from any  
237 source. The revenues received or earned by the Lottery  
238 Senior Citizens Fund shall be distributed in the manner  
239 provided below and may not be treated by the Auditor or  
240 Treasurer as part of the general revenue of the state.  
241 Annually, the Legislature shall appropriate the revenues  
242 received or earned by the Lottery Senior Citizens Fund to any  
243 senior citizens medical care and other programs it considers  
244 beneficial to the citizens of this state.

245           (l) The Division of Natural Resources and the West  
246 Virginia Development Office, as appropriated by the  
247 Legislature, may use the amounts allocated to them pursuant  
248 to subsection (f) of this section for one or more of the  
249 following purposes: (1) The payment of any or all of the  
250 costs incurred in the development, construction,  
251 reconstruction, maintenance or repair of any project or  
252 recreational facility, as these terms are defined in section  
253 four, article five, chapter twenty of this code, pursuant to the

254 authority granted to it under article five, chapter twenty of  
255 this code; (2) the payment, funding or refunding of the  
256 principal of, interest on or redemption premiums on any  
257 bonds, security interests or notes issued by the parks and  
258 recreation section of the Division of Natural Resources under  
259 article five, chapter twenty of this code; or (3) the payment of  
260 any advertising and marketing expenses for the promotion  
261 and development of tourism or any tourist facility or  
262 attraction in this state.

**§29-22-18c. Increase in allocation to Higher education  
Improvement Fund from State Excess Lottery  
Revenue Fund.**

1 Notwithstanding any provision of subsection (d), section  
2 eighteen-a of this article to the contrary, the deposit of \$10  
3 million into the Higher Education Improvement Fund for  
4 Higher Education set forth above is for the fiscal year  
5 beginning July 1, 2009, only. For the fiscal year beginning  
6 July 1, 2010, and subsequent fiscal years, the commission  
7 shall deposit \$15 million into the Higher Education  
8 Improvement Fund for Higher Education.

**CHAPTER 31. CORPORATIONS.**

**ARTICLE 15. WEST VIRGINIA ECONOMIC  
DEVELOPMENT AUTHORITY.**

**§31-15-16a. Bonds for capital improvements at institutions of  
higher education, state parks, the State Capitol  
complex, other state facilities or tourism sites;  
limitations; authority to issue revenue bonds;  
use of funds to pay for projects.**

1 (a)(1) The economic development authority shall, in  
2 accordance with the provisions of this article, issue revenue

3 bonds from time to time, to pay for a portion of the cost of  
4 constructing, equipping, improving or maintaining capital  
5 improvement projects under this section or to refund the  
6 bonds, at the discretion of the authority. The principal  
7 amount of the bonds issued under this section shall not  
8 exceed, in the aggregate, an amount that, in the opinion of the  
9 authority, is necessary to provide sufficient funds for  
10 achievement of the purposes of this section and is within the  
11 limits of moneys pledged for the repayment of the principal,  
12 interest and redemption premium, if any, on any revenue  
13 bonds or refunding bonds authorized by this section. Any  
14 revenue bonds issued on or after the effective date of this  
15 section which are secured by lottery proceeds shall mature at  
16 a time or times not exceeding thirty years from their  
17 respective dates. The principal of, and the interest and  
18 redemption premium, if any, on the bonds shall be payable  
19 solely from the Education, Arts, Sciences and Tourism Debt  
20 Service Fund established in section eleven-a, article six,  
21 chapter five and continued by this section.

22 (2) All amounts deposited in the fund shall be pledged to  
23 the repayment of the principal, interest and redemption  
24 premium, if any, on any revenue bonds or refunding revenue  
25 bonds authorized by this section. The authority may further  
26 provide in the trust agreement for priorities on the revenues  
27 paid into the Education, Arts, Sciences and Tourism Debt  
28 Service Fund as may be necessary for the protection of the  
29 prior rights of the holders of bonds issued at different times  
30 under the provisions of this section or section eleven-a,  
31 article six, chapter five of this code. The bonds issued  
32 pursuant to this section shall be separate from all other bonds  
33 which may be or have been issued from time to time under  
34 the provisions of section eleven-a, article six, chapter five of  
35 this code. The Education, Arts, Sciences and Tourism Debt  
36 Service Fund shall be pledged solely for the repayment of  
37 bonds issued pursuant to this section and section eleven-a,

38 article six, chapter five of this code. On or prior to May 1 of  
39 each year, commencing May 1, 2010, the authority shall  
40 certify to the state lottery director the principal and interest  
41 and coverage ratio requirements for the following fiscal year  
42 on any revenue bonds or refunding revenue bonds issued  
43 pursuant to this section, and for which moneys deposited in  
44 the Education, Arts, Sciences and Tourism Debt Service  
45 Fund have been pledged, or will be pledged, for repayment  
46 pursuant to this section.

47 (3) After the authority has issued bonds authorized by  
48 this section, and after the requirements of all funds have been  
49 satisfied, including coverage and reserve funds established in  
50 connection with the bonds issued pursuant to this section, any  
51 balance remaining in the Education, Arts, Sciences and  
52 Tourism Debt Service Fund may be used for the redemption  
53 of any of the outstanding bonds issued under this section  
54 which, by their terms, are then redeemable or for the  
55 purchase of the outstanding bonds at the market price, but not  
56 to exceed the price, if any, at which redeemable, and all  
57 bonds redeemed or purchased shall be immediately canceled  
58 and shall not again be issued.

59 (b) The authority shall expend sixty percent of the bond  
60 proceeds, net of issuance costs, reserve funds and refunding  
61 costs, for certified capital improvement projects at state  
62 institutions of higher education. The Higher Education  
63 Policy Commission shall submit a proposed list of capital  
64 improvement projects to the Governor on or before January  
65 1, 2010. Thereafter, the Governor shall certify to the  
66 authority on or before February 1, 2010, a list of those capital  
67 improvement projects at state institutions of higher education  
68 that will receive funds from the proceeds of bonds issued  
69 pursuant to this section.

70           At any time prior to the issuance of bonds under this  
71 section, the Governor may certify to the authority a revised  
72 list of capital improvement projects at state institutions of  
73 higher education that will receive funds from the proceeds of  
74 bonds issued pursuant to this section. The Governor shall  
75 consult with the Higher Education Policy Commission prior  
76 to certifying a revised list of capital improvement projects to  
77 the authority.

78           (c) The authority shall expend the balance of the bond  
79 proceeds for certified projects at state parks, the capitol  
80 complex, other state facilities or tourism sites.

81           (1) A committee comprised of the secretary of the  
82 Department of Administration, the director of the Division of  
83 Natural Resources, the director of the West Virginia  
84 Development Office and a representative of the capitol  
85 building commission, other than the secretary of the  
86 Department of Administration, who shall be selected by the  
87 capitol building commission, shall submit a proposed list of  
88 capital improvement projects to the Governor on or before  
89 January 1, 2010. Thereafter, the Governor shall certify to the  
90 authority on or before February 1, 2010, a list of those capital  
91 improvement projects at state parks, the State Capitol  
92 complex, other state facilities or tourism sites that will  
93 receive funds from the proceeds of bonds issued pursuant to  
94 this section.

95           (2) At any time prior to the issuance of bonds under this  
96 section, the Governor may certify to the authority a revised  
97 list of capital improvement projects at state parks, the State  
98 Capitol Complex, other state facilities or tourism sites that  
99 will receive funds from the proceeds of bonds issued  
100 pursuant to this section. The Governor shall consult with the  
101 committee established by this subsection prior to certifying  
102 a revised list of capital improvement projects to the authority.

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## CHAPTER 97

**(S. B. 574 - By Senators Boley,  
Yost, Sypolt, Wells, Barnes,  
Deem, Stollings, Kessler and Williams)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §2-2-1a of the Code of West Virginia, 1931, as amended, relating to making December 7 a special memorial day known as Pearl Harbor Day to honor all West Virginians who fought in World War II.

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

That §2-2-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.**

**§2-2-1a. Special memorial days.**

1           (a) The Governor shall, by proclamation, declare the  
2 week beginning with the Sunday before Thanksgiving as a  
3 special memorial week to be known as Native American  
4 Indian Heritage Week.

5           (b) The first Tuesday after the first Monday of November  
6 is designated Susan B. Anthony Day and shall only be a legal  
7 holiday in all years ending in an even number. The Governor



8 shall annually issue a proclamation calling on all schools,  
9 civic organizations, government departments and citizens to  
10 undertake activities on the designated day and surrounding  
11 days to pay tribute to the accomplishments of Susan B.  
12 Anthony in securing the civil and political rights of all  
13 Americans, including securing equal voting rights for  
14 women.

15 (c) The Governor shall, by proclamation, declare  
16 December 7 as a special memorial day, to be known as Pearl  
17 Harbor Day, honoring all West Virginians who fought in  
18 World War II and shall encourage all municipalities in the  
19 state to do the same.



## CHAPTER 98

**(Com. Sub. for S. B. 337 - By Senators  
Snyder, Unger and Kessler)**

\_\_\_\_\_  
[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 2, 2010.]  
\_\_\_\_\_

AN ACT to amend and reenact §19-23-10, §19-23-13 and §19-23-13b of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22-18a of said code; and to amend and reenact §29-22C-27 of said code, all relating to receipts and expenditures of moneys in the conduct of the racing industry in the state generally; providing as an additional purpose for which certain moneys may be used the purpose of greyhound adoption programs to include spaying and neutering; modifying the distribution of funds derived from horse racetrack unredeemed pari-mutuel tickets and other sources to owners, breeders and owners of sires of certain winning horses; providing for the

deposit of surplus funds held for those purposes into horse racetrack regular purse funds; removing provisions requiring that certain unexpended balances be paid to certain horse racetrack licensees and expended for certain purposes; combining and distributing funds derived from dog racetrack unredeemed pari-mutuel tickets into the greyhound breeding development fund; removing authority for racing commission to expend certain excess moneys as purse money, to supplement purses and to establish stakes races and racing handicaps; removing requirements that certain moneys from unredeemed pari-mutuel tickets be allocated and paid by the racing commission into the greyhound breeding development fund, into a special account to be used for certain stakes races, into a trust to provide health and disability benefits to eligible active or disabled West Virginia jockeys, and into an unspecified trust administered by an organization representative of jockeys; providing for the payment of claims received on purses won on or before June 30, 2010; transferring a specified amount of funds from the state excess lottery revenue fund and additional amounts from certain special accounts to pay for those claims; extinguishing obligation of the state for payments made on certain claims; removing the requirement that a certain racing commission report to the legislative auditor include certain information; authorizing the racing commission to promulgate emergency rules; specifying which racing secretary is to be a member of a certain committee; removing expired requirements for the submission of a report; providing for the contingent distribution of an annual amount from the state excess lottery revenue fund into a certain thoroughbred racetrack purse fund, into certain thoroughbred racetrack unredeemed pari-mutuel tickets accounts, and into a certain greyhound breeding development fund; and changing the allocation of a certain distribution from the lottery racetrack table games fund to the purse funds of the thoroughbred racetracks from an equal allocation among the tracks to a pro rata distribution.

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

That §19-23-10, §19-23-13 and §19-23-13b of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29-22-18a of said code be amended and reenacted; and that §29-22C-27 of said code be amended and reenacted, all to read as follows:

**Chapter**

**19. Agriculture.**

**29. Miscellaneous Boards and Officers.**

**CHAPTER 19. AGRICULTURE.**

**ARTICLE 23. HORSE AND DOG RACING.**

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; payment of past obligations.

§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

**§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.**

1           (a) Any racing association conducting thoroughbred  
2 racing at any horse racetrack in this state shall pay each day  
3 upon which horse races are run a daily license tax of \$250.  
4 Any racing association conducting harness racing at any  
5 horse racetrack in this state shall pay each day upon which  
6 horse races are run a daily license tax of \$150. Any racing  
7 association conducting dog races shall pay each day upon  
8 which dog races are run a daily license tax of \$150. In the  
9 event thoroughbred racing, harness racing, dog racing or any  
10 combination of the foregoing are conducted on the same day  
11 at the same racetrack by the same racing association, only  
12 one daily license tax in the amount of \$250 shall be paid for  
13 that day. Any daily license tax shall not apply to any local,  
14 county or state fair, horse show or agricultural or livestock  
15 exposition at which horse racing is conducted for not more  
16 than six days.

17           (b) Any racing association licensed by the Racing  
18 Commission to conduct thoroughbred racing and permitting  
19 and conducting pari-mutuel wagering under the provisions of  
20 this article shall, in addition to the daily license tax set forth  
21 in subsection (a) of this section, pay to the Racing  
22 Commission, from the commission deducted each day by the  
23 licensee from the pari-mutuel pools on thoroughbred racing  
24 a tax calculated on the total daily contribution of all pari-  
25 mutuel pools conducted or made at any and every  
26 thoroughbred race meeting of the licensee licensed under the  
27 provisions of this article. The tax, on the pari-mutuel pools  
28 conducted or made each day during the months of January,  
29 February, March, October, November and December, shall  
30 be calculated at four-tenths of one percent of the pool; and,  
31 on the pari-mutuel pools conducted or made each day during  
32 all other months, shall be calculated at one and four-tenths  
33 percent of the pool: *Provided*, That out of the amount  
34 realized from the three tenths of one percent decrease in the  
35 tax effective for fiscal year 1991 and thereafter, which  
36 decrease correspondingly increases the amount of  
37 commission retained by the licensee, the licensee shall  
38 annually expend or dedicate: (i) One half of the realized  
39 amount for capital improvements in its barn area at the track,  
40 subject to the Racing Commission's prior approval of the  
41 plans for the improvements; and (ii) the remaining one half  
42 of the realized amount for capital improvements as the  
43 licensee may determine appropriate at the track. The term  
44 "capital improvement" shall be as defined by the Internal  
45 Revenue Code: *Provided, however*, That any racing  
46 association operating a horse racetrack in this state having an  
47 average daily pari-mutuel pool on horse racing of \$280,000  
48 or less per day for the race meetings of the preceding  
49 calendar year shall, in lieu of payment of the pari-mutuel  
50 pool tax, calculated as in this subsection, be permitted to  
51 conduct pari-mutuel wagering at the horse racetrack on the  
52 basis of a daily pari-mutuel pool tax fixed as follows: On the  
53 daily pari-mutuel pool not exceeding \$300,000 the daily pari-

54 mutuel pool tax shall be \$1,000 plus the otherwise applicable  
55 percentage rate imposed by this subsection of the daily pari-  
56 mutuel pool, if any, in excess of \$300,000: *Provided further,*  
57 That upon the effective date of the reduction of the daily pari-  
58 mutuel pool tax to \$1,000 from the former \$2,000, the  
59 association or licensee shall daily deposit \$500 into the  
60 special fund for regular purses established by subdivision (1),  
61 subsection (b), section nine of this article: *And provided*  
62 *further,* That if an association or licensee qualifying for the  
63 foregoing alternate tax conducts more than one racing  
64 performance, each consisting of up to thirteen races in a  
65 calendar day, the association or licensee shall pay both the  
66 daily license tax imposed in subsection (a) of this section and  
67 the alternate tax in this subsection for each performance: *And*  
68 *provided further,* That a licensee qualifying for the foregoing  
69 alternate tax is excluded from participation in the fund  
70 established by section thirteen-b of this article: *And provided*  
71 *further,* That this exclusion shall not apply to any  
72 thoroughbred racetrack at which the licensee has participated  
73 in the West Virginia Thoroughbred Development Fund for  
74 more than four consecutive years prior to December 31,  
75 1992.

76 (c) Any racing association licensed by the Racing  
77 Commission to conduct harness racing and permitting and  
78 conducting pari-mutuel wagering under the provisions of this  
79 article shall, in addition to the daily license tax required  
80 under subsection (a) of this section, pay to the Racing  
81 Commission, from the commission deducted each day by the  
82 licensee from the pari-mutuel pools on harness racing, as a  
83 tax, three percent of the first \$100,000 wagered, or any part  
84 thereof; four percent of the next \$150,000; and five and  
85 three-fourths percent of all over that amount wagered each  
86 day in all pari-mutuel pools conducted or made at any and  
87 every harness race meeting of the licensee licensed under the  
88 provisions of this article.

89           (d) Any racing association licensed by the Racing  
90 Commission to conduct dog racing and permitting and  
91 conducting pari-mutuel wagering under the provisions of this  
92 article shall, in addition to the daily license tax required  
93 under subsection (a) of this section, pay to the Racing  
94 Commission, from the commission deducted each day by the  
95 licensee from the pari-mutuel pools on dog racing, as a tax,  
96 four percent of the first \$50,000 or any part thereof of the  
97 pari-mutuel pools, five percent of the next \$50,000 of the  
98 pari-mutuel pools, six percent of the next \$100,000 of the  
99 pari-mutuel pools, seven percent of the next \$150,000 of the  
100 pari-mutuel pools, and eight percent of all over \$350,000  
101 wagered each day: *Provided*, That the licensee shall deduct  
102 daily from the pari-mutuel tax an amount equal to one tenth  
103 of one percent of the daily pari-mutuel pools in dog racing in  
104 fiscal year 1990; fifteen hundredths of one percent in fiscal  
105 year 1991; two tenths of one percent in fiscal year 1992; one  
106 quarter of one percent in fiscal year 1993; and three tenths of  
107 one percent in fiscal year 1994 and every fiscal year  
108 thereafter. The amounts deducted shall be paid to the Racing  
109 Commission to be deposited by the Racing Commission in a  
110 banking institution of its choice in a special account to be  
111 known as "West Virginia Racing Commission-Special  
112 Account-West Virginia Greyhound Breeding Development  
113 Fund". The purpose of the fund is to promote better  
114 breeding, training track facilities and racing of greyhounds in  
115 the state through awards and purses to bona fide resident  
116 registered greyhound owners of accredited West Virginia  
117 whelped greyhounds. In order to participate and be eligible  
118 to receive an award or purse through the fund, the registered  
119 greyhound owner must have an appropriate license from the  
120 Racing Commission to race in West Virginia. The registered  
121 greyhound dam at the time of breeding must be wholly or  
122 solely owned or leased by a bona fide resident or residents of  
123 West Virginia. The accredited West Virginia whelped  
124 greyhound must be wholly or solely owned by a bona fide  
125 resident or residents of this state. To qualify as a bona fide

126 resident of West Virginia, a registered greyhound owner may  
127 not claim residency in any other state. A registered  
128 greyhound owner must prove bona fide residency by  
129 providing to the commission personal income tax returns  
130 filed in the State of West Virginia for the most recent tax year  
131 and the three previous tax years, has real or personal property  
132 in this state on which the owner has paid real or personal  
133 property taxes during the most recent tax year and the  
134 previous three tax years and an affidavit stating that the  
135 owner claims no other state of residency. The Racing  
136 Commission shall maintain a registry for West Virginia bred  
137 greyhounds. The moneys shall be expended by the Racing  
138 Commission for purses for stake races, training track  
139 facilities, supplemental purse awards, administration,  
140 promotion, education and greyhound adoption programs  
141 involving West Virginia whelped dogs, owned by residents  
142 of this state under rules promulgated by the Racing  
143 Commission. The Racing Commission shall pay out of the  
144 greyhound breeding development fund to each of the licensed  
145 dog racing tracks the sum of \$75,000 for the fiscal year  
146 ending June 30, 1994. The licensee shall deposit the sum  
147 into the special fund for regular purses established under the  
148 provisions of section nine of this article. The funds shall be  
149 expended solely for the purpose of supplementing regular  
150 purses under rules promulgated by the Racing Commission.

151 Supplemental purse awards will be distributed as follows:  
152 Supplemental purses shall be paid directly to the registered  
153 greyhound owner of an accredited greyhound.

154 The registered greyhound owner of accredited West  
155 Virginia whelped greyhounds that earn points at any West  
156 Virginia meet will receive a bonus award calculated at the  
157 end of each month as a percentage of the fund dedicated to  
158 the owners as purse supplements, which shall be a minimum  
159 of fifty percent of the total moneys deposited into the West  
160 Virginia Greyhound Breeding Development fund monthly.

161           The total amount of the fund available for the owners'  
162 awards shall be distributed according to the ratio of points  
163 earned by an accredited greyhound to the total amount earned  
164 in races by all accredited West Virginia whelped greyhounds  
165 for that month as a percentage of the funds dedicated to the  
166 owners' purse supplements. The point value at all greyhound  
167 tracks shall be the same as approved by the Racing  
168 Commission to be effective April 1, 2007. The West  
169 Virginia Greyhound Owners and Breeders Association shall  
170 submit a list of any additions or deletions to the registry of  
171 accredited West Virginia whelped greyhounds on the first of  
172 each month. The Racing Commission shall not require  
173 anyone to be a member of a particular association in order to  
174 participate in the West Virginia Greyhound Breeding  
175 Development Fund.

176           The registered greyhound owner of an accredited West  
177 Virginia whelped greyhound shall file a purse distribution  
178 form with the Racing Commission for a percentage of his or  
179 her dog's earnings to be paid directly to the registered  
180 greyhound owner or owners of the greyhound. Distribution  
181 shall be made on the fifteenth day of each month for the  
182 preceding month's achievements.

183           In no event shall points earned at a meet held at a track  
184 which did not make contributions to the West Virginia  
185 Greyhound Breeding Development Fund out of the daily pool  
186 on the day the meet was held qualify or count toward  
187 eligibility for supplemental purse awards.

188           Any balance in the purse supplement funds after all  
189 distributions have been made for the year revert to the  
190 general account of the fund for distribution in the following  
191 year: *Provided*, That not more than \$2 million from the  
192 balance in the purse supplemental fund shall be used for the  
193 construction and maintenance of two dog training track  
194 facilities if such be approved by the Racing Commission:



195 *Provided, however,* That not more than \$1 million may be  
196 allocated for the construction and maintenance of each  
197 training track: *Provided further,* That both training track  
198 facilities must be located in West Virginia. The West  
199 Virginia Racing Commission shall be authorized to  
200 promulgate rules governing dog training tracks: *And provided*  
201 *further,* That the Racing Commission shall: (1) Provide a  
202 process in its rules for competitive bidding of the  
203 construction or maintenance, or both, of the training tracks;  
204 and (2) set standards to assure that only the actual costs of  
205 construction and maintenance shall be paid out of the  
206 foregoing fund.

207 In an effort to further promote the breeding of quality  
208 West Virginia whelped greyhounds, a bonus purse  
209 supplement shall be established in the amount of \$50,000 per  
210 annum, to be paid in equal quarterly installments of \$12,500  
211 per quarter using the same method to calculate and distribute  
212 these funds as the regular supplemental purse awards. This  
213 bonus purse supplement is for three years only, commencing  
214 on July 1, 1993, and ending June 30, 1996. This money  
215 would come from the current existing balance in the  
216 greyhound development fund.

217 Each pari-mutuel greyhound track shall provide stakes  
218 races for accredited West Virginia whelped greyhounds:  
219 *Provided,* That each pari-mutuel track shall have one juvenile  
220 and one open stake race annually. Each pari-mutuel dog  
221 track shall provide at least three restricted races for  
222 accredited West Virginia whelped greyhounds per race card:  
223 *Provided, however,* That sufficient dogs are available. To  
224 assure breeders of accredited West Virginia whelped  
225 greyhounds an opportunity to participate in the West Virginia  
226 Greyhound Breeding Development Fund the West Virginia  
227 Racing Commission by July 1, each year shall establish and  
228 announce the minimum number of accredited West Virginia  
229 whelped greyhounds that greyhound racing kennels at West

230 Virginia dog tracks must have on their racing active list  
231 during the calendar year following such action. The  
232 minimum number may vary from dog track to dog track. The  
233 minimum number shall be established after consultation with  
234 the West Virginia Greyhound Owners and Breeders  
235 Association and kennel owners and operators. Factors to be  
236 considered in establishing this minimum number shall be the  
237 number of individually registered accredited West Virginia  
238 whelped greyhounds whelped in the previous two years. The  
239 number of all greyhounds seeking qualification at each West  
240 Virginia dog track, the ratio of active running greyhounds to  
241 housed number of greyhounds at each West Virginia dog  
242 track, and the size and number of racing kennels at each West  
243 Virginia dog track. Any greyhound racing kennel not having  
244 the minimum number of accredited West Virginia whelped  
245 greyhounds determined by the West Virginia Racing  
246 Commission on their active list shall only be permitted to  
247 race the maximum allowable number on the active list less  
248 the number of accredited West Virginia whelped greyhounds  
249 below the established minimum number. Consistent  
250 violations of this minimum requirement may be reviewed by  
251 the Racing Commission and may constitute cause for denial  
252 or revocation of a kennel's racing license. The Racing  
253 Commission shall oversee and approve racing schedules and  
254 purse amounts.

255 Ten percent of the deposits into the greyhound breeding  
256 development fund beginning July 1, 1993 and continuing  
257 each year thereafter, shall be withheld by the Racing  
258 Commission and placed in a special revenue account hereby  
259 created in the State Treasury called the "administration,  
260 promotion, education, capital improvement and greyhound  
261 adoption programs to include spaying and neutering  
262 account". The Racing Commission is authorized to expend  
263 the moneys deposited in the administration, promotion,  
264 education, capital improvement and greyhound adoption  
265 programs to include spaying and neutering account at such  
266 times and in such amounts as the commission determines to

267 be necessary for purposes of administering and promoting the  
268 greyhound development program: *Provided*, That beginning  
269 with fiscal year 1995 and in each fiscal year thereafter in  
270 which the commission anticipates spending any money from  
271 the account, the commission shall submit to the executive  
272 department during the budget preparation period prior to the  
273 Legislature convening before that fiscal year for inclusion in  
274 the executive budget document and budget bill, the  
275 recommended expenditures, as well as requests of  
276 appropriations for the purpose of administration, promotion,  
277 education, capital improvement and greyhound adoption  
278 programs to include spaying and neutering. The commission  
279 shall make an annual report to the Legislature on the status of  
280 the administration, promotion, education, capital  
281 improvement and greyhound adoption programs to include  
282 spaying and neutering account, including the previous year's  
283 expenditures and projected expenditures for the next year.

284 The Racing Commission, for the fiscal year 1994 only,  
285 may expend up to \$35,000 from the West Virginia  
286 Greyhound Breeding Development Fund to accomplish the  
287 purposes of this section without strictly following the  
288 requirements in the previous paragraph.

289 (e) All daily license and pari-mutuel pools tax payments  
290 required under the provisions of this section shall be made to  
291 the Racing Commission or its agent after the last race of each  
292 day of each horse or dog race meeting, and the pari-mutuel  
293 pools tax payments shall be made from all contributions to all  
294 pari-mutuel pools to each and every race of the day.

295 (f) Every association or licensee subject to the provisions  
296 of this article, including the changed provisions of sections  
297 nine and ten of this article, shall annually submit to the  
298 Racing Commission and the Legislature financial statements,  
299 including a balance sheet, income statement, statement of  
300 change in financial position and an audit of any electronic  
301 data system used for pari-mutuel tickets and betting, prepared

302 in accordance with generally accepted auditing standards, as  
303 certified by an experienced public accountant or a certified  
304 public accountant.

**§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; payment of past obligations.**

1 (a) All moneys held by any licensee for the payment of  
2 outstanding and unredeemed pari-mutuel tickets, if not  
3 claimed within ninety days after the close of a horse or dog  
4 race meeting or the televised racing day, as the case may be,  
5 in connection with which the tickets were issued, shall be  
6 turned over by the licensee to the racing commission within  
7 fifteen days after the expiration of the ninety-day period, and  
8 the licensee shall give any information required by the racing  
9 commission concerning the outstanding and unredeemed  
10 tickets. The moneys shall be deposited by the racing  
11 commission in a banking institution of its choice in a special  
12 account to be known as "West Virginia Racing Commission  
13 Special Account - Unredeemed Pari-Mutuel Tickets." Notice  
14 of the amount, date and place of each deposit shall be given  
15 by the racing commission, in writing, to the state treasurer.  
16 The racing commission shall then cause to be published a  
17 notice to the holders of the outstanding and unredeemed pari-  
18 mutuel tickets, notifying them to present their unredeemed  
19 tickets for payment at the principal office of the racing  
20 commission within ninety days from the date of the  
21 publication of the notice. The notice shall be published  
22 within fifteen days following the receipt of the outstanding  
23 and unredeemed pari-mutuel ticket moneys by the  
24 commission from the licensee as a Class I legal  
25 advertisement in compliance with the provisions of article  
26 three, chapter fifty-nine of this code, and the publication area  
27 for the publication shall be the county in which the horse or  
28 dog race meeting was held and the county in which the  
29 televised racing day wagering was conducted in this state.

30 (b) Any outstanding and unredeemed pari-mutuel tickets  
31 that are not presented for payment within ninety days from  
32 the date of the publication of the notice are thereafter  
33 irredeemable, and the moneys theretofore held for the  
34 redemption of the pari-mutuel tickets shall become the  
35 property of the racing commission and shall be expended as  
36 provided in subsections (c) and (d) of this section. The  
37 racing commission shall maintain separate accounts for each  
38 licensee and shall record in each separate account the moneys  
39 turned over by the licensee and the amount expended at the  
40 licensee's track for the purposes set forth in this subsection.

41 (c) In the fiscal year beginning on July 1, 2010, the racing  
42 commission shall keep separate the unredeemed pari-mutuel  
43 tickets received from each of the two licensee horse  
44 racetracks.

45 (1) The unredeemed pari-mutuel tickets attributable to  
46 each licensee horse racetrack together with funds distributed  
47 pursuant to section eighteen-a, article twenty-two, chapter  
48 twenty-nine of this code shall be used for claims received  
49 pursuant to this subsection by the Racing Commission each  
50 calendar quarter: *Provided*, That the first distribution after the  
51 effective date of amendments to this section made during the  
52 2010 regular legislative session shall not occur until February  
53 2011 and then each calendar quarter thereafter. Any claims  
54 made pursuant to this subsection must be submitted to the  
55 racing commission no later than fifteen days after the race  
56 where the funds are awarded. The funds in the two special  
57 accounts - unredeemed pari-mutuel tickets shall be  
58 distributed based on claims received from each horse  
59 racetrack as follows:

60 (A) To the owner of the winning horse in any horse race  
61 at a horse race meeting held or conducted by any licensee:  
62 *Provided*, That the owner of the horse is at the time of the  
63 horse race a bona fide resident of this state, a sum equal to

64 ten percent of the purse won by the horse at that race:  
65 *Provided, however,* That in the event there are more than ten  
66 races in any performance, the award to the resident owner of  
67 the winning horse will be that fractional share of the purse  
68 with a numerator of one and a denominator representing the  
69 number of races on the day of the performance. The  
70 commission may require proof that the owner was, at the  
71 time of the race, a bona fide resident of this state. Upon  
72 proof by the owner that he or she filed a personal income tax  
73 return in this state for the previous two years and that he or  
74 she owned real or personal property in this state and paid  
75 taxes in this state on real or personal property for the  
76 previous two years, he or she shall be presumed to be a bona  
77 fide resident of this state; and

78 (B) To the breeder (that is, the owner of the mare) of the  
79 winning horse in any horse race at a horse race meeting held  
80 or conducted by any licensee: *Provided,* That the mare foaled  
81 in this state, a sum equal to ten percent of the purse won by  
82 the horse: *Provided, however,* That in the event there are  
83 more than ten races in any performance, the award to the  
84 breeder will be that fractional share of the purse with a  
85 numerator of one and a denominator representing the number  
86 of races on the day of the performance; and

87 (C) To the owner of the stallion which sired the winning  
88 horse in any horse race at a horse race meeting held or  
89 conducted by any licensee: *Provided,* That the mare which  
90 foaled the winning horse was served by a stallion standing  
91 and registered in this state, a sum equal to ten percent of the  
92 purse won by the horse: *Provided, however,* That in the event  
93 there are more than ten races in any performance, the award  
94 to the owner of the stallion will be percentage of the purse  
95 based upon the fractional share represented by the number of  
96 races on the day of the performance.

97 (2) If in any calendar quarter insufficient funds are  
98 available in each licensee horse racetrack's special account -

99 unredeemed pari-mutuel tickets administered by the Racing  
100 Commission for payments pursuant to subdivision (1),  
101 payments shall be made on a pro rata basis pursuant to  
102 paragraphs (A), (B) and (C) of subdivision (1) of this  
103 subsection of the claims submitted from races won at each  
104 horse racetrack. Once payments on each claim are made,  
105 whether in full or on a pro rata basis, no further obligation for  
106 payment is created by this subdivision. Claims received after  
107 the deadline are not valid.

108 (3) If after paying any claims pursuant to this subsection  
109 and funds remain in the accounts, those funds shall carry over  
110 to the next calendar quarter. If in any quarter the surplus in  
111 either account reaches a balance of \$1 million, then that  
112 surplus balance shall be placed in to the regular purse fund of  
113 that licensee horse racetrack whose unredeemed pari-mutuel  
114 account achieves the surplus.

115 (d) Any unredeemed pari-mutuel tickets received from  
116 licensee dog racetracks shall be combined into a single  
117 balance and distributed quarterly to the West Virginia racing  
118 commission special account - West Virginia greyhound  
119 breeding development fund. The deposit made pursuant to  
120 this subsection does not create a continuing obligation of  
121 payment except to the extent that there are unredeemed pari-  
122 mutuel tickets from the licensee dog racetracks.

123 (e) The amendments to this section made during the 2010  
124 regular legislative session shall become effective July 1,  
125 2010.

126 (f) The Racing Commission shall satisfy obligations of  
127 the prior enactment of this section for all claims received on  
128 purses won on or before June 30, 2010. Claimants must  
129 submit all claims on or before July 15, 2010 for verification  
130 by the Racing Commission. Claims received after July 15,  
131 2010 are not valid.

132           (1) A transfer of \$2.5 million from the State Excess  
133 Lottery Revenue Fund available on the last day of the fiscal  
134 year which began July 1, 2009 shall be made to the  
135 nonappropriated fund with the State Treasurer known as the  
136 Unredeemed Pari-Mutuel Tickets Fund. The Racing  
137 Commission shall also transfer to the account with the State  
138 Treasurer monies from the racing commission special  
139 accounts - unredeemed pari-mutuel tickets for deposits  
140 received in each of those accounts that have been credited  
141 with unredeemed pari-mutuel tickets for races completed at  
142 any licensee racetrack as of June 30, 2010, and any other  
143 monies appropriated by the legislature. Unredeemed pari-  
144 mutuel tickets for races completed after June 30, 2010 must  
145 remain in the special accounts - unredeemed pari-mutuel  
146 tickets to satisfy future payments pursuant to this section.

147           (2) The Racing Commission is authorized to pay claims  
148 received for races completed on or before June 30, 2010  
149 without regard to date of deposit or date of claim. Claims  
150 shall be paid in date order, with the oldest claims being paid  
151 first, until all claims have been satisfied. All payments made  
152 pursuant to this subsection for claims received on purses won  
153 on or before June 30, 2010 shall extinguish any further  
154 obligation by the state with respect to those claims.

155           (g) The commission shall submit to the legislative auditor  
156 a quarterly report and accounting of the income and  
157 expenditures in the special account created by this section  
158 known as the West Virginia racing commission special  
159 account - unredeemed pari-mutuel tickets.

160           (h) Nothing contained in this article shall prohibit one  
161 person from qualifying for all or more than one of the  
162 aforesaid awards or for awards under section thirteen-b of  
163 this article.

164           (i) The cost of publication of the notice provided for in  
165 this section shall be paid from the funds in the hands of the



166 state treasurer collected from the pari-mutuel pools' tax  
167 provided for in section ten of this article, when not otherwise  
168 provided in the budget; but no such costs shall be paid unless  
169 an itemized account thereof, under oath, be first filed with the  
170 state auditor.

171 (j) The racing commission is authorized to promulgate  
172 emergency rules, prior to September 1, 2010, to incorporate  
173 the revisions to this article enacted during the 2010 regular  
174 legislative session.

**§19-23-13b. West Virginia Thoroughbred Development Fund;  
distribution; restricted races; nonrestricted  
purse supplements; preference for West  
Virginia accredited thoroughbreds.**

1 (a) The Racing Commission shall deposit moneys  
2 required to be withheld by an association or licensee in  
3 subsection (b), section nine of this article in a banking  
4 institution of its choice in a special account to be known as  
5 "West Virginia Racing Commission Special Account -- West  
6 Virginia Thoroughbred Development Fund": *Provided*, That  
7 after the West Virginia Lottery Commission has divided  
8 moneys between the West Virginia Thoroughbred  
9 Development Fund and the West Virginia Greyhound  
10 Breeding Development Fund pursuant to the provisions of  
11 sections ten and ten-b, article twenty-two-a, chapter twenty-  
12 nine of this code, the Racing Commission shall, beginning  
13 October 1, 2005, deposit the remaining moneys required to  
14 be withheld from an association or licensee designated to the  
15 Thoroughbred Development Fund under the provisions of  
16 subsection (b), section nine of this article, subdivision (3),  
17 subsection (e), section twelve-b of this article, subsection (b),  
18 section twelve-c of this article, paragraph (B), subdivision  
19 (3), subsection (b), section thirteen-c of this article and  
20 sections ten and ten-b, article twenty-two-a, chapter twenty-  
21 nine of this code into accounts for each thoroughbred

22 racetrack licensee with a banking institution of its choice  
23 with a separate account for each association or licensee.  
24 Each separate account shall be a special account to be known  
25 as “West Virginia Racing Commission Special Account –  
26 West Virginia Thoroughbred Development Fund” and shall  
27 name the licensee for which the special account has been  
28 established: *Provided, however,* That the Racing Commission  
29 shall deposit all moneys paid into the Thoroughbred  
30 Development Fund by a thoroughbred racetrack licensee that  
31 did not participate in the Thoroughbred Development Fund  
32 for at least four consecutive calendar years prior to December  
33 31, 1992 from July 8, 2005 until the effective date of the  
34 amendment to this section passed during the fourth  
35 extraordinary session of the seventy-seventh Legislature shall  
36 be paid into the purse fund of that thoroughbred racetrack  
37 licensee: *Provided further,* That the moneys paid into the  
38 Thoroughbred Development Fund by a thoroughbred  
39 racetrack licensee that did not participate in the  
40 Thoroughbred Development Fund for at least four  
41 consecutive calendar years prior to December 31, 1992, shall  
42 be transferred into that licensee’s purse fund until April 1,  
43 2006. Notice of the amount, date and place of the deposits  
44 shall be given by the Racing Commission, in writing, to the  
45 State Treasurer. The purpose of the funds is to promote  
46 better breeding and racing of thoroughbred horses in the state  
47 through awards and purses for accredited breeders/raisers,  
48 sire owners and thoroughbred race horse owners: *And*  
49 *provided further,* That five percent of the deposits required to  
50 be withheld by an association or licensee in subsection (b),  
51 section nine of this article shall be placed in a special revenue  
52 account hereby created in the state Treasury called the  
53 “Administration and Promotion Account”.

54 (b) The Racing Commission is authorized to expend the  
55 moneys deposited in the administration and promotion  
56 account at times and in amounts as the Commission  
57 determines to be necessary for purposes of administering and

58 promoting the thoroughbred development program: *Provided,*  
59 That during any fiscal year in which the Commission  
60 anticipates spending any money from the account, the  
61 Commission shall submit to the executive department during  
62 the budget preparation period prior to the Legislature  
63 convening before that fiscal year for inclusion in the  
64 executive budget document and budget bill the recommended  
65 expenditures, as well as requests of appropriations for the  
66 purpose of administration and promotion of the program.  
67 The Commission shall make an annual report to the  
68 Legislature on the status of the administration and promotion  
69 account, including the previous year's expenditures and  
70 projected expenditures for the next year.

71 (c) The fund or funds and the account or accounts  
72 established in subsection (a) of this section shall operate on  
73 an annual basis.

74 (d) Funds in the Thoroughbred Development Fund or  
75 funds in the separate accounts for each association or licensee  
76 as provided in subsection (a) of this section shall be  
77 expended for awards and purses except as otherwise provided  
78 in this section. Annually, the first \$800,000 shall be  
79 available for distribution for a minimum of fourteen  
80 accredited stakes races at a racetrack which has participated  
81 in the West Virginia Thoroughbred Development Fund for a  
82 period of more than four consecutive calendar years prior to  
83 December 31, 1992. The weights for all accredited stakes  
84 races shall be weight for age. One of the stakes races shall be  
85 the West Virginia Futurity and the second shall be the Frank  
86 Gall Memorial Stakes. For the purpose of participating in the  
87 West Virginia Futurity only, all mares, starting with the  
88 breeding season beginning the first day of February through  
89 July 31, 2004, and each successive breeding season thereafter  
90 shall be bred back that year to an accredited West Virginia  
91 stallion only which is registered with the West Virginia  
92 Thoroughbred Breeders Association. The accredited stake

93 races shall be chosen by the committee set forth in subsection  
94 (f) of this section.

95 (e) Awards and purses shall be distributed as follows:

96 (1) The breeders/raisers of accredited thoroughbred  
97 horses that earn a purse at a participating West Virginia meet  
98 shall receive a bonus award calculated at the end of the year  
99 as a percentage of the fund dedicated to the breeders/raisers,  
100 which shall be sixty percent of the fund available for  
101 distribution in any one year. The total amount available for  
102 the breeders'/raisers' awards shall be distributed according to  
103 the ratio of purses earned by an accredited race horse to the  
104 total amount earned in the participating races by all  
105 accredited race horses for that year as a percentage of the  
106 fund dedicated to the breeders/raisers. However, no  
107 breeder/raiser may receive from the fund dedicated to  
108 breeders'/raisers' awards an amount in excess of the earnings  
109 of the accredited horse at West Virginia meets. In addition,  
110 should a horse's breeder and raiser qualify for the same  
111 award on the same horse, they will each be awarded one half  
112 of the proceeds. The bonus referred to in this subdivision  
113 may only be paid on the first \$100,000 of any purse and not  
114 on any amounts in excess of the first \$100,000.

115 (2) The owner of an accredited West Virginia sire of an  
116 accredited thoroughbred horse that earns a purse in any race  
117 at a participating West Virginia meet shall receive a bonus  
118 award calculated at the end of the year as a percentage of the  
119 fund dedicated to sire owners, which shall be fifteen percent  
120 of the fund available for distribution in any one year. The  
121 total amount available for the sire owners' awards shall be  
122 distributed according to the ratio of purses earned by the  
123 progeny of accredited West Virginia stallions in the  
124 participating races for a particular stallion to the total purses  
125 earned by the progeny of all accredited West Virginia  
126 stallions in the participating races. However, no sire owner

127 may receive from the fund dedicated to sire owners an  
128 amount in excess of thirty-five percent of the accredited  
129 earnings for each sire. The bonus referred to in this  
130 subdivision shall only be paid on the first \$100,000 of any  
131 purse and not on any amounts in excess of the first \$100,000.

132 (3) The owner of an accredited thoroughbred horse that  
133 earns a purse in any participating race at a West Virginia  
134 meet shall receive a restricted purse supplement award  
135 calculated at the end of the year, which shall be twenty-five  
136 percent of the fund available for distribution in any one year,  
137 based on the ratio of the earnings in the races of a particular  
138 race horse to the total amount earned by all accredited race  
139 horses in the participating races during that year as a  
140 percentage of the fund dedicated to purse supplements.  
141 However, the owners may not receive from the fund  
142 dedicated to purse supplements an amount in excess of thirty-  
143 five percent of the total accredited earnings for each  
144 accredited race horse. The bonus referred to in this  
145 subdivision shall only be paid on the first \$100,000 of any  
146 purse and not on any amounts in excess of the first \$100,000.

147 (4) In no event may purses earned at a meet held at a  
148 track which did not make a contribution to the Thoroughbred  
149 Development Fund out of the daily pool on the day the meet  
150 was held qualify or count toward eligibility for an award  
151 under this subsection.

152 (5) Any balance in the breeders/raisers, sire owners and  
153 purse supplement funds after yearly distributions shall first  
154 be used to fund the races established in subsection (f) of this  
155 section. Any amount not so used shall revert into the general  
156 account of the Thoroughbred Development Fund for each  
157 racing association or licensee for distribution in the next year.

158 Distribution shall be made on the fifteenth day of each  
159 February for the preceding year's achievements.

160 (f)(1) Each pari-mutuel thoroughbred horse track shall  
161 provide at least one restricted race per racing day: *Provided,*  
162 That sufficient horses and funds are available. For purposes  
163 of this subsection, there are sufficient horses if there are at  
164 least seven single betting interests received for the race:  
165 *Provided, however,* That, if sufficient horses and funds are  
166 available, any thoroughbred horse racetrack whose licensee  
167 participated in the Thoroughbred Development Fund for at  
168 least four consecutive calendar years prior to December 31,  
169 1992, shall provide two restricted races per racing day, at  
170 least one of which may be split at the discretion of the racing  
171 secretary. The restricted race required by this section must  
172 be included in the first nine races written in the condition  
173 book for that racing day.

174 (2) The restricted races established in this subsection  
175 shall be administered by a three-member committee at each  
176 track consisting of:

177 (A) The racing secretary at each track;

178 (B) A member appointed by the authorized representative  
179 of a majority of the owners and trainers at the thoroughbred  
180 track; and

181 (C) A member appointed by the West Virginia  
182 Thoroughbred Breeders Association.

183 (3) Restricted races shall be funded by each racing  
184 association from:

185 (A) Moneys placed in the General Purse Fund: *Provided,*  
186 That a thoroughbred horse racetrack which did not participate  
187 in the West Virginia Thoroughbred Development Fund for a  
188 period of more than four consecutive years prior to December  
189 31, 1992, may fund restricted races in an amount not to  
190 exceed \$1 million per year.

191 (B) Moneys as provided in subdivision (5), subsection (e)  
192 of this section, which shall be placed in a special fund called  
193 the “West Virginia Accredited Race Fund”.

194 (4) The racing schedules, purse amounts and types of  
195 races are subject to the approval of the West Virginia Racing  
196 Commission.

197 (5) If less than seventy-five percent of the restricted races  
198 required by this subsection fail to receive enough entries to  
199 race, the Racing Commission shall, on a quarterly basis,  
200 dedicate funds in each fund back to the general purse fund of  
201 the racing association or licensee: *Provided*, That no moneys  
202 may be dedicated back to a General purse fund if the  
203 dedication would leave less than \$250,000 in the fund.

204 (g) As used in this section, “West Virginia bred-foal”  
205 means a horse that was born in the State of West Virginia.

206 (h) To qualify for the West Virginia Accredited Race  
207 Fund, the breeder must qualify under one of the following:

208 (1) The breeder of the West Virginia bred-foal is a West  
209 Virginia resident;

210 (2) The breeder of the West Virginia bred-foal is not a  
211 West Virginia resident, but keeps his or her breeding stock in  
212 West Virginia year round; or

213 (3) The breeder of the West Virginia bred-foal is not a  
214 West Virginia resident and does not qualify under  
215 subdivision (2) of this subsection, but either the sire of the  
216 West Virginia bred-foal is a West Virginia stallion, or the  
217 mare is covered only by a West Virginia accredited stallion  
218 or stallions before December 31 of the calendar year  
219 following the birth of that West Virginia bred-foal.

220 (i) From July 1, 2001, West Virginia accredited  
221 thoroughbred horses have preference for entry in all  
222 accredited races at a thoroughbred race track at which the  
223 licensee participates in the West Virginia Thoroughbred  
224 Development Fund.

225 (j) Beginning July 1, 2006, any racing association  
226 licensed by the Racing Commission to conduct thoroughbred  
227 racing and permitting and conducting pari-mutuel wagering  
228 under the provisions of this article must have a West Virginia  
229 Thoroughbred Racing Breeders Program.

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### Article

22. State Lottery Act.

22C. West Virginia Lottery Racetrack Table Game Act.

## ARTICLE 22. STATE LOTTERY ACT.

### §29-22-18a. State Excess Lottery Revenue Fund.

1 (a) The State Lottery Fund in the State Treasury which is  
2 designated and known as the State Excess Lottery Revenue  
3 Fund is continued. The fund consists of all appropriations to  
4 the fund and all interest earned from investment of the fund  
5 and any gifts, grants or contributions received by the fund.  
6 All revenues received under the provisions of sections ten-b  
7 and ten-c, article twenty-two-a of this chapter and under  
8 article twenty-two-b of this chapter, except the amounts due  
9 the commission under subdivision (1), subsection (a), section  
10 one thousand four hundred eight, article twenty-two-b of this  
11 chapter, shall be deposited in the State Treasury and placed  
12 into the State Excess Lottery Revenue Fund. The revenue  
13 shall be disbursed in the manner provided in this section for  
14 the purposes stated in this section and shall not be treated by



15 the State Auditor and the State Treasurer as part of the  
16 general revenue of the state.

17 (b) For the fiscal year beginning July 1, 2002, the  
18 commission shall deposit: (1) \$65 million into the subaccount  
19 of the state Excess Lottery Revenue Fund hereby created in  
20 the State Treasury to be known as the General Purpose  
21 Account to be expended pursuant to appropriation of the  
22 Legislature; (2) \$10 million into the Education Improvement  
23 Fund for appropriation by the Legislature to the PROMISE  
24 Scholarship Fund created in section seven, article seven,  
25 chapter eighteen-c of this code; (3) \$19 million into the  
26 Economic Development Project Fund created in subsection  
27 (e) of this section for the issuance of revenue bonds and to be  
28 spent in accordance with the provisions of said subsection;  
29 (4) \$20 million into the School Building Debt Service Fund  
30 created in section six, article nine-d, chapter eighteen of this  
31 code for the issuance of revenue bonds; (5) \$40 million into  
32 the West Virginia Infrastructure Fund created in section nine,  
33 article fifteen-a, chapter thirty-one of this code to be spent in  
34 accordance with the provisions of said article; (6) \$10 million  
35 into the Higher Education Improvement Fund for Higher  
36 Education; and (7) \$5 million into the State Park  
37 Improvement Fund for Park Improvements. For the fiscal  
38 year beginning July 1, 2003, the commission shall deposit:  
39 (1) \$65 million into the General Purpose Account to be  
40 expended pursuant to appropriation of the Legislature; (2)  
41 \$17 million into the Education Improvement Fund for  
42 appropriation by the Legislature to the PROMISE  
43 Scholarship Fund created in section seven, article seven,  
44 chapter eighteen-c of this code; (3) \$19 million into the  
45 Economic Development Project Fund created in subsection  
46 (e) of this section for the issuance of revenue bonds and to be  
47 spent in accordance with the provisions of said subsection;  
48 (4) \$20 million into the School Building Debt Service Fund  
49 created in section six, article nine-d, chapter eighteen of this  
50 code for the issuance of revenue bonds; (5) \$40 million into

51 the West Virginia Infrastructure Fund created in section nine,  
52 article fifteen-a, chapter thirty-one of this code to be spent in  
53 accordance with the provisions of said article; (6) \$10 million  
54 into the Higher Education Improvement Fund for Higher  
55 Education; and (7) \$7 million into the State Park  
56 Improvement Fund for Park Improvements.

57 (c) For the fiscal year beginning July 1, 2004, and  
58 subsequent fiscal years through the fiscal year ending June  
59 30, 2009, the commission shall deposit: (1) \$65 million into  
60 the General Purpose Account to be expended pursuant to  
61 appropriation of the Legislature; (2) \$27 million into the  
62 Education Improvement Fund for appropriation by the  
63 Legislature to the PROMISE Scholarship Fund created in  
64 section seven, article seven, chapter eighteen-c of this code;  
65 (3) \$19 million into the Economic Development Project Fund  
66 created in subsection (e) of this section for the issuance of  
67 revenue bonds and to be spent in accordance with the  
68 provisions of said subsection; (4) \$19 million into the School  
69 Building Debt Service Fund created in section six, article  
70 nine-d, chapter eighteen of this code for the issuance of  
71 revenue bonds: *Provided*, That for the fiscal year beginning  
72 July 1, 2008, and subsequent fiscal years, no moneys shall be  
73 deposited in the School Building Debt Service Fund pursuant  
74 to this subsection and instead \$19 million shall be deposited  
75 into the Excess Lottery School Building Debt Service Fund;  
76 (5) \$40 million into the West Virginia Infrastructure Fund  
77 created in section nine, article fifteen-a, chapter thirty-one of  
78 this code to be spent in accordance with the provisions of  
79 said article; (6) \$10 million into the Higher Education  
80 Improvement Fund for Higher Education; and (7) \$5 million  
81 into the State Park Improvement Fund for Park  
82 Improvements. No portion of the distributions made as  
83 provided in this subsection and subsection (b) of this section,  
84 except distributions made in connection with bonds issued  
85 under subsection (e) of this section, may be used to pay debt  
86 service on bonded indebtedness until after the Legislature

87 expressly authorizes issuance of the bonds and payment of  
88 debt service on the bonds through statutory enactment or the  
89 adoption of a concurrent resolution by both houses of the  
90 Legislature. Until subsequent legislative enactment or  
91 adoption of a resolution that expressly authorizes issuance of  
92 the bonds and payment of debt service on the bonds with  
93 funds distributed under this subsection and subsection (b) of  
94 this section, except distributions made in connection with  
95 bonds issued under subsection (d) of this section, the  
96 distributions may be used only to fund capital improvements  
97 that are not financed by bonds and only pursuant to  
98 appropriation of the Legislature.

99 (d) For the fiscal year beginning July 1, 2009, and  
100 subsequent fiscal years, the commission shall deposit: (1) \$65  
101 million into the General Purpose Account to be expended  
102 pursuant to appropriation of the Legislature; (2) \$29 million  
103 into the Education Improvement Fund for appropriation by  
104 the Legislature to the PROMISE Scholarship Fund created in  
105 section seven, article seven, chapter eighteen-c of this code;  
106 (3) \$19 million into the Economic Development Project Fund  
107 created in subsection (e) of this section for the issuance of  
108 revenue bonds and to be spent in accordance with the  
109 provisions of said subsection; (4) \$19 million into the Excess  
110 Lottery School Building Debt Service Fund created in section  
111 six, article nine-d, chapter eighteen of this code; (5) \$40  
112 million into the West Virginia Infrastructure Fund created in  
113 section nine, article fifteen-a, chapter thirty-one of this code  
114 to be spent in accordance with the provisions of said article;  
115 (6) \$10 million into the Higher Education Improvement Fund  
116 for Higher Education; and (7) \$5 million into the State Park  
117 Improvement Fund for Park Improvements. No portion of  
118 the distributions made as provided in this subsection and  
119 subsection (b) of this section, except distributions made in  
120 connection with bonds issued under subsection (e) of this  
121 section, may be used to pay debt service on bonded  
122 indebtedness until after the Legislature expressly authorizes

123 issuance of the bonds and payment of debt service on the  
124 bonds through statutory enactment or the adoption of a  
125 concurrent resolution by both houses of the Legislature.  
126 Until subsequent legislative enactment or adoption of a  
127 resolution that expressly authorizes issuance of the bonds and  
128 payment of debt service on the bonds with funds distributed  
129 under this subsection and subsection (b) of this section,  
130 except distributions made in connection with bonds issued  
131 under subsection (e) of this section, the distributions may be  
132 used only to fund capital improvements that are not financed  
133 by bonds and only pursuant to appropriation of the  
134 Legislature.

135 (e) The Legislature finds and declares that in order to  
136 attract new business, commerce and industry to this state, to  
137 retain existing business and industry providing the citizens of  
138 this state with economic security and to advance the business  
139 prosperity of this state and the economic welfare of the  
140 citizens of this state, it is necessary to provide public  
141 financial support for constructing, equipping, improving and  
142 maintaining economic development projects, capital  
143 improvement projects and infrastructure which promote  
144 economic development in this state.

145 (1) The West Virginia Economic Development Authority  
146 created and provided for in article fifteen, chapter thirty-one  
147 of this code shall, by resolution, in accordance with the  
148 provisions of this article and article fifteen, chapter thirty-one  
149 of this code, and upon direction of the Governor, issue  
150 revenue bonds of the Economic Development Authority in no  
151 more than two series to pay for all or a portion of the cost of  
152 constructing, equipping, improving or maintaining projects  
153 under this section or to refund the bonds at the discretion of  
154 the authority. Any revenue bonds issued on or after July 1,  
155 2002, which are secured by state excess lottery revenue  
156 proceeds shall mature at a time or times not exceeding thirty  
157 years from their respective dates. The principal of and the

158 interest and redemption premium, if any, on the bonds shall  
159 be payable solely from the special fund provided in this  
160 section for the payment.

161 (2) The special revenue fund named the Economic  
162 Development Project Fund into which shall be is deposited  
163 the amounts to be deposited in the fund as specified in  
164 subsections (b), (c) and (d) of this section is continued. The  
165 Economic Development Project Fund shall consist of all such  
166 moneys, all appropriations to the fund, all interest earned  
167 from investment of the fund and any gifts, grants or  
168 contributions received by the fund. All amounts deposited in  
169 the fund shall be pledged to the repayment of the principal,  
170 interest and redemption premium, if any, on any revenue  
171 bonds or refunding revenue bonds authorized by this section,  
172 including any and all commercially customary and  
173 reasonable costs and expenses which may be incurred in  
174 connection with the issuance, refunding, redemption or  
175 defeasance of the bonds. The West Virginia Economic  
176 Development Authority may further provide in the resolution  
177 and in the trust agreement for priorities on the revenues paid  
178 into the Economic Development Project Fund that are  
179 necessary for the protection of the prior rights of the holders  
180 of bonds issued at different times under the provisions of this  
181 section. The bonds issued pursuant to this subsection shall be  
182 separate from all other bonds which may be or have been  
183 issued, from time to time, under the provisions of this article.

184 (3) After the West Virginia Economic Development  
185 Authority has issued bonds authorized by this section and  
186 after the requirements of all funds have been satisfied,  
187 including any coverage and reserve funds established in  
188 connection with the bonds issued pursuant to this subsection,  
189 any balance remaining in the Economic Development Project  
190 Fund may be used for the redemption of any of the  
191 outstanding bonds issued under this subsection which, by  
192 their terms, are then redeemable or for the purchase of the

193 outstanding bonds at the market price, but not to exceed the  
194 price, if any, at which redeemable, and all bonds redeemed or  
195 purchased shall be immediately canceled and shall not again  
196 be issued.

197 (4) Bonds issued under this subsection shall state on their  
198 face that the bonds do not constitute a debt of the State of  
199 West Virginia; that payment of the bonds, interest and  
200 charges thereon cannot become an obligation of the State of  
201 West Virginia; and that the bondholders' remedies are limited  
202 in all respects to the Special Revenue Fund established in this  
203 subsection for the liquidation of the bonds.

204 (5) The West Virginia Economic Development Authority  
205 shall expend the bond proceeds from the revenue bond issues  
206 authorized and directed by this section for projects certified  
207 under the provision of this subsection: *Provided*, That the  
208 bond proceeds shall be expended in accordance with the  
209 requirements and provisions of article five-a, chapter twenty-  
210 one of this code and either article twenty-two or twenty-two-  
211 a, chapter five of this code, as the case may be: *Provided*,  
212 *however*, That if the bond proceeds are expended pursuant to  
213 article twenty-two-a, chapter five of this code and if the  
214 Design-Build Board created under said article determines that  
215 the execution of a design-build contract in connection with a  
216 project is appropriate pursuant to the criteria set forth in said  
217 article and that a competitive bidding process was used in  
218 selecting the design builder and awarding the contract, the  
219 determination shall be conclusive for all purposes and shall  
220 be considered to satisfy all the requirements of said article.

221 (6) For the purpose of certifying the projects that will  
222 receive funds from the bond proceeds, a committee is hereby  
223 established and comprised of the Governor, or his or her  
224 designee, the Secretary of the Department of Revenue, the  
225 Executive Director of the West Virginia Development Office  
226 and six persons appointed by the Governor: *Provided*, That

227 at least one citizen member must be from each of the state's  
228 three congressional districts. The committee shall meet as  
229 often as necessary and make certifications from bond  
230 proceeds in accordance with this subsection. The committee  
231 shall meet within thirty days of the effective date of this  
232 section.

233 (7) Applications for grants submitted on or before July 1,  
234 2002, shall be considered refiled with the committee. Within  
235 ten days from the effective date of this section as amended in  
236 the year 2003, the lead applicant shall file with the committee  
237 any amendments to the original application that may be  
238 necessary to properly reflect changes in facts and  
239 circumstances since the application was originally filed with  
240 the committee.

241 (8) When determining whether or not to certify a project,  
242 the committee shall take into consideration the following:

243 (A) The ability of the project to leverage other sources of  
244 funding;

245 (B) Whether funding for the amount requested in the  
246 grant application is or reasonably should be available from  
247 commercial sources;

248 (C) The ability of the project to create or retain jobs,  
249 considering the number of jobs, the type of jobs, whether  
250 benefits are or will be paid, the type of benefits involved and  
251 the compensation reasonably anticipated to be paid persons  
252 filling new jobs or the compensation currently paid to  
253 persons whose jobs would be retained;

254 (D) Whether the project will promote economic  
255 development in the region and the type of economic  
256 development that will be promoted;

257 (E) The type of capital investments to be made with bond  
258 proceeds and the useful life of the capital investments; and

259 (F) Whether the project is in the best interest of the  
260 public.

261 (9) A grant may not be awarded to an individual or other  
262 private person or entity. Grants may be awarded only to an  
263 agency, instrumentality or political subdivision of this state  
264 or to an agency or instrumentality of a political subdivision  
265 of this state.

266 The project of an individual or private person or entity  
267 may be certified to receive a low-interest loan paid from bond  
268 proceeds. The terms and conditions of the loan, including,  
269 but not limited to, the rate of interest to be paid and the  
270 period of the repayment, shall be determined by the  
271 Economic Development Authority after considering all  
272 applicable facts and circumstances.

273 (10) Prior to making each certification, the committee  
274 shall conduct at least one public hearing, which may be held  
275 outside of Kanawha County. Notice of the time, place, date  
276 and purpose of the hearing shall be published in at least one  
277 newspaper in each of the three congressional districts at least  
278 fourteen days prior to the date of the public hearing.

279 (11) The committee may not certify a project unless the  
280 committee finds that the project is in the public interest and  
281 the grant will be used for a public purpose. For purposes of  
282 this subsection, projects in the public interest and for a public  
283 purpose include, but are not limited to:

284 (A) Sports arenas, fields, parks, stadiums and other sports  
285 and sports-related facilities;

286 (B) Health clinics and other health facilities;



287 (C) Traditional infrastructure, such as water and  
288 wastewater treatment facilities, pumping facilities and  
289 transmission lines;

290 (D) State-of-the-art telecommunications infrastructure;

291 (E) Biotechnical incubators, development centers and  
292 facilities;

293 (F) Industrial parks, including construction of roads,  
294 sewer, water, lighting and other facilities;

295 (G) Improvements at state parks, such as construction,  
296 expansion or extensive renovation of lodges, cabins,  
297 conference facilities and restaurants;

298 (H) Railroad bridges, switches and track extension or  
299 spurs on public or private land necessary to retain existing  
300 businesses or attract new businesses;

301 (I) Recreational facilities, such as amphitheaters, walking  
302 and hiking trails, bike trails, picnic facilities, restrooms, boat  
303 docking and fishing piers, basketball and tennis courts, and  
304 baseball, football and soccer fields;

305 (J) State-owned buildings that are registered on the  
306 National Register of Historic Places;

307 (K) Retail facilities, including related service, parking  
308 and transportation facilities, appropriate lighting, landscaping  
309 and security systems to revitalize decaying downtown areas;  
310 and

311 (L) Other facilities that promote or enhance economic  
312 development, educational opportunities or tourism  
313 opportunities thereby promoting the general welfare of this  
314 state and its residents.

315           (12) Prior to the issuance of bonds under this subsection,  
316 the committee shall certify to the Economic Development  
317 Authority a list of those certified projects that will receive  
318 funds from the proceeds of the bonds. Once certified, the list  
319 may not thereafter be altered or amended other than by  
320 legislative enactment.

321           (13) If any proceeds from sale of bonds remain after  
322 paying costs and making grants and loans as provided in this  
323 subsection, the surplus may be deposited in an account in the  
324 State Treasury known as the Economic Development Project  
325 Bridge Loan Fund administered by the Economic  
326 Development Authority created in article fifteen, chapter  
327 thirty-one of this code. Expenditures from the fund are not  
328 authorized from collections but are to be made only in  
329 accordance with appropriation by the Legislature and in  
330 accordance with the provisions of article three, chapter  
331 twelve of this code and upon fulfillment of the provisions of  
332 article two, chapter five-a of this code. Loan repayment  
333 amounts, including the portion attributable to interest, shall  
334 be paid into the fund created in this subdivision.

335           (f) If the commission receives revenues in an amount that  
336 is not sufficient to fully comply with the requirements of  
337 subsections (b), (c), (d) and (i) of this section, the  
338 commission shall first make the distribution to the Economic  
339 Development Project Fund; second, make the distribution or  
340 distributions to the other funds from which debt service is to  
341 be paid; third, make the distribution to the Education  
342 Improvement Fund for appropriation by the Legislature to the  
343 PROMISE Scholarship Fund; and fourth, make the  
344 distribution to the General Purpose Account: *Provided, That,*  
345 subject to the provisions of this subsection, to the extent the  
346 revenues are not pledged in support of revenue bonds which  
347 are or may be issued, from time to time, under this section,  
348 the revenues shall be distributed on a pro rata basis.

349 (g) Each fiscal year, the commission shall, after meeting  
350 the requirements of subsections (b), (c), (d) and (i) of this  
351 section and after transferring to the State Lottery Fund  
352 created under section eighteen of this article an amount equal  
353 to any transfer from the State Lottery Fund to the Excess  
354 Lottery Fund pursuant to subsection (f), section eighteen of  
355 this article, deposit fifty percent of the amount by which  
356 annual gross revenue deposited in the State Excess Lottery  
357 Revenue Fund exceeds \$225 million in a fiscal year in a  
358 separate account in the State Lottery Fund to be available for  
359 appropriation by the Legislature.

360 (h) When bonds are issued for projects under subsection  
361 (d) (e) of this section or for the School Building Authority,  
362 infrastructure, higher education or park improvement  
363 purposes described in this section that are secured by profits  
364 from lotteries deposited in the State Excess Lottery Revenue  
365 Fund, the Lottery Director shall allocate first to the Economic  
366 Development Project Fund an amount equal to one tenth of  
367 the projected annual principal, interest and coverage  
368 requirements on any and all revenue bonds issued, or to be  
369 issued as certified to the Lottery Director; and second, to the  
370 fund or funds from which debt service is paid on bonds  
371 issued under this section for the School Building Authority,  
372 infrastructure, higher education and park improvements an  
373 amount equal to one tenth of the projected annual principal,  
374 interest and coverage requirements on any and all revenue  
375 bonds issued, or to be issued as certified to the Lottery  
376 Director. In the event there are insufficient funds available  
377 in any month to transfer the amounts required pursuant to this  
378 subsection, the deficiency shall be added to the amount  
379 transferred in the next succeeding month in which revenues  
380 are available to transfer the deficiency.

381 (i) Prior to the distributions provided in subsection (d) of  
382 this section, the Lottery Commission shall deposit into the  
383 General Revenue Fund amounts necessary to provide

384 reimbursement for the refundable credit allowable under  
385 section twenty-one, article twenty-one, chapter eleven of this  
386 code.

387 (j)(1) The Legislature considers the following as  
388 priorities in the expenditure of any surplus revenue funds:

389 (A) Providing salary and/or increment increases for  
390 professional educators and public employees;

391 (B) Providing adequate funding for the Public Employees  
392 Insurance Agency; and

393 (C) Providing funding to help address the shortage of  
394 qualified teachers and substitutes in areas of need, both in  
395 number of teachers and in subject matter areas.

396 (2) The provisions of this subsection may not be  
397 construed by any court to require any appropriation or any  
398 specific appropriation or level of funding for the purposes set  
399 forth in this subsection.

400 (k) The Legislature further directs the Governor to focus  
401 resources on the creation of a prescription drug program for  
402 senior citizens by pursuing a Medicaid waiver to offer  
403 prescription drug services to senior citizens; by investigating the  
404 establishment of purchasing agreements with other entities to  
405 reduce costs; by providing discount prices or rebate programs  
406 for seniors; by coordinating programs offered by pharmaceutical  
407 manufacturers that provide reduced cost or free drugs; by  
408 coordinating a collaborative effort among all state agencies to  
409 ensure the most efficient and cost-effective program possible for  
410 the senior citizens of this state; and by working closely with the  
411 state's congressional delegation to ensure that a national  
412 program is implemented. The Legislature further directs that the  
413 Governor report his or her progress back to the Joint Committee  
414 on Government and Finance on an annual basis until a  
415 comprehensive program has been fully implemented.

416 (1) After all of the expenditures in subsections (a) through  
417 (i) of this section have been satisfied in any fiscal year, the  
418 next \$2 million shall be distributed as follows:

419 (1) On the last day of the fiscal year that begins on July 1,  
420 2010, and for each fiscal year thereafter, forty-six percent shall  
421 be placed in the general purse fund of a thoroughbred racetrack  
422 licensee that did not participate in the Thoroughbred  
423 Development Fund for at least four consecutive calendar years  
424 prior to December 31, 1992, for payment of regular purses;

425 (2) Forty-three and one half percent shall be distributed  
426 to the racing commission special account - unredeemed pari-  
427 mutual tickets established on behalf of a thoroughbred  
428 racetrack licensee that did participate in the Thoroughbred  
429 Development Fund for at least four consecutive calendar  
430 years prior to December 31, 1992;

431 (3) Five and one half percent shall be distributed to the  
432 racing commission special account - unredeemed pari-mutuel  
433 tickets established on behalf of a thoroughbred racetrack  
434 licensee that did not participate in the Thoroughbred  
435 Development Fund for at least four consecutive calendar  
436 years prior to December 31, 1992; and

437 (4) Five percent shall be distributed to the West Virginia  
438 racing commission special account - greyhound breeding  
439 development fund.

## **ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.**

### **\*§29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community-Based Service Fund; State Debt Reduction Fund; distribution of funds.**

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\*CLERK'S NOTE: This section was also amended by S. B. 237 (Chapter 129)  
which passed subsequent to this act.

1           (a)(1) The special fund in the State Treasury known as  
2 the West Virginia Lottery Racetrack Table Games Fund is  
3 continued and all tax collected under this article shall be  
4 deposited with the State Treasurer and placed in the West  
5 Virginia Lottery Racetrack Table Games Fund. The fund  
6 shall be an interest-bearing account with all interest or other  
7 return earned on the money of the fund credited to and  
8 deposited in the fund.

9           (2) Notwithstanding any provision of this article to the  
10 contrary, all racetrack table games license fees received by  
11 the commission pursuant to section eight of this article shall  
12 be deposited into the Community-Based Service Fund which  
13 is continued in the State Treasury. Moneys of the fund shall  
14 be expended by the Bureau of Senior Services upon  
15 appropriation of the Legislature solely for the purpose of  
16 enabling the aged and disabled citizens of this state to  
17 maintain their residency in the community-based setting  
18 through the provision of home and community-based  
19 services.

20           (b) From the gross amounts deposited into the Racetrack  
21 Table Games Fund pursuant to subsection (a) of this section,  
22 the commission shall:

23           (1) Retain an amount for the administrative expenses of  
24 the commission as determined by the commission in  
25 accordance with subsection (e) of this section;

26           (2) Transfer two and one-half percent of adjusted gross  
27 receipts from all thoroughbred racetracks with West Virginia  
28 Lottery table games to the special funds established by each  
29 thoroughbred racetrack table games licensee for the payment  
30 of regular racetrack purses, the amount being divided on a  
31 pro rata basis between the special funds of each thoroughbred  
32 racetrack table games licensee and transfer two and one-half  
33 percent of adjusted gross receipts from all greyhound

34 racetracks with West Virginia Lottery table games to the  
35 special funds established by each greyhound racetrack table  
36 games licensees for the payment of regular racetrack purses,  
37 the amount being divided equally between the special funds  
38 of each greyhound racetrack table games licensee;

39 (3) Transfer two percent of the adjusted gross receipts  
40 from all licensed racetracks to the West Virginia  
41 Thoroughbred Development Fund created under section  
42 thirteen-b, article twenty-three, chapter nineteen of this code  
43 and the West Virginia Greyhound Breeding Development  
44 Fund created under section ten, article twenty-three, chapter  
45 nineteen of this code. The total amount transferred under this  
46 subdivision shall be divided pro rata among the development  
47 funds for each racetrack table games licensee based on  
48 relative adjusted receipts from each racetrack. The amounts  
49 transferred to these funds may not be used for the benefit of  
50 any person or activity other than at or associated with a  
51 racetrack table games licensee;

52 (4) Transfer one percent of the adjusted gross receipts  
53 from each licensed racetrack to the county commissions of  
54 the counties where racetracks with West Virginia Lottery  
55 table games are located. The one percent transferred under  
56 this subdivision shall be divided pro rata among the counties  
57 with a racetrack with West Virginia Lottery table games  
58 based on relative adjusted gross receipts from each county's  
59 racetrack: *Provided*, That the county board of education of a  
60 growth county, as that term is defined in section three, article  
61 twenty, chapter seven of this code, which has enacted the  
62 Local Powers Act, and in which county a racetrack is located  
63 that has participated in the West Virginia Thoroughbred  
64 Development Fund since on or before January 1, 1991, shall  
65 receive the one percent of adjusted gross receipts as provided  
66 in this subdivision for the purpose of capital improvements;

67           (5) Transfer two percent of the adjusted gross receipts  
68 from each licensed racetrack to the governing bodies of  
69 municipalities within counties where racetracks with West  
70 Virginia Lottery table games are located, which shall be  
71 allocated as follows:

72           (A) One half of the amounts transferred under this  
73 subdivision shall be allocated to the municipalities within  
74 each county having a racetrack table games licensee, based  
75 on relative adjusted gross receipts from West Virginia  
76 Lottery table games from those racetracks and the total  
77 amount allocated to the municipalities within a county shall  
78 be divided pro rata among the municipalities based on each  
79 municipality's population determined at the most recent  
80 United States decennial census of population: *Provided, That:*  
81 (i) For each allocation, when a municipality is physically  
82 located in two or more counties, only that portion of its  
83 population residing in the county where the authorized table  
84 games are located shall be considered; (ii) a single  
85 municipality in a county where West Virginia Lottery  
86 racetrack table games are played may not receive a total share  
87 under this paragraph that is in excess of seventy-five percent  
88 of the total distribution under this paragraph for the county in  
89 which the municipality is located; and (iii) a municipality  
90 receiving moneys under this paragraph may not receive an  
91 amount which is less than that received by a municipality  
92 under provisions of subdivision (4), subsection (d) of this  
93 section; and

94           (B) One half of the amounts transferred under this  
95 subdivision shall be allocated pro rata to the municipalities  
96 within all the counties, having a racetrack table games  
97 licensee based on each municipality's population determined  
98 at the most recent United States decennial census of  
99 population: *Provided, That:* (i) A municipality which  
100 received funds above its pro rata share pursuant to subpart  
101 (iii), paragraph (A) of this subdivision may not receive an



102 allocation under this paragraph; (ii) for each allocation, when  
103 a municipality is physically located in two or more counties,  
104 only that portion of its population residing in the county  
105 where the authorized table games are located shall be  
106 considered; and (iii) a single municipality in a county where  
107 West Virginia Lottery racetrack games are played may not  
108 receive a total share under this paragraph that is in excess of  
109 twenty-five percent of the total transfers under this  
110 paragraph: *Provided, however,* That the county board of  
111 education of a growth county, as that term is defined in  
112 section three, article twenty, chapter seven of this code,  
113 which has enacted the Local Powers Act, and in which  
114 county a racetrack is located that has participated in the West  
115 Virginia Thoroughbred Development Fund since on or before  
116 January 1, 1991, shall receive the two percent of adjusted  
117 gross receipts as provided in this subdivision for the purpose  
118 of capital improvements;

119 (6) Transfer one half of one percent of the adjusted gross  
120 receipts to the governing bodies of municipalities in which a  
121 racetrack table games licensee is located. The municipalities  
122 shall each receive an equal share of the total amount allocated  
123 under this subdivision: *Provided,* That distribution under this  
124 subdivision may not be made to any municipality which did  
125 not have a licensed racetrack within its municipal boundaries  
126 as they existed on January 1, 2007: *Provided, however,* That  
127 if no racetrack table games licensee is located within a  
128 municipality, a transfer may not be made under this  
129 subdivision; and

130 (7) Distribute the remaining amounts, hereinafter referred  
131 to as the net amounts in the Racetrack Table Games Funds,  
132 in accordance with the provisions of subsection (d) of this  
133 section.

134 (c) Beginning with the fiscal year following the licensing  
135 of every licensed racetrack to offer West Virginia lottery

136 racetrack table games under this article, subsection (b) of this  
137 section shall be superseded and replaced by this subsection  
138 for distribution of the balances in the fund established by  
139 subsection (a) of this section. From the gross amounts  
140 deposited into the fund, the commission shall:

141 (1) Retain an amount for the administrative expenses of  
142 the commission as determined by the commission in  
143 accordance with subsection(e) of this section;

144 (2) Transfer two and one-half percent of adjusted gross  
145 receipts from all thoroughbred racetracks with West Virginia  
146 Lottery table games to the special funds established by each  
147 thoroughbred racetrack table games licensee for the payment  
148 of regular racetrack purses, the amount being divided on a  
149 pro rata basis between the special funds of each thoroughbred  
150 racetrack table games licensee and transfer two and one-half  
151 percent of adjusted gross receipts from all greyhound  
152 racetracks with West Virginia Lottery table games to the  
153 special funds established by each greyhound racetrack table  
154 games licensee for the payment of regular racetrack purses,  
155 the amount being divided equally between the special funds  
156 of each greyhound racetrack table games licensee;

157 (3) Transfer two percent of the adjusted gross receipts  
158 from all licensed racetracks to the West Virginia  
159 Thoroughbred Development Fund created under section  
160 thirteen-b, article twenty-three, chapter nineteen of this code  
161 and the West Virginia Greyhound Breeding Development  
162 Fund created under section ten, article twenty-three, chapter  
163 nineteen of this code. The total amount transferred under this  
164 subdivision shall be divided pro rata among the development  
165 funds for each racetrack table games licensee based on  
166 relative adjusted receipts from each racetrack. The amounts  
167 transferred to these funds may not be used for the benefit of  
168 any person or activity other than at or associated with a  
169 racetrack table games licensee;

170           (4) Transfer two percent of the adjusted gross receipts  
171 from each licensed racetrack to the county commissions of  
172 the counties where racetracks with West Virginia Lottery  
173 table games are located. The money transferred under this  
174 subdivision shall be divided pro rata among the counties with  
175 a racetrack with West Virginia Lottery table games based on  
176 relative adjusted gross receipts from each county's racetrack:  
177 *Provided*, That the county board of education of a growth  
178 county, as that term is defined in section three, article twenty,  
179 chapter seven of this code, which has enacted the Local  
180 Powers Act, and in which a racetrack is located that has  
181 participated in the West Virginia Thoroughbred Development  
182 Fund since on or before January 1, 1991, shall receive one  
183 half of that county's share of adjusted gross receipts as  
184 provided in this subdivision for the purpose of capital  
185 improvements;

186           (5) Transfer three percent of the adjusted gross receipts  
187 from each licensed racetrack to the governing bodies of  
188 municipalities within counties where racetracks with West  
189 Virginia Lottery table games are located, which shall be  
190 allocated as follows:

191           (A) One half of the money transferred by this subdivision  
192 shall be allocated to the municipalities within each county,  
193 other than a county described in paragraph (C) of this  
194 subdivision, having a racetrack table games licensee based on  
195 relative adjusted gross receipts from West Virginia Lottery  
196 table games from those racetracks and the total amount  
197 allocated to the municipalities within a county shall be  
198 divided pro rata among the municipalities based on each  
199 municipality's population determined at the most recent  
200 United States decennial census of population: *Provided*, That:  
201 (i) For each allocation, when a municipality is physically  
202 located in two or more counties, only that portion of its  
203 population residing in the county where the authorized table  
204 games are located shall be considered; (ii) a single

205 municipality in a county where West Virginia Lottery  
206 racetrack table games are played may not receive a total share  
207 under this paragraph that is in excess of seventy-five percent  
208 of the total distribution under this paragraph for the county in  
209 which the municipality is located; and (iii) a municipality  
210 receiving moneys under this paragraph may not receive an  
211 amount which is less than that received by a municipality  
212 under provisions of subdivision (4), subsection (d) of this  
213 section.

214 (B) One half of the money transferred under this  
215 subdivision shall be allocated pro rata to the municipalities  
216 within all the counties, other than a county described in  
217 paragraph (C) of this subdivision, having a racetrack table  
218 games licensee based on each municipality's population  
219 determined at the most recent United States decennial census  
220 of population: *Provided, That:* (i) A municipality which  
221 received funds above its pro rata share pursuant to  
222 subparagraph (iii), paragraph (A) of this subdivision shall not  
223 receive an allocation under this paragraph; (ii) for each  
224 allocation, when a municipality is physically located in two  
225 or more counties, only that portion of its population residing  
226 in the county where the authorized table games are located  
227 shall be considered; and (iii) a single municipality in a county  
228 where West Virginia Lottery racetrack games are played may  
229 not receive a total share under this paragraph that is in excess  
230 of twenty-five percent of the total transfers under this  
231 paragraph.

232 (C) Notwithstanding the provisions of paragraphs (A) and  
233 (B) of this subdivision, when a racetrack is located in a  
234 growth county, as that term is defined in section three, article  
235 twenty, chapter seven of this code, which has enacted the  
236 Local Powers Act, and in which county a racetrack is located  
237 that has participated in the West Virginia Thoroughbred  
238 Development Fund since on or before January 1, 1991, the  
239 county board of education shall receive two thirds of the

240 share of adjusted gross receipts from West Virginia Lottery  
241 table games from the racetrack in the county as provided in  
242 this subdivision and the municipalities within the county shall  
243 share the remaining one third of the total amount allocated as  
244 provided in this paragraph. The municipal one-third share  
245 shall be divided pro rata among the municipalities based on  
246 each municipality's population determined at the most recent  
247 United States decennial census of population. All money  
248 transferred under this paragraph shall be used by the county  
249 board of education and by the municipalities for the purpose  
250 of capital improvements;

251 (6) Transfer one half of one percent of the adjusted gross  
252 receipts to the governing bodies of municipalities in which a  
253 racetrack table games licensee is located. The municipalities  
254 shall each receive an equal share of the total amount allocated  
255 under this subdivision: *Provided*, That distribution under this  
256 subdivision may not be made to any municipality that did not  
257 have a licensed racetrack within its municipal boundaries as  
258 they existed on January 1, 2007: *Provided, however*, That if  
259 no racetrack table games licensee is located within a  
260 municipality, a transfer may not be made under this  
261 subdivision; and

262 (7) Distribute the remaining amounts, hereinafter referred  
263 to as the net amounts in the Racetrack Table Games Funds,  
264 in accordance with the provisions of subsection (d) of this  
265 section.

266 (d) From the net amounts in the Racetrack Table Games  
267 Fund, the commission shall:

268 (1) Transfer seventy-six percent to the State Debt  
269 Reduction Fund which is hereby continued in the State  
270 Treasury. Moneys of the fund shall be expended solely for  
271 the purpose of accelerating the reduction of existing

272 unfunded liabilities and existing bond indebtedness of the  
273 state and shall be expended or transferred only upon  
274 appropriation of the Legislature;

275 (2) Transfer four percent, divided pro rata based on  
276 relative adjusted gross receipts from the individual licensed  
277 racetracks for and on behalf of all employees of each licensed  
278 racing association, into a special fund to be established by the  
279 Racing Commission to be used for payment into the pension  
280 plan for all employees of each licensed racing association;

281 (3) Transfer ten percent, to be divided and paid in equal  
282 shares, to each county commission in the state that is not  
283 eligible to receive a distribution under subdivision (4),  
284 subsection (b) of this section: *Provided*, That funds  
285 transferred to county commissions under this subdivision  
286 shall be used only to pay regional jail expenses and the costs  
287 of infrastructure improvements and other capital  
288 improvements; and

289 (4) Transfer ten percent, to be divided and paid in equal  
290 shares, to the governing bodies of each municipality in the  
291 state that is not eligible to receive a distribution under  
292 subdivisions (5) and (6), subsection (b) of this section:  
293 *Provided*, That funds transferred to municipalities under this  
294 subdivision shall be used only to pay for debt reduction in  
295 municipal police and fire pension funds and the costs of  
296 infrastructure improvements and other capital improvements.

297 (e) All expenses of the commission incurred in the  
298 administration and enforcement of this article shall be paid  
299 from the Racetrack Table Games Fund, including  
300 reimbursement of state law-enforcement agencies for services  
301 performed at the request of the commission pursuant to this  
302 article. The commission's expenses associated with a  
303 particular racetrack with authorized table games under this

304 article may not exceed three percent of the total annual  
305 adjusted gross receipts received from that licensee's  
306 operation of table games under this article, including, but not  
307 limited to, all license fees or other amounts attributable to the  
308 licensee's operation of table games under this article, except  
309 as provided in subdivision (2), subsection (a) of this section.  
310 However, for the fiscal year following the licensing of every  
311 licensed racetrack to offer West Virginia lottery racetrack  
312 table games under this article and for the fiscal year  
313 thereafter, the commission's expenses associated with a  
314 particular racetrack with authorized table games under this  
315 article may not exceed four percent of the total annual  
316 adjusted gross receipts received from that licensee's  
317 operation of table games under this article, including, but not  
318 limited to, all license fees or other amounts attributable to the  
319 licensee's operation of table games under this article, except  
320 as provided in subdivision (2), subsection (a) of this section.  
321 These expenses shall either be allocated to the racetrack with  
322 West Virginia Lottery table games for which the expense is  
323 incurred, if practicable, or be treated as general expenses  
324 related to all racetrack table games facilities and be allocated  
325 pro rata among the racetrack table games facilities based on  
326 the ratio that annual adjusted gross receipts from operation of  
327 table games at each racetrack with West Virginia Lottery  
328 table games bears to total annual adjusted gross receipts from  
329 operation of table games at all racetracks with West Virginia  
330 Lottery table games during the fiscal year of the state. From  
331 this allowance, the commission shall transfer at least  
332 \$100,000 but not more than \$500,000 into the Compulsive  
333 Gambling Treatment Fund created in section nineteen, article  
334 twenty-two-a of this chapter.



## CHAPTER 99

**(Com. Sub. for S. B. 498 - By Senators  
Kessler and Chafin)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §9-6-1 of the Code of West Virginia, 1931, as amended, relating to amending the civil definition of “neglect” by making it congruent with the definition of “criminal neglect”; replacing the term “mentally retarded” with “individuals with an intellectual disability”; and providing a definition for “caregiver”.

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

That §9-6-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 6. SOCIAL SERVICES FOR ADULTS.**

#### **§9-6-1. Definitions.**

1 As used in this article:

2 (1) “Adult protective services agency” means any public  
3 or nonprofit private agency, corporation, board or  
4 organization furnishing protective services to adults;

5 (2) “Abuse” means the infliction or threat to inflict  
6 physical pain or injury on or the imprisonment of any  
7 incapacitated adult or facility resident;



8 (3) "Neglect" means:

9 (A) The unreasonable failure by a caregiver to provide  
10 the care necessary to assure the physical safety or health of  
11 an incapacitated adult; or

12 (B) The unlawful expenditure or willful dissipation of the  
13 funds or other assets owned or paid to or for the benefit of an  
14 incapacitated adult or resident;

15 (4) "Incapacitated adult" means any person who by  
16 reason of physical, mental or other infirmity is unable to  
17 independently carry on the daily activities of life necessary to  
18 sustaining life and reasonable health;

19 (5) "Emergency" or "emergency situation" means a  
20 situation or set of circumstances which presents a substantial  
21 and immediate risk of death or serious injury to an  
22 incapacitated adult;

23 (6) "Legal representative" means a person lawfully  
24 invested with the power and charged with the duty of taking  
25 care of another person or with managing the property and  
26 rights of another person, including, but not limited to, a  
27 guardian, conservator, medical power of attorney  
28 representative, trustee or other duly appointed person;

29 (7) "Nursing home" or "facility" means any institution,  
30 residence, intermediate care facility for individuals with an  
31 intellectual disability, care home or any other adult  
32 residential facility, or any part or unit thereof, that is subject  
33 to the provisions of articles five-c, five-d, five-e or five-h,  
34 chapter sixteen of this code;

35 (8) "Regional long-term care ombudsman" means any  
36 paid staff of a designated regional long-term care  
37 ombudsman program who has obtained appropriate

38 certification from the Bureau for Senior Services and meets  
39 the qualifications set forth in section seven, article five-l,  
40 chapter sixteen of this code;

41 (9) "Facility resident" means an individual living in a  
42 nursing home or other facility, as that term is defined in  
43 subdivision (7) of this section;

44 (10) "Responsible family member" means a member of  
45 a resident's family who has undertaken primary  
46 responsibility for the care of the resident and who has  
47 established a working relationship with the nursing home or  
48 other facility in which the resident resides. For purposes of  
49 this article, a responsible family member may include  
50 someone other than the resident's legal representative;

51 (11) "State Long-term Care Ombudsman" means an  
52 individual who meets the qualifications of section five, article  
53 five-l, chapter sixteen of this code and who is employed by  
54 the State Bureau for Senior Services to implement the State  
55 Long-term Care Ombudsman Program;

56 (12) "Secretary" means the Secretary of the Department  
57 of Health and Human Resources.

58 (13) 'Caregiver' means a person or entity who cares for  
59 or shares in the responsibility for the care of an incapacitated  
60 adult on a full-time or temporary basis, regardless of whether  
61 such person or entity has been designated as a guardian or  
62 custodian of the incapacitated adult by any contract,  
63 agreement or legal procedures. Caregiver includes health  
64 care providers, family members, and any person who  
65 otherwise voluntarily accepts a supervisory role towards an  
66 incapacitated adult.



## CHAPTER 100

**(S. B. 512 - By Senator Fanning)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 24, 2010.]

AN ACT to amend and reenact §20-2-19 of the Code of West Virginia, 1931, as amended, relating to trap markings.

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

That §20-2-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 2. WILDLIFE RESOURCES.**

#### **§20-2-19. Marking of traps.**

- 1 All traps used for taking game or fur-bearing animals
- 2 shall be marked with a durable plate or tag attached to the
- 3 snare, trap or trap chain bearing the name and address of the
- 4 owner of the trap.

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## CHAPTER 101

### (S. B. 511 - By Senator Fanning)

[Passed March 13, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2010.]

AN ACT to amend and reenact §20-2-21 of the Code of West Virginia, 1931, as amended, relating to *Castor canadensis*, or beaver, trapping and tagging of pelts.

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

That §20-2-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 2. WILDLIFE RESOURCES.**

##### **§20-2-21. Reporting *Castor canadensis* (beaver); pelts taken and tagged.**

1        Each trapper shall present each *Castor canadensis*  
2 (beaver) or its pelt to a game checking station or  
3 representative of the division within thirty days after the  
4 close of a legal season. A tag provided by the division shall  
5 be affixed to each *Castor canadensis* pelt and remain attached  
6 to the pelt until it is processed into commercial fur.

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**CHAPTER 102**

**(Com. Sub. for H. B. 4531 - By Delegates  
Brown, Miley, Hatfield, Guthrie,  
Lawrence, Poore and Caputo)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §25-1-16 of the Code of West Virginia, 1931, as amended; to further amend said code by adding thereto a new section, designated §31-20-30a; and to amend and reenact §49-5E-6 of said code, all relating to the proper care of inmates in state institutions or facilities; authorizing the transfer of inmates with mental health needs; authorizing the transfer of inmates for medical reasons under appropriate supervision; providing criteria, standards and limitations relating to the proper treatment of pregnant inmates; authorizing restraint of pregnant inmates when necessary; and providing criteria, standards and limitations relating to the proper treatment of pregnant juveniles in the custody of the Division of Juvenile Services.

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

That §25-1-16 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 §31-20-30a; and that §49-5E-6 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 25. Division of Corrections.**
- 31. Corporations.**
- 49. Child Welfare.**

**CHAPTER 25. DIVISION OF CORRECTIONS.****ARTICLE 1. ORGANIZATION, INSTITUTIONS AND  
CORRECTIONS MANAGEMENT.****§25-1-16. Transfer of inmates of state institutions or facilities.**

1           The State Commissioner of Corrections shall have authority  
2   to cause the transfer of any inmate from any correctional facility  
3   to any other state or federal institution or facility which is  
4   better equipped for the care or treatment of such inmate, or  
5   for other good cause or reason.

6           Whenever an inmate committed to the custody of  
7   corrections becomes mentally ill and his or her needs cannot  
8   be properly met within the correctional facility, the  
9   commissioner shall proceed in accordance with section thirty-  
10   one, article five, chapter twenty-eight of this code.

11          Whenever an inmate committed to the custody of  
12   corrections needs medical attention, other than mental health  
13   care, not available at said prison, the warden or administrator  
14   of said correctional facility shall immediately notify the  
15   Commissioner of Corrections who, after proper investigation,  
16   shall cause the transfer of said inmate to a facility properly  
17   equipped to render the medical attention necessary. Such  
18   inmate, while receiving treatment in said hospital, shall be  
19   under an appropriate level of supervision at all times and  
20   shall forthwith be returned to his or her correctional facility  
21   upon release from said facility.

22          In providing or arranging for the necessary medical and  
23   other care and treatment of a pregnant inmate, the warden or  
24   administrator of the correctional facility shall take reasonable  
25   measures to assure that pregnant inmates will not be restrained  
26   after reaching the second trimester of pregnancy until the end  
27   of the pregnancy: *Provided*, That if the inmate, based upon

28 her classification, discipline history, or other factors deemed  
29 relevant by the warden or administrator poses a threat of  
30 escape, or to the safety of herself, the public, staff or the  
31 fetus, the inmate may be restrained in a manner reasonably  
32 necessary: *Provided, however,* That prior to directing the  
33 application of restraints and where there is no threat to the  
34 safety of the inmate, the public, staff or the fetus, the warden,  
35 administrator or designee shall consult with an appropriate  
36 health care professional to assure that the manner of restraint  
37 will not pose an unreasonable risk of harm to the inmate or  
38 the fetus.

## CHAPTER 31. CORPORATIONS.

### ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

#### §31-20-30a. Mechanical restraints during pregnancy.

1 In providing or arranging for the necessary medical and  
2 other care and treatment of inmates committed to the  
3 Regional Jail Authority's custody, the authority shall assure  
4 that pregnant inmates will not be restrained after reaching the  
5 second trimester of pregnancy until the end of the pregnancy:  
6 *Provided,* That if the inmate, based upon her classification,  
7 discipline history, or other factors deemed relevant by the  
8 authority poses a threat of escape, or to the safety of herself,  
9 the public, staff or the fetus, the inmate may be restrained in  
10 a manner reasonably necessary: *Provided, however,* That  
11 prior to directing the application of restraints and where there  
12 is no threat to the safety of the inmate, the public, staff or the  
13 fetus, the director or designee shall consult with an appropriate  
14 health care professional to assure that the manner of restraint  
15 will not pose an unreasonable risk of harm to the inmate or  
16 the fetus.

**CHAPTER 49. CHILD WELFARE.****ARTICLE 5E. DIVISION OF JUVENILE SERVICES.****§49-5E-6. Medical and other treatment of juveniles in custody of the division; coordination of care and claims processing and administration by the department; authorization of certain cooperative agreements.**

1           (a) Notwithstanding any other provision of law to the  
2 contrary, the director, or his or her designee, is hereby  
3 authorized to consent to the medical or other treatment of any  
4 juvenile in the legal or physical custody of the director or the  
5 division.

6           (b) In providing or arranging for the necessary medical  
7 and other care and treatment of juveniles committed to the  
8 division's custody, the director shall utilize service providers  
9 who provide the same or similar services to juveniles under  
10 existing contracts with the Department of Health and Human  
11 Resources. In order to obtain the most advantageous  
12 reimbursement rates, to capitalize on an economy of scale  
13 and to avoid duplicative systems and procedures, the  
14 department shall administer and process all claims for  
15 medical or other treatment of juveniles committed to the  
16 division's custody.

17           (c) In providing or arranging for the necessary medical  
18 and other care and treatment of juveniles committed to the  
19 division's custody, the director shall assure that pregnant  
20 inmates will not be restrained after reaching the second  
21 trimester of pregnancy until the end of the pregnancy:  
22 *Provided*, That if the inmate, based upon her classification,  
23 discipline history or other factors deemed relevant by the  
24 director poses a threat of escape, or to the safety of herself,  
25 the public, staff, or the unborn child, the inmate may be  
26 restrained in a manner reasonably necessary: *Provided*,



27 *however*, That prior to directing the application of restraints  
28 and where there is no threat to the safety of the inmate, the  
29 public, staff or the fetus, the director or designee shall consult  
30 with an appropriate health care professional to assure that the  
31 manner of restraint will not pose an unreasonable risk of  
32 harm to the inmate or the fetus.

33 (d) For purposes of implementing the mandates of this  
34 section, the director is hereby authorized and directed to enter  
35 into any necessary agreements with the Department of Health  
36 and Human Resources. Any such agreement shall specify, at  
37 a minimum, for the direct and incidental costs associated with  
38 such care and treatment to be paid by the Division of Juvenile  
39 Services.

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## CHAPTER 103

**(Com. Sub. for H. B. 4615 -  
By Delegate Campbell)**

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[Passed March 12, 2010; in effect from passage.]  
[Approved by the Governor on April 1, 2010.]

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AN ACT to amend and reenact §29-12A-16 of the Code of West Virginia, 1931, as amended, relating to authorizing political subdivisions to establish risk pools to insure their workers' compensation risks; providing that political subdivisions may not make application to the Insurance Commissioner to operate a risk pool until rules promulgated to regulate such programs have been made effective; and authorizing the Insurance Commissioner to promulgate emergency rules.

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

That §29-12A-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 12A. GOVERNMENTAL TORT CLAIMS AND INSURANCE REFORM ACT.**

**§29-12A-16. Procurement of liability insurance and self-insurance.**

1           (a) A political subdivision may use public funds to secure  
2 insurance with respect to its potential liability and that of its  
3 employees for damages in civil actions for injury, death or  
4 loss to persons or property allegedly caused by an act or  
5 omission of the political subdivision or any of its employees,  
6 including insurance coverage procured through the State  
7 Board of Risk and Insurance Management. The insurance  
8 may be at the limits for the circumstances, and subject to the  
9 terms and conditions that are determined by the political  
10 subdivision in its discretion.

11           The insurance may be for the period that is set forth in  
12 specifications for competitive bids or, when competitive  
13 bidding is not required, for the period that is mutually agreed  
14 upon by the political subdivision and insurance company.  
15 The period does not have to be, but can be, limited to the  
16 fiscal cycle under which the political subdivision is funded  
17 and operates.

18           (b)(1) Regardless of whether a political subdivision  
19 procures a policy or policies of liability insurance pursuant to  
20 subsection (a) of this section or otherwise:

21           (A) Any political subdivision may establish and maintain a  
22 self-insurance program relative to its potential liability and that  
23 of its employees for damages in civil actions for injury, death, or  
24 loss to persons or property allegedly caused by an act or  
25 omission of the political subdivision or any of its employees; or

26           (B) Any group of two or more political subdivisions may  
27 establish and maintain a self-insurance pool relative to their

28 collective potential liability and that of their collective  
29 employees for damages in civil actions for injury, death or  
30 loss to persons or property allegedly caused by an act or  
31 omission of the political subdivision or any of its employees.

32 (2) Beginning July 1, 2010, any group of two or more  
33 political subdivisions may, upon approval of the Insurance  
34 Commissioner, establish and maintain a self-insurance pool  
35 to insure their workers' compensation risks: *Provided*, That  
36 political subdivisions may not make application to the  
37 Insurance Commissioner to operate a risk pool until rules  
38 promulgated pursuant to subsection (g) of this section  
39 regulating such programs have been made effective.

40 (3) If it so chooses, the political subdivision or group of  
41 political subdivisions may contract with any person, any  
42 licensed West Virginia insurance agent, other political  
43 subdivision, municipal association, county association or  
44 regional council of governments for purposes of the  
45 administration of the program or pool.

46 (c) Political subdivisions that have established self-  
47 insurance programs relative to their potential liability and that  
48 of their employees, as described in paragraph (A),  
49 subdivision (1), subsection (b) of this section, may mutually  
50 agree that their self-insurance programs may be jointly  
51 administered in a specified manner.

52 (d) The purchase of liability insurance, or the  
53 establishment and maintenance of a self-insurance program,  
54 by a political subdivision does not constitute a waiver of any  
55 immunity it may have pursuant to this article or any defense  
56 of the political subdivision or its employees.

57 (e) The authorization for political subdivisions to secure  
58 insurance and to establish and maintain self-insurance  
59 programs and pools, as set out in subsections (a) and (b) in  
60 this section, are in addition to any other authority to secure

61 insurance or to establish and maintain self-insurance that is  
62 granted pursuant to this code or the Constitution of this state,  
63 and they are not in derogation of any other authorization.

64 (f) An insurance agent licensed in West Virginia is  
65 authorized to establish or write policies for a self-insurance  
66 program or pool for political subdivisions, pursuant to the  
67 provisions of this section.

68 (g) The Insurance Commissioner shall propose rules for  
69 legislative approval, pursuant to the provisions of chapter  
70 twenty-nine-a of this code, setting forth the criteria for  
71 establishing and maintaining self-insurance programs and  
72 pools for political subdivisions, and may promulgate  
73 emergency rules pursuant to the provisions of section fifteen,  
74 article three, chapter twenty-nine-a of this code.

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## CHAPTER 104

**(Com. Sub. for H. B. 4260 -  
By Delegates Perry and Ashley)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

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AN ACT to repeal §33-12B-2 and §33-12B-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-12B-1, §33-12B-3, §33-12B-5, §33-12B-9, §33-12B-10 and §33-12B-11 of said code; to amend said code by adding thereto a new section, designated §33-12B-10a, all relating to insurance adjusters; providing definitions; permitting an adjuster to designate a home state; establishing a new crop adjuster license and its qualifications; revising the requirements for nonresident

adjusters; revising licensing renewal requirements; requiring notification by adjusters of legal actions taken against them; granting the Insurance Commissioner the authority to examine the business practices of persons holding or applying for adjuster licenses; clarifying the hearing process to be used concerning adverse administrative actions; providing for placing an adjuster on probation for violation of the provisions of the chapter or rules; providing for suspension or revocation of license for failure to pay administrative penalty; increasing maximum administrative penalty for violations; and providing for judicial review.

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

That §33-12B-2 and §33-12B-13 of the Code of West Virginia, 1931, as amended, be repealed; that §33-12B-1, §33-12B-3, §33-12B-5, §33-12B-9, §33-12B-10 and §33-12B-11 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-12B-10a, all to read as follows:

## **ARTICLE 12B. ADJUSTERS.**

- §33-12B-1. Definitions.
- §33-12B-3. Company, public and crop adjusters; concurrency; direct conflict prohibited.
- §33-12B-5. Qualifications for adjuster's license; examinations; exemptions.
- §33-12B-9. Licensing of nonresident adjusters.
- §33-12B-10. Expiration of license; renewal.
- §33-12B-10a. Reporting of actions.
- §33-12B-11. Denial, revocation, suspension, probation or refusal to renew license; penalties.

### **§33-12B-1. Definitions.**

- 1 (a) An "adjuster" is any individual who, for compensation,
- 2 fee or commission, investigates and settles claims arising under
- 3 property, casualty or surety insurance contracts, on behalf solely
- 4 of either the insurer or insured. A licensed attorney who is
- 5 qualified to practice law in this state is deemed not to be an
- 6 adjuster for the purposes of this article.

7 (b) "Company adjuster" means an adjuster representing  
8 the interests of the insurer, including an independent  
9 contractor and a salaried employee of the insurer.

10 (c) "Home state" means the District of Columbia or any  
11 state or territory of the United States in which an adjuster  
12 maintains his or her principal place of residence or business  
13 and in which he or she is licensed to act as a resident adjuster.  
14 If a person's principal place of residence or business does not  
15 license adjusters for the type of adjuster license sought in this  
16 state, he or she shall designate as his or her home state any  
17 state in which he or she has such a license.

18 (d) "Public adjuster" means an independent contractor  
19 representing solely the financial interests of the insured  
20 named in the policy.

21 (e) "Crop adjuster" means a person who adjusts crop  
22 insurance claims under the federal crop insurance program  
23 administered by the United States Department of Agriculture.

**§33-12B-3. Company, public and crop adjusters; concurrency;  
direct conflict prohibited.**

1 The commissioner shall license an individual as a  
2 company adjuster, public adjuster or crop adjuster. An  
3 individual may be licensed concurrently under separate  
4 licenses but shall not act as an adjuster representing the  
5 interests of the insured and the insurer with respect to the  
6 same claim.

**§33-12B-5. Qualifications for adjuster's license; examinations;  
exemptions.**

1 (a) For the protection of the people of West Virginia, the  
2 commissioner shall not issue, renew or permit to exist any  
3 adjuster's license, except to an individual who:

4 (1) Is eighteen years of age or more.

5 (2) Is a resident of West Virginia, except for nonresident  
6 adjusters as provided in section nine of this article.

7 (3) Satisfies the commissioner that he or she is  
8 trustworthy and competent.

9 (b)(1) The commissioner may, at his or her discretion,  
10 test the competency of an applicant for a license under this  
11 section by examination. However, in order to qualify for a  
12 crop adjuster license, an applicant must pass a written  
13 examination that tests the knowledge of the individual  
14 concerning the insurance laws of this state and the duties and  
15 responsibilities of a multi-peril crop adjuster. In lieu of such  
16 an examination, the commissioner may accept certification  
17 that the individual has passed a proficiency examination  
18 approved by the federal Risk Management Agency.

19 (2) If such an examination is required, each examinee  
20 shall pay a \$25 examination fee for each examination to the  
21 commissioner, which fees shall be used for the purposes set  
22 forth in section thirteen, article three of this chapter. The  
23 commissioner may, at his or her discretion, designate an  
24 independent testing service to prepare and administer such  
25 examination subject to direction and approval by the  
26 commissioner, and examination fees charged by such service  
27 shall be paid by the applicant.

28 (c) The requirements of this section do not apply to  
29 licenses issued to emergency adjusters.

### **§33-12B-9. Licensing of nonresident adjusters.**

1 (a) A nonresident applicant for an adjuster license who  
2 holds a similar license in his or her home state may be  
3 licensed as a nonresident adjuster in this state if the  
4 applicant's home state has established, by law or regulation

5 like requirements for the licensing of a resident of this state  
6 as a nonresident adjuster.

7 (b) As a condition of continuing a nonresident adjuster  
8 license, the licensee must maintain a license in his or her  
9 home state.

10 (c) If a nonresident adjuster desires to become a resident  
11 adjuster he or she must apply to become one within ninety  
12 days of establishing legal residency in this state.

13 (d) If a nonresident adjuster has his or her license  
14 suspended, terminated or revoked by his or her home state, the  
15 adjuster must immediately notify the commissioner of that  
16 action.

### **§33-12B-10. Expiration of license; renewal.**

1 (a) All licenses of adjusters shall expire at midnight on May  
2 31 next following the date of issuance and the commissioner  
3 shall renew annually the license of all such licensees who qualify  
4 and make application therefor. However, the commissioner  
5 may, in his or her discretion, establish the dates of expiration of  
6 licenses in any manner deemed advisable for an efficient  
7 distribution of the workload of his or her office.

8 (b) An adjuster whose license expires may, if application  
9 is made within one year of the expiration date, be reissued a  
10 license upon payment of twice the renewal fee.

11 (c) The commissioner may waive any renewal  
12 requirement for any adjuster who is unable to comply due to  
13 military service, long-term medical disability or other  
14 extenuating circumstance.

15 (d) As a condition of the renewal of a crop adjuster license,  
16 the commissioner may require that the licensee demonstrate that  
17 he or she has maintained certification of proficiency issued or  
18 approved by the federal Risk Management Agency.



**§33-12B-10a. Reporting of actions.**

1 (a) An adjuster shall report to the commissioner any  
2 administrative action taken against the adjuster in another  
3 jurisdiction or by another governmental agency in this state  
4 within thirty days of the final disposition of the matter,  
5 including decertification or other action related to the  
6 adjuster's proficiency to adjust multi-peril crop insurance  
7 claims. The report shall include a copy of the order, consent  
8 to order and any other relevant legal documents.

9 (b) Within thirty days of the initial pretrial hearing date, an  
10 adjuster shall report to the commissioner any criminal  
11 prosecution of the adjuster in any jurisdiction. The report shall  
12 include a copy of the initial complaint filed, the order resulting  
13 from the hearing and any other relevant legal documents.

**§33-12B-11. Denial, revocation, suspension, probation or refusal to renew license; penalties.**

1 (a) The commissioner may examine and investigate the  
2 business affairs and conduct of persons applying for or  
3 holding an adjuster license to determine whether such person  
4 is trustworthy and competent or has been or is engaged in any  
5 violation of the insurance laws or rules of this state or in any  
6 unfair or deceptive acts or practices in any state.

7 (b) If the commissioner denies an application for a  
8 license, he or she shall notify the applicant or licensee in  
9 writing of the reason for such action. The applicant or  
10 licensee may, within ten days of receipt of such notice, make  
11 written demand for a hearing before the commissioner to  
12 determine the reasonableness of the action, and such hearing  
13 shall be held in accordance with the provisions of section  
14 thirteen, article two of this chapter.

15 (c) Whenever, after notice and hearing, the commissioner  
16 is satisfied that any adjuster has violated any provision of this

17 chapter or of rules promulgated hereunder, or is incompetent  
18 or untrustworthy, he or she shall place the adjuster on  
19 probation or revoke, suspend, or, if renewal of license is  
20 pending, refuse to renew the license of such adjuster. In  
21 addition to placing a licensee on probation or revoking,  
22 suspending or refusing to renew his or her license, the  
23 commissioner may in his or her discretion order such licensee  
24 to pay to the state of West Virginia an administrative penalty  
25 in a sum not to exceed \$1000 for each violation. Upon the  
26 failure of the licensee to pay such penalty within thirty days,  
27 his or her license shall be revoked or suspended by the  
28 commissioner.

29 (d) Orders issued pursuant to subsection (b) or (c) of this  
30 section are subject to the judicial review provisions of section  
31 fourteen, article two of this chapter.

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## CHAPTER 105

**(Com. Sub. for H. B. 4038 - By Mr. Speaker,  
Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]**

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[Passed March 11, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

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AN ACT to repeal §33-17-9a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-12C-6a; to amend and reenact §33-17-9b of said code; and to amend said code by adding thereto a new article, designated §38-10E-1 and §38-10E-2, all relating to imposing a statutory lien on fire insurance proceeds in the event of a total loss to real property; requiring insurance companies to notify insured and municipality or county after

determining that a claim involves a total loss to real property; defining terms; requiring a municipality or county to perfect the lien within thirty days of notice of a total loss determination; providing for release of the lien upon satisfaction of certain conditions; and authorizing the Insurance Commissioner to declare surplus lines insurers ineligible for certain violations.

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

That §33-17-9a of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §33-12C-6a; to amend and reenact §33-17-9b of said code; and to amend said code by adding thereto a new article, designated §38-10E-1 and §38-10E-2, all to read as follows:

**Chapter**

- 33. Insurance.
- 38. Liens.

**CHAPTER 33. INSURANCE.**

**Article**

- 12C. Surplus Line.
- 17. Fire and Marine Insurance.

**ARTICLE 12C. SURPLUS LINE.**

**§33-12C-6a. Debris removal liens; noncompliance; penalties.**

- 1 The commissioner may declare a surplus lines insurer
- 2 ineligible for committing any violation of the provisions of
- 3 article ten-e, chapter thirty-eight of this code.

**ARTICLE 17. FIRE AND MARINE INSURANCE.**

**§33-17-9b. Claims for total loss; debris removal proceeds.**

- 1 (a) No proceeds shall be paid by an insurance company
- 2 that has issued a policy which provides coverage for debris
- 3 removal for cleanup, removal of refuse, debris, remnants, or

4 remains of a dwelling or structure upon a claim of total loss  
5 unless and until the insurance company receives certification  
6 that the refuse, debris, remnants, or remains of the dwelling  
7 or structure have been cleaned up, removed or otherwise  
8 disposed of. In the event the insurance company receives,  
9 within six months of the date of loss, certification that such  
10 cleanup, removal or disposal costs have been incurred by a  
11 municipality, county or other governmental entity, rather than  
12 the policyholder, such debris removal and cleanup proceeds  
13 shall be paid to the municipality, county or other government  
14 entity which has incurred such costs: *Provided*, That any  
15 company that has issued a policy that provides coverage for  
16 damage to real property as a result of fire or explosion,  
17 regardless of whether such policy includes coverage for  
18 debris removal, shall comply with the provisions of section  
19 one, article ten-e, chapter thirty-eight of this code.

20 No insurance company subject to this section which  
21 complies with this section may be held liable for any claim  
22 that may arise out of the cleanup, removal or disposal of  
23 debris pursuant to this section.

24 (b) An insurance company subject to this section that  
25 complies with this section and with section one, article ten-e,  
26 chapter thirty-eight of this code shall be deemed to have fully  
27 satisfied all contractual obligations to the policyholder  
28 regarding debris removal; in no event shall an insurance  
29 company be required to pay moneys in excess of policy  
30 limits.

31 (c) Compliance with this section and section one, article  
32 ten-e, chapter thirty-eight of the code may not be deemed a  
33 violation of section nine of this article.

## CHAPTER 38. LIENS.

### ARTICLE 10E. LIEN ON INSURANCE PROCEEDS FOR DEBRIS REMOVAL.

§38-10E-1. Debris removal; notice of insurance proceeds; lien of municipality and county.

§38-10E-2. Release of lien.

**§38-10E-1. Debris removal; notice of insurance proceeds; lien of municipality and county.**

1           (a)(1) Notwithstanding any provision of this code to the  
2 contrary, the receipt by an insurance company of a claim  
3 under a fire insurance policy for a total loss to real property  
4 creates a statutory lien on the insurance proceeds payable for  
5 such claim in favor of the municipality in which the property  
6 is situate or, if the property is located outside a municipality,  
7 the county in which the property is situate, in an amount  
8 equal to the greater of: (A) \$5,000; or (B) ten percent of the  
9 policy limits for loss to the real property, including any  
10 coverage for debris removal: *Provided*, That the amount of  
11 thelien may not exceed the policy limits of coverage for the  
12 real property plus debris removal, if any: *Provided, however*,  
13 That the lien created by this subsection does not apply to  
14 proceeds payable under the policy for any losses other than  
15 those to the real property insured, including loss of personal  
16 property and payments for temporary housing and related  
17 living expenses.

18           (2) The terms “municipality” and “treasurer” have the  
19 same meanings ascribed to them in section two, article one,  
20 chapter eight of this code.

21           (b) Within ten days of a determination by the insurer that  
22 a covered claim constitutes a total loss, the insurance  
23 company shall send certified letters to the insured and, as  
24 applicable, to the treasurer of the municipality in which the  
25 propertyis situate or, if the property is situate outside a  
26 municipality, to the sheriff of the county in which the  
27 property is situate, stating any amount claimed; the limits and  
28 conditions of coverage; the location of the property; the terms  
29 and limits of coverage designated by the insurance policy for  
30 securing, cleanup and removal, if any; any time limitations

31 imposed on the insured for securing, cleanup and removal;  
32 and the policyholder's name and mailing address.

33 (c)(1) The lien created pursuant to subsection (a) of this  
34 section shall be discharged unless the municipality or county,  
35 whichever is applicable, within thirty days of the receipt of  
36 the letter sent in accordance with subsection (b) of this  
37 section, perfects and preserves such lien by filing a notice  
38 thereof with the clerk of the county commission of the county  
39 in which such property is situate: *Provided*, That upon filing  
40 of a notice of lien in accordance with this subdivision, the  
41 amount of the lien created in subsection (a) shall thereafter be  
42 for the estimated cost of cleanup contained in such notice of  
43 lien: *Provided, however*, That the discharge of a lien based  
44 on the municipality's or county's failure to file a notice  
45 pursuant to this subdivision does not affect any other  
46 remedies the municipality or county may have with respect  
47 to such property or the liability of the property owner.

48 (2) A notice of lien filed in accordance with this  
49 subsection shall include a statement of the estimated cost to  
50 the municipality or county for the cleanup of the damaged  
51 property, removal of any refuse, debris, remnants or remains  
52 of the building and appurtenances, and securing the structure:  
53 *Provided*, That such estimated cost may not exceed the  
54 amount of the lien created pursuant to subsection (a) of this  
55 section.

56 (3) A notice of lien filed in accordance with this section  
57 shall be notarized and shall be sufficient if in form and effect  
58 as follows:

59 Notice of Lien for Debris Removal

60 To (name of insurance company):

61 You will please take notice that the undersigned, on  
62 behalf of the (municipality or county) (of County, if a

63 municipality), West Virginia, has estimated that the cost of  
64 removing debris and otherwise cleaning up (a certain  
65 building, other structure or improvement) on real estate  
66 known as (an adequate and ascertainable description of the  
67 real estate) would be (estimated cleanup cost).

68 You are further notified that, in order to secure the  
69 payment of such sum, the undersigned, on behalf of the  
70 (municipality or county) and pursuant to the provisions of  
71 section one, article ten-e, chapter thirty-eight of the West  
72 Virginia Code, claims a lien in such amount upon the interest  
73 of (policyholder's name) in a fire insurance policy (the policy  
74 number or other identifying information) issued by (the  
75 insurance company's name and address).

76 (Signature of treasurer or municipal officer exercising the  
77 power and authority commonly exercised by a treasurer, or  
78 sheriff)

79 (Title)

80 (d) The clerk of the county commission shall, upon the  
81 filing of such notice, index the same in a book in his or her  
82 office called "Debris Removal Liens" as a lien against the  
83 insurance proceeds in favor of the municipality or county and  
84 shall send a copy of the notice to the insurer.

### §38-10E-2. Release of lien.

1 (a) A lien recorded in accordance with section one of this  
2 article shall be released if the municipality or county  
3 determines that the property has been satisfactorily cleaned  
4 up or repaired, the city or county determines that satisfactory  
5 measures have been taken to assure that the property will be  
6 repaired or cleaned up within a reasonable time, with the  
7 property owner first being given the opportunity to make said  
8 clean-up or removal within sixty days, or that the insurance

9 company has paid the amount of the lien to the municipality  
10 or county or such person designated to receive such moneys:  
11 *Provided*, That if the insurer has paid the amount of the lien  
12 to the treasurer or sheriff and the subsequent cost of cleanup  
13 is less than that amount, the difference shall be returned to  
14 the insurer.

15 (b) Upon the satisfaction of a lien in accordance with  
16 subsection (a) of this section, the treasurer or sheriff,  
17 whichever is applicable, shall sign a release and cause it to be  
18 recorded by the clerk of the county commission in the  
19 “Debris Removal Liens” book and, immediately upon  
20 recordation, he or she shall send a certified copy thereof to  
21 the insurance company: *Provided*, That if a lien has been  
22 paid or otherwise satisfied and the treasurer or sheriff refuses  
23 to cause such lien to be released, the insurance company or  
24 policyholder may apply to the circuit court for an order  
25 compelling the clerk to record a release.

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## CHAPTER 106

**(Com. Sub. for S. B. 665 -  
By Senator Prezioso)**

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[Passed March 11, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2010.]

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AN ACT to repeal §33-15B-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-15B-1, §33-15B-2, §33-15B-3 and §33-15B-5 of said code, all relating to health care forms; explaining legislative purpose; defining scope of article; transferring certain duties regarding uniform forms from the Health Care Authority to the Insurance



Commissioner; adding Department of Health and Human Resources to advisory committee; authorizing Insurance Commissioner to propose rules; and prescribing penalties.

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

That §33-15B-4 of the Code of West Virginia, 1931, as amended, be repealed; and that §33-15B-1, §33-15B-2, §33-15B-3 and §33-15B-5 of said code be amended and reenacted, all to read as follows:

## **ARTICLE 15B. UNIFORM HEALTH CARE ADMINISTRATION ACT.**

§33-15B-1. Legislative findings; purpose.

§33-15B-2. Scope of article.

§33-15B-3. Insurance Commissioner to propose rules; use of standardized forms and classifications; advisory group.

§33-15B-5. Penalties for violation.

### **§33-15B-1. Legislative findings; purpose.**

1       The Legislature hereby finds that there is a need to  
2 provide guidelines regarding uniform health care  
3 administration in order to best serve consumers, health care  
4 providers and insurers and to organize and streamline the  
5 claims process. The purpose of this article is to authorize the  
6 Insurance Commissioner to develop standard forms and  
7 procedures regarding health care claims and to require that all  
8 insurers, third party payers, and health care providers  
9 implement and use such standards in a uniform manner.

### **§33-15B-2. Scope of article.**

1       The provisions of this article apply to all health care  
2 providers in the state; all health insurers writing or issuing  
3 accident and sickness policies, including hospital service

4 corporations, health service corporations, medical service  
5 corporations, dental service corporations and HMOs; all third  
6 party payers; all state agencies and departments, including,  
7 but not limited to, the public employees insurance agency and  
8 providers of services under Medicare and Medicaid; and all  
9 entities involved in the payment of health care claims.

**§33-15B-3. Insurance Commissioner to propose rules; use of  
standardized forms and classifications; advisory  
group.**

1 (a) The commissioner shall propose rules for legislative  
2 approval, in accordance with the provisions of chapter  
3 twenty-nine-a of this code, regarding the implementation and  
4 use of uniform health care administrative forms. Such rules  
5 shall establish, where practicable, the acceptance and use  
6 throughout the health care system of standard administrative  
7 forms, terms or procedures, including, but not limited to, the  
8 following:

9 (1) The standard CMS 1500 health insurance claim form,  
10 as amended, or other similar forms, terms, and definitions to  
11 be used which are consistent with health care and insurance  
12 industry standards.

13 (2) International classification of disease, ninth clinical  
14 modifications (ICD-9-CM) and common procedural  
15 terminology (CPT) codes, as amended, or other similar  
16 forms, terms, and definitions to be used which are consistent  
17 with health care and insurance industry standards.

18 (3) National uniform billing data element  
19 specifications(UB-04), as amended, and as supplemented by  
20 the West Virginia uniform billing committee, or other similar  
21 forms, terms, and definitions to be used which are consistent  
22 with health care and insurance industry standards.

23       (4) Consideration of current practices involving  
24 reimbursement of claims and explanation of benefits, and the  
25 implementation of standards and guidelines regarding  
26 explanation of benefits, including, but not limited to,  
27 consideration of line item explanations of payments or denial  
28 of payments.

29       (b) The legislative rules required herein shall be  
30 developed with the advice of an advisory group to be  
31 appointed by the commissioner. Such advisory group shall  
32 consist of representatives of consumers, providers, payors,  
33 and regulatory agencies, including representatives from the  
34 following: The department of health and human resources;  
35 the West Virginia health care authority; West Virginia dental  
36 association; West Virginia pharmacists association; the West  
37 Virginia hospital association; commercial health insurers;  
38 third party administrators; the West Virginia state medical  
39 association; the West Virginia nurses association; public  
40 employees insurance agency; and consumers.

41       (c) The commissioner and the advisory group shall  
42 review the legislative rules to be proposed pursuant to this  
43 section as necessary and update the same in a timely manner  
44 in order to conform to current legislation and health care and  
45 insurance industry standards and trends.

### **§33-15B-5. Penalties for violation.**

1       Any person, partnership, corporation, limited liability  
2 company, professional corporation, health care provider,  
3 insurer or other payer, or other entity violating any provision  
4 of this article shall be subject to a fine imposed by the  
5 commissioner of not more than \$1000 for each violation and,  
6 in addition to or in lieu of any fine imposed, the West  
7 Virginia health care authority is empowered to withhold rate  
8 approval or a certificate of need for any health care provider  
9 violating any provision of this article.

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**CHAPTER 107**

**(Com. Sub. for S. B. 483 - By Senators  
Minard and Chafin)**

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[Amended and again passed March 20, 2010 as a result of the  
objections of the Governor; in effect ninety days from passage.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §33-25A-2 and §33-25A-5 of the Code of West Virginia, 1931, as amended, all relating to health maintenance organizations; authority to provide a point of service option; and authority for the Office of the Insurance Commissioner to develop standards for a point of service option by legislative and emergency rule.

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

That §33-25A-2 and §33-25A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

**ARTICLE 25A. HEALTH MAINTENANCE  
ORGANIZATION ACT.**

§33-25A-2. Definitions.

§33-25A-5. Powers of health maintenance organizations.

**§33-25A-2. Definitions.**

- 1 (1) “Basic health care services” means physician,
- 2 hospital, out-of-area, podiatric, chiropractic, laboratory, X
- 3 ray, emergency, treatment for serious mental illness as
- 4 provided in section three-a, article sixteen of this chapter, and
- 5 cost-effective preventive services including immunizations,

6 well-child care, periodic health evaluations for adults,  
7 voluntary family planning services, infertility services, and  
8 children's eye and ear examinations conducted to determine  
9 the need for vision and hearing corrections, which services  
10 need not necessarily include all procedures or services  
11 offered by a service provider.

12 (2) "Capitation" means the fixed amount paid by a health  
13 maintenance organization to a health care provider under  
14 contract with the health maintenance organization in  
15 exchange for the rendering of health care services.

16 (3) "Commissioner" means the commissioner of insurance.

17 (4) "Consumer" means any person who is not a provider  
18 of care or an employee, officer, director or stockholder of any  
19 provider of care.

20 (5) "Copayment" means a specific dollar amount, or  
21 percentage, except as otherwise provided for by statute, that  
22 the subscriber must pay upon receipt of covered health care  
23 services and which is set at an amount or percentage  
24 consistent with allowing subscriber access to health care  
25 services.

26 (6) "Employee" means a person in some official  
27 employment or position working for a salary or wage  
28 continuously for no less than one calendar quarter and who  
29 is in such a relation to another person that the latter may  
30 control the work of the former and direct the manner in  
31 which the work shall be done.

32 (7) "Employer" means any individual, corporation,  
33 partnership, other private association, or state or local  
34 government that employs the equivalent of at least two full-  
35 time employees during any four consecutive calendar  
36 quarters.

37 (8) “Enrollee”, “subscriber” or “member” means an  
38 individual who has been voluntarily enrolled in a health  
39 maintenance organization, including individuals on whose  
40 behalf a contractual arrangement has been entered into with  
41 a health maintenance organization to receive health care  
42 services.

43 (9) “Evidence of coverage” means any certificate,  
44 agreement or contract issued to an enrollee setting out the  
45 coverage and other rights to which the enrollee is entitled.

46 (10) “Health care services” means any services or goods  
47 included in the furnishing to any individual of medical,  
48 mental or dental care, or hospitalization or incident to the  
49 furnishing of the care or hospitalization, osteopathic services,  
50 chiropractic services, podiatric services, home health, health  
51 education or rehabilitation, as well as the furnishing to any  
52 person of any and all other services or goods for the purpose  
53 of preventing, alleviating, curing or healing human illness or  
54 injury.

55 (11) “Health maintenance organization” or “HMO”  
56 means a public or private organization which provides, or  
57 otherwise makes available to enrollees, health care services,  
58 including at a minimum basic health care services and which:

59 (A) Receives premiums for the provision of basic health  
60 care services to enrollees on a prepaid per capita or prepaid  
61 aggregate fixed sum basis, excluding copayments;

62 (B) Provides physicians’ services primarily: (i) Directly  
63 through physicians who are either employees or partners of  
64 the organization; or (ii) through arrangements with individual  
65 physicians or one or more groups of physicians organized on  
66 a group practice or individual practice arrangement; or (iii)  
67 through some combination of paragraphs (i) and (ii) of this  
68 subdivision;

69 (C) Assures the availability, accessibility and quality,  
70 including effective utilization, of the health care services  
71 which it provides or makes available through clearly  
72 identifiable focal points of legal and administrative  
73 responsibility; and

74 (D) Offers services through an organized delivery system in  
75 which a primary care physician or primary care provider is  
76 designated for each subscriber upon enrollment. The primary  
77 care physician or primary care provider is responsible for  
78 coordinating the health care of the subscriber and is responsible  
79 for referring the subscriber to other providers when necessary:  
80 *Provided*, That when dental care is provided by the health  
81 maintenance organization the dentist selected by the subscriber  
82 from the list provided by the health maintenance organization  
83 shall coordinate the covered dental care of the subscriber, as  
84 approved by the primary care physician or the health  
85 maintenance organization.

86 (12) "Impaired" means a financial situation in which,  
87 based upon the financial information which would be  
88 required by this chapter for the preparation of the health  
89 maintenance organization's annual statement, the assets of  
90 the health maintenance organization are less than the sum of  
91 all of its liabilities and required reserves including any  
92 minimum capital and surplus required of the health  
93 maintenance organization by this chapter so as to maintain its  
94 authority to transact the kinds of business or insurance it is  
95 authorized to transact.

96 (13) "Individual practice arrangement" means any  
97 agreement or arrangement to provide medical services on  
98 behalf of a health maintenance organization among or  
99 between physicians or between a health maintenance  
100 organization and individual physicians or groups of  
101 physicians, where the physicians are not employees or  
102 partners of the health maintenance organization and are not  
103 members of or affiliated with a medical group.

104       (14) “Insolvent” or “insolvency” means a financial  
105 situation in which, based upon the financial information that  
106 would be required by this chapter for the preparation of the  
107 health maintenance organization’s annual statement, the  
108 assets of the health maintenance organization are less than  
109 the sum of all of its liabilities and required reserves.

110       (15) “Medical group” or “group practice” means a  
111 professional corporation, partnership, association or other  
112 organization composed solely of health professionals  
113 licensed to practice medicine or osteopathy and of other  
114 licensed health professionals, including podiatrists, dentists  
115 and optometrists, as are necessary for the provision of health  
116 services for which the group is responsible: (a) A majority of  
117 the members of which are licensed to practice medicine or  
118 osteopathy; (b) who as their principal professional activity  
119 engage in the coordinated practice of their profession; (c)  
120 who pool their income for practice as members of the group  
121 and distribute it among themselves according to a  
122 prearranged salary, drawing account or other plan; and (d)  
123 who share medical and other records and substantial portions  
124 of major equipment and professional, technical and  
125 administrative staff.

126       (16) “Point of service option” means a delivery system  
127 that permits an enrollee to receive health care services from  
128 a provider outside of the panel of providers with which the  
129 health maintenance organization has a contractual  
130 arrangement under the terms and conditions of the enrollee’s  
131 contract with the health maintenance organization or the  
132 insurance carrier that provides the point of service option.

133       (17) “Premium” means a prepaid per capita or prepaid  
134 aggregate fixed sum unrelated to the actual or potential  
135 utilization of services of any particular person which is  
136 charged by the health maintenance organization for health  
137 services provided to an enrollee.



138       (18) “Primary care physician” means the general  
139 practitioner, family practitioner, obstetrician/gynecologist,  
140 pediatrician or specialist in general internal medicine who is  
141 chosen or designated for each subscriber who will be  
142 responsible for coordinating the health care of the subscriber,  
143 including necessary referrals to other providers.

144       (19) “Primary care provider” means a person who may be  
145 chosen or designated in lieu of a primary care physician for  
146 each subscriber, who will be responsible for coordinating the  
147 health care of the subscriber, including necessary referrals to  
148 other providers, and includes:

149       (A) An advanced nurse practitioner practicing in  
150 compliance with article seven, chapter thirty of this code and  
151 other applicable state and federal laws, who develops a  
152 mutually agreed upon association in writing with a primary  
153 care physician on the panel of and credentialed by the health  
154 maintenance organization; and

155       (B) A certified nurse-midwife, but only if chosen or  
156 designated in lieu of a subscriber’s primary care physician or  
157 primary care provider during the subscriber’s pregnancy and  
158 for a period extending through the end of the month in which  
159 the sixty-day period following termination of pregnancy  
160 ends.

161       (C) Nothing in this subsection may be construed to  
162 expand the scope of practice for advanced nurse practitioners  
163 as governed by article seven, chapter thirty of this code or  
164 any legislative rule, or for certified nurse-midwives, as  
165 defined in article fifteen, chapter thirty of this code.

166       (20) “Provider” means any physician, hospital or other  
167 person or organization which is licensed or otherwise  
168 authorized in this state to furnish health care services.

169 (21) “Uncovered expenses” means the cost of health care  
170 services that are covered by a health maintenance  
171 organization, for which a subscriber would also be liable in  
172 the event of the insolvency of the organization.

173 (22) “Service area” means the county or counties  
174 approved by the commissioner within which the health  
175 maintenance organization may provide or arrange for health  
176 care services to be available to its subscribers.

177 (23) “Statutory surplus” means the minimum amount of  
178 unencumbered surplus which a corporation must maintain  
179 pursuant to the requirements of this article.

180 (24) “Surplus” means the amount by which a  
181 corporation’s assets exceeds its liabilities and required  
182 reserves based upon the financial information which would  
183 be required by this chapter for the preparation of the  
184 corporation’s annual statement except that assets pledged to  
185 secure debts not reflected on the books of the health  
186 maintenance organization shall not be included in surplus.

187 (25) “Surplus notes” means debt which has been  
188 subordinated to all claims of subscribers and general  
189 creditors of the organization.

190 (26) “Qualified independent actuary” means an actuary  
191 who is a member of the American academy of actuaries or  
192 the society of actuaries and has experience in establishing  
193 rates for health maintenance organizations and who has no  
194 financial or employment interest in the health maintenance  
195 organization.

196 (27) “Quality assurance” means an ongoing program  
197 designed to objectively and systematically monitor and  
198 evaluate the quality and appropriateness of the enrollee’s  
199 care, pursue opportunities to improve the enrollee’s care and

200 to resolve identified problems at the prevailing professional  
201 standard of care.

202 (28) "Utilization management" means a system for the  
203 evaluation of the necessity, appropriateness and efficiency of  
204 the use of health care services, procedure and facilities.

**§33-25A-5. Powers of health maintenance organizations.**

1 (a) Upon obtaining a certificate of authority as required  
2 under this article, a health maintenance organization may  
3 enter into health maintenance contracts in this state and  
4 engage in any activities, consistent with the purposes and  
5 provisions of this article, which are necessary to the  
6 performance of its obligations under such contracts, subject  
7 to the limitations provided in this article. A health  
8 maintenance organization may offer to its enrollees in  
9 conjunction with the benefits provided to them through their  
10 contractual arrangement for health services with the health  
11 maintenance organization a point of service option to be  
12 provided either by the health maintenance organization  
13 directly or by an insurance carrier licensed in this state with  
14 which the health maintenance organization has a contractual  
15 arrangement. Benefits for health care services within the  
16 health maintenance organization's contracted provider panel  
17 shall comply with all other provisions of this article.

18 (b) The commissioner shall propose rules for legislative  
19 approval in accordance with the provisions of article three,  
20 chapter twenty-nine-a of this code limiting or regulating the  
21 powers of health maintenance organizations which the  
22 commissioner finds to be in the public interest. The  
23 commissioner may promulgate emergency rules pursuant to  
24 the provisions of section fifteen, article three, chapter twenty-  
25 nine-a of this code to implement standards and requirements  
26 for a point of service option.

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## CHAPTER 108

**(Com. Sub. for H. B. 4128-  
By Delegate Perry)**

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[Passed March 3, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 10, 2010.]

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AN ACT to repeal §33-34-11 of the Code of West Virginia, 1931, as amended; to repeal §33-34A-1, §33-34A-2, §33-34A-3, §33-34A-4, §33-34A-5, §33-34A-6, §33-34A-7 and §33-34A-8 of said code; to amend and reenact §33-34-3 and §33-34-4 of said code; and to further amend said article by adding thereto a new section, designated §33-34-3a, all relating to determining when insurance companies are to be deemed to be in hazardous financial condition; deleting severability provisions; providing for consideration of impact on creditors; providing for entry of an order by the commissioner placing the insurer under administrative supervision; revising standards and authority for the Insurance Commissioner's identification of companies in potentially hazardous condition; providing for additional remedies; removing requirement of hearing prior to entry of order of supervision; requiring a prompt hearing and providing procedure; and revising confidentiality provisions.

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

That §33-34-11 of the Code of West Virginia, 1931, as amended, be repealed; that §33-34A-1, §33-34A-2, §33-34A-3, §33-34A-4, §33-34A-5, §33-34A-6, §33-34A-7 and §33-34A-8 of said code be repealed; that §33-34-3 and §33-34-4 of said code be amended and reenacted; and that said article be amended by adding thereto a new section, designated §33-34-3a, all to read as follows:

**ARTICLE 34. ADMINISTRATIVE SUPERVISION.**

§33-34-3. Administrative supervision; order; review.

§33-34-3a. Standards to determine hazardous condition; commissioner's authority.

§33-34-4. Confidentiality of certain proceedings and records.

**§33-34-3. Administrative supervision; order; review.**

1 (a) An insurer may be subject to administrative  
2 supervision by the commissioner if upon examination or at  
3 any other time it appears in the commissioner's discretion  
4 that:

5 (1) The insurer's condition renders the continuance of its  
6 business hazardous to the public, to its insureds or to its  
7 creditors;

8 (2) The insurer has or appears to have exceeded its  
9 powers granted under its certificate of authority and  
10 applicable law;

11 (3) The insurer has failed to comply with the applicable  
12 provisions of this chapter or chapter twenty-three of this  
13 code;

14 (4) The business of the insurer is being conducted  
15 fraudulently; or

16 (5) The insurer gives its consent.

17 (b) If the commissioner determines that one or more of  
18 the conditions set forth in subsection (a) of this section exist,  
19 the commissioner shall enter an order placing the insurer  
20 under administrative supervision of the commissioner. The  
21 order shall:

22 (1) Notify the insurer of the commissioner's  
23 determination and set forth the conduct, conditions and

24 grounds upon which the commissioner based the  
25 determination;

26 (2) Set forth all requirements necessary to abate the  
27 determination; and

28 (3) Notify the insurer that it is under the supervision of  
29 the commissioner and that the commissioner is applying and  
30 effectuating the provisions of the article.

31 (c) (1) If placed under administrative supervision, the  
32 insurer shall have sixty days, or another period of time as  
33 designated by the commissioner, to comply with the  
34 requirements of the commissioner subject to the provisions  
35 of this article.

36 (2) If it is determined after notice and hearing that  
37 conditions giving rise to the supervision still exist at the end  
38 of the supervision period specified above, the commissioner  
39 may enter an order to extend such period.

40 (3) If it is determined by the commissioner that  
41 conditions giving rise to the supervision have been corrected,  
42 the commissioner shall enter an order to release the insurer  
43 from supervision.

44 (d) (1) An insurer subject to an order placing the insurer  
45 under administrative supervision may contest and seek  
46 review of the order, or any extensions or modifications  
47 thereof, pursuant to the provisions of section thirteen, article  
48 two of this chapter. Every notice of hearing shall state the  
49 time and place of the hearing and the conduct, condition or  
50 ground upon which the commissioner based the order. Unless  
51 mutually agreed between the commissioner and the insurer,  
52 the hearing shall occur not less than ten days nor more than  
53 thirty days after notice is served.

54 (2) A hearing upon an order of the commissioner in  
55 which the commissioner is alleging, pursuant to subdivision  
56 (1), subsection (a) of this section that the insurer's condition  
57 renders the continuance of its business hazardous to the  
58 public, its insureds or its creditors shall be held privately  
59 unless the insurer requests a public hearing, in which case the  
60 hearing shall be public.

61 (3) During the period of supervision, the insurer may  
62 contest an action taken or proposed to be taken by the  
63 supervisor specifying the manner wherein the action being  
64 complained of would not result in improving the condition of  
65 the insurer.

**§33-34-3a. Standards to determine hazardous condition;  
commissioner's authority.**

1 (a) *Standards.* -- In making a determination pursuant to  
2 subdivision (1), subsection (a), section three of this chapter  
3 as to whether the continued operation of an insurer  
4 transacting an insurance business in this state might be  
5 deemed to be hazardous to the public, to its insureds or to its  
6 creditors, the commissioner may consider the following  
7 standards either singly or in combination:

8 (1) Adverse findings reported in financial condition and  
9 market conduct examination reports, audit reports and  
10 actuarial opinions, reports or summaries;

11 (2) The National Association of Insurance Commissioners'  
12 insurance regulatory information system and its other  
13 financial analysis solvency tools and reports;

14 (3) Whether the insurer has made adequate provision,  
15 according to presently accepted actuarial standards of  
16 practice, for the anticipated cash flows required by the  
17 contractual obligations and related expenses of the insurer,  
18 when considered in light of the assets held by the insurer with

19 respect to such reserves and related actuarial items including,  
20 but not limited to, the investment earnings on such assets and  
21 the considerations anticipated to be received and retained  
22 under such policies and contracts;

23 (4) The ability of an assuming reinsurer to perform and  
24 whether the insurer's reinsurance program provides sufficient  
25 protection for the insurer's remaining surplus, after taking  
26 into account the insurer's cash flow and the classes of  
27 business written as well as the financial condition of the  
28 assuming reinsurer;

29 (5) Whether the insurer's operating loss in the last twelve-  
30 month period or any shorter period of time, including but not  
31 limited to net capital gain or loss, change in nonadmitted assets  
32 and cash dividends paid to shareholders, is greater than fifty  
33 percent of such insurer's remaining surplus as regards  
34 policyholders in excess of the minimum required;

35 (6) Whether the insurer's operating loss in the last  
36 twelve-month period or any shorter period of time, excluding  
37 net capital gains, is greater than twenty percent of the  
38 insurer's remaining surplus as regards policyholders in  
39 excess of the minimum required;

40 (7) Whether a reinsurer, obligor or any entity within the  
41 insurer's insurance holding company system is insolvent,  
42 threatened with insolvency or delinquent in payment of its  
43 monetary or other obligations and which in the opinion of the  
44 commissioner may affect the solvency of the insurer;

45 (8) Contingent liabilities, pledges or guaranties which  
46 either individually or collectively involve a total amount  
47 which in the opinion of the commissioner may affect the  
48 solvency of the insurer;



49           (9) Whether any controlling person of an insurer is  
50 delinquent in the transmitting to, or payment of, net  
51 premiums to such insurer;

52           (10) The age and collectability of receivables;

53           (11) Whether the management of an insurer, including  
54 officers, directors or any other person who directly or  
55 indirectly controls the operation of such insurer, fails to  
56 possess and demonstrate the competence, fitness and  
57 reputation deemed necessary to serve the insurer in such  
58 position;

59           (12) Whether management of an insurer has failed to  
60 respond to inquiries relative to the condition of the insurer or  
61 has furnished false and misleading information concerning an  
62 inquiry;

63           (13) Whether the insurer has failed to meet financial and  
64 holding company filing requirements in the absence of a  
65 reason satisfactory to the commissioner;

66           (14) Whether management of an insurer has filed any false  
67 or misleading sworn financial statement, released a false or  
68 misleading financial statement to lending institutions or to the  
69 general public, or made a false or misleading entry or omitted an  
70 entry of material amount in the books of the insurer;

71           (15) Whether the insurer has grown so rapidly and to  
72 such an extent that it lacks adequate financial and  
73 administrative capacity to meet its obligations in a timely  
74 manner;

75           (16) Whether the insurer has experienced or will  
76 experience in the foreseeable future cash flow or liquidity  
77 problems;

78           (17) Whether management has established reserves that  
79 do not comply with minimum standards established by this  
80 chapter or the rules promulgated thereunder, statutory  
81 accounting standards, sound actuarial principles and  
82 standards of practice;

83           (18) Whether management persistently engages in material  
84 under-reserving that results in adverse development;

85           (19) Whether transactions among affiliates, subsidiaries  
86 or controlling persons for which the insurer receives assets or  
87 capital gains, or both, do not provide sufficient value,  
88 liquidity or diversity to assure the insurer's ability to meet its  
89 outstanding obligations as they mature; and

90           (20) Any other finding determined by the commissioner  
91 to be hazardous to the insurer's insureds, creditors or the  
92 general public.

93           (b) *Commissioner's authority.* -- For the purposes of  
94 making a determination of an insurer's financial condition  
95 under this section, the commissioner may:

96           (1) Disregard any credit or amount receivable resulting  
97 from transactions with a reinsurer that is insolvent, impaired  
98 or otherwise subject to a delinquency proceeding;

99           (2) Make appropriate adjustments, including disallowance,  
100 to asset values attributable to investments in or transactions  
101 with parents, subsidiaries or affiliates consistent with the  
102 NAIC Accounting Policies And Procedures Manual, state  
103 laws and rules;

104           (3) Refuse to recognize the stated value of accounts  
105 receivable if the ability to collect receivables is highly  
106 speculative in view of the age of the account or the financial  
107 condition of the debtor; or

108           (4) Increase the insurer's liability in an amount equal to  
109 any contingent liability, pledge or guarantee not otherwise  
110 included if there is a substantial risk that the insurer will be  
111 called upon to meet the obligation undertaken within the next  
112 twelve-month period.

113           (c) *Order.* -- If the commissioner determines that the  
114 continued operation of the insurer may be hazardous to its  
115 insureds, creditors or the general public, then the  
116 commissioner may order the insurer to do one or more of the  
117 following: *Provided,* That if the insurer is a foreign insurer,  
118 the commissioner's order may be limited to the extent  
119 provided by statute:

120           (1) Reduce the total amount of present and potential  
121 liability for policy benefits by reinsurance;

122           (2) Reduce, suspend or limit the volume of business  
123 being accepted or renewed;

124           (3) Reduce general insurance and commission expenses  
125 by specified methods;

126           (4) Increase the insurer's capital and surplus;

127           (5) Suspend or limit the declaration and payment of  
128 dividend by an insurer to its stockholders or to its  
129 policyholders;

130           (6) File reports in a form acceptable to the commissioner  
131 concerning the market value of an insurer's assets;

132           (7) Limit or withdraw from certain investments or  
133 discontinue certain investment practices to the extent the  
134 commissioner deems necessary;

135           (8) Document the adequacy of premium rates in relation  
136 to the risks insured;

137 (9) File, in addition to regular annual statements, interim  
138 financial reports on the form adopted by the National  
139 Association of Insurance Commissioners or in such format as  
140 promulgated by the commissioner.

141 (10) Correct corporate governance practice deficiencies,  
142 and adopt and utilize governance practices acceptable to the  
143 commissioner;

144 (11) Provide a business plan to the commissioner in order  
145 to continue to transact business in the state; or

146 (12) Notwithstanding any other provision of law limiting  
147 the frequency or amount of premium rate adjustments, adjust  
148 rates for any nonlife insurance product written by the insurer  
149 that the commissioner considers necessary to improve the  
150 financial condition of the insurer.

**§33-34-4. Confidentiality of certain proceedings and records.**

1 (a) Notwithstanding any other provision of law and  
2 except as set forth in this section, proceedings, hearings,  
3 notices, correspondence, reports, records and other  
4 information in the possession of the commissioner relating to  
5 the supervision of any insurer shall not be subject to  
6 disclosure as provided in article one, chapter twenty-nine-b  
7 of this code, shall not be subject to subpoena and shall not be  
8 subject to discovery or admissible in evidence in any private  
9 civil action, except as provided by this section. However, the  
10 commissioner is authorized to use the documents, materials  
11 or other information in the furtherance of any regulatory or  
12 legal action brought as part of the commissioner's official  
13 duties.

14 (b) The personnel of the offices of the Insurance  
15 Commissioner shall have access to these proceedings,  
16 hearings, notices, correspondence, reports, records or

17 information as permitted by the commissioner. Neither the  
18 commissioner nor any person who received documents,  
19 materials or other information while acting under the  
20 authority of the commissioner shall be permitted or required  
21 to testify in any private civil action concerning any such  
22 documents, materials or information.

23 (c) The commissioner may share the notices,  
24 correspondence, reports, records or information with other  
25 state, federal and international regulatory agencies, with the  
26 National Association of Insurance Commissioners and its  
27 affiliates and subsidiaries, and with state, federal and  
28 international law enforcement authorities, if the  
29 commissioner determines that the disclosure is necessary or  
30 proper for the enforcement of the laws of this or another state  
31 of the United States, and provided that the recipient agrees to  
32 maintain the confidentiality of the documents, material or  
33 other information. No waiver of any applicable privilege or  
34 claim of confidentiality shall occur as a result of the sharing  
35 of documents, materials or other information pursuant to this  
36 subsection.

37 (d) The commissioner may open the proceedings or  
38 hearings or make public the notices, correspondence, reports,  
39 records or other information if the commissioner deems that  
40 it is in the best interest of the public, the insurer, its insureds,  
41 creditors or the general public.

42 (e) This section does not apply to hearings, notices,  
43 correspondence, reports, records or other information  
44 obtained upon the appointment of a receiver for the insurer  
45 by a court of competent jurisdiction.

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**CHAPTER 109**

**(Com. Sub. for H. B. 4273 -  
By Delegate Morgan)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

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AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §33-46A-4a, relating to professional employer organizations; providing that a professional employer organization operating without a license is subject to the same enforcement provisions and criminal penalties as unauthorized insurers; and authorizing insurance fraud unit to conduct investigations.

*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 §33-46A-4a, to read as follows:

**ARTICLE 46A. PROFESSIONAL EMPLOYER ORGANIZATIONS.**

**§33-46A-4a. Operation of a PEO without a license; enforcement; penalties; fraud unit may investigate.**

- 1 (a) Any person who operates a PEO without a license
- 2 issued in accordance with this article is subject to the all of
- 3 the injunctive, criminal, civil and administrative relief and

4 criminal penalties as provided in article forty-four of this  
5 chapter for the unauthorized transaction of insurance.

6 (b) In addition to the other investigative authority granted  
7 to the commissioner in this chapter, the insurance fraud unit  
8 created pursuant to the provisions of section eight, article  
9 forty-one of this chapter may investigate suspected violations  
10 of this article.

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## CHAPTER 110

**(Com. Sub. for H. B. 3301 - By Delegates  
Moye, Schoen, Klempa, Campbell,  
Sumner, Caputo, D. Poling and Barker)**

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[Passed March 9, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 16, 2010.]

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AN ACT to amend and reenact §21-1B-5 and §21-1B-7 of the Code of West Virginia, 1931, as amended, and to further amend said code by adding thereto a new section, designated §21-1B-8, all relating to employment of unauthorized workers; creating a penalty for failure to maintain certain records; authorizing the Commissioner to issue notices to produce records and citations under certain circumstances; and requiring such citations to be presented to a magistrate or circuit judge.

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

That §21-1B-5 and §21-1B-7 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 §21-1B-8, all to read as follows:

**ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS  
OF WORKERS.**

§21-1B-5. Penalties.

§21-1B-7. Suspension or revocation of license.

§21-1B-8. Citation for violation.

**§21-1B-5. Penalties.**

1           (a) Any employer who knowingly and willfully fails to  
2 maintain records as required by section four of this article is  
3 guilty of a misdemeanor and, upon conviction thereof, shall  
4 be fined one hundred dollars for each offense. Failure to  
5 keep records on each employee constitutes a separate offense.

6           (b) Any employer who knowingly violates the provisions  
7 of section three of this article by employing, hiring, recruiting  
8 or referring an unauthorized worker is guilty of a misdemeanor  
9 and, upon conviction thereof, is subject to the following  
10 penalties:

11           (1) For a first offense, a fine of not less than one hundred  
12 dollars nor more than one thousand dollars for each violation;

13           (2) For a second offense, a fine of not less than five  
14 hundred dollars nor more than five thousand dollars for each  
15 violation;

16           (3) For a third or subsequent offense, a fine of not less  
17 than one thousand dollars nor more than ten thousand dollars,  
18 or confinement in jail for not less than thirty days nor more  
19 than one year, or both.

20           (c) Any employer who knowingly and willfully provides  
21 false records as to the legal status or authorization to work of  
22 any employee to the commissioner or his or her authorized  
23 representative is guilty of a misdemeanor and, upon conviction



24 thereof, shall be confined in jail not more than one year or  
25 fined not more than two thousand five hundred dollars, or  
26 both.

27 (d) Any employer who knowingly and willfully and with  
28 fraudulent intent sells, transfers or otherwise disposes of  
29 substantially all of the employer's assets for the purpose of  
30 evading the record-keeping requirements of section four of  
31 this article is guilty of a misdemeanor and, upon conviction  
32 thereof, shall be confined in jail not more than one year or  
33 fined not more than ten thousand dollars, or both.

**§21-1B-7. Suspension or revocation of license.**

1 (a) If, upon examination of the record or records of  
2 conviction, the commissioner determines that an employer  
3 has been convicted of a third or subsequent offense under  
4 subsection (b), section five of this article or has been  
5 convicted of the offenses described in subsection (c) or (d) of  
6 said section, the commissioner may enter an order imposing  
7 the following disciplinary actions:

8 (1) Permanently revoke or file an action to revoke any  
9 license held by the employer; or

10 (2) Suspend a license or move for a suspension of any  
11 license held by the employer for a specified period;

12 (b) The order shall contain the reasons for the revocation  
13 or suspension and the revocation or suspension periods.  
14 Further, the order shall give the procedures for requesting a  
15 hearing. The person shall be advised in the order that  
16 because of the receipt of the record of conviction by the  
17 commissioner a presumption exists that the person named in  
18 the record of conviction is the person named in the  
19 commissioner's order and this constitutes sufficient evidence

20 to support a revocation or suspension and that the sole  
21 purpose for the hearing held under this section is for the  
22 person requesting the hearing to present evidence that he or  
23 she is not the person named in the record of conviction. A  
24 copy of the order shall be forwarded to the person by  
25 registered or certified mail, return receipt requested. No  
26 revocation or suspension shall become effective until ten  
27 days after receipt of a copy of the order.

**§21-1B-8. Citation for violation.**

1 (a) If, upon inspection or investigation, the commissioner  
2 believes that an employer has violated a provision of this  
3 article, the commissioner shall issue a notice to produce  
4 records or documents to the employer. Each notice shall be  
5 in writing and shall describe with particularity the nature of  
6 the violation, including a reference to the provision of this  
7 article alleged to have been violated. The employer shall  
8 have up to seventy-two hours, or for good cause shown to the  
9 commissioner, a greater period of time, to produce  
10 employment status verification records.

11 (b) If after the time period allowed under subsection (a)  
12 of this section the employer is unable to produce the required  
13 documents to satisfy the commissioner that there is no  
14 violation of this article, the commissioner may issue a  
15 citation to the employer. Each citation shall be in writing on  
16 a standard form as prescribed by the commissioner and shall  
17 describe with particularity the nature of the violation,  
18 including a reference to the provision of this article alleged  
19 to have been violated. Each citation issued under this section  
20 or a copy or copies thereof shall be prominently presented to  
21 a magistrate or circuit judge in the county where the violation  
22 occurred.

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## CHAPTER 111

**(Com. Sub. for H. B. 4359 - By Delegates  
D. Poling, Klempa, Ferro, Longstreth,  
D. Walker, Varner, Morgan and Caputo)**

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[Passed March 11, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 19, 2010.]

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AN ACT to amend and reenact §21-1C-2 of the Code of West Virginia, 1931, as amended, relating to requiring local labor for public construction projects; reducing the dollar amount of the applicable construction project to \$500,000; reducing the amount of miles for the local labor market to fifty miles; and clarifying the definition of local labor market.

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

That §21-1C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 1C. WEST VIRGINIA JOBS ACT.**

#### **§21-1C-2. Definitions.**

1 As used in this article:

2 (1) The term “construction project” means any construction,  
3 reconstruction, improvement, enlargement, painting, decorating  
4 or repair of any public improvement let to contract in an  
5 amount equal to or greater than \$500,000. The term  
6 “construction project” does not include temporary or  
7 emergency repairs;

8           (2) (A) The term “employee” means any person hired or  
9 permitted to perform hourly work for wages by a person, firm  
10 or corporation in the construction industry;

11           (B) The term “employee” does not include:

12           (i) Bona fide employees of a public authority or individuals  
13 engaged in making temporary or emergency repairs;

14           (ii) Bona fide independent contractors; or

15           (iii) Salaried supervisory personnel necessary to assure  
16 efficient execution of the employee’s work;

17           (3) The term “employer” means any person, firm or  
18 corporation employing one or more employees on any public  
19 improvement and includes all contractors and subcontractors;

20           (4) The term “local labor market” means every county in  
21 West Virginia and any county outside of West Virginia if any  
22 portion of that county is within fifty miles of the border of  
23 West Virginia;

24           (5) The term “public authority” means any officer, board,  
25 commission or agency of the State of West Virginia and its  
26 subdivisions, including counties and municipalities. Further,  
27 the economic grant committee, economic development  
28 authority, infrastructure and jobs development council and  
29 School Building Authority shall be required to comply with  
30 the provisions of this article for loans, grants or bonds  
31 provided for public improvement construction projects;

32           (6) The term “public improvement” includes the  
33 construction of all buildings, roads, highways, bridges,  
34 streets, alleys, sewers, ditches, sewage disposal plants,  
35 waterworks, airports and all other structures that may be let  
36 to contract by a public authority, excluding improvements  
37 funded, in whole or in part, by federal funds.

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## CHAPTER 112

**(Com. Sub. for H. B. 4623 -  
By Delegate Mahan)**

[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §21-5E-5 of the Code of West Virginia, 1931, as amended, relating to the Equal Pay Commission; adding members to the Equal Pay commission; and removing the termination date of the Equal Pay Commission.

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

That §21-5E-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.**

#### **§21-5E-5. Establishment of the Equal Pay Commission; appointment of members.**

1 (a) The Equal Pay Commission is continued. The  
2 commission shall be composed of the following thirteen  
3 members:

4 (1) Five members of the House of Delegates, appointed  
5 by the Speaker;

6       (2) Five members of the Senate, appointed by the  
7       President; and

8       (3) Three state employee representatives, including one labor  
9       union member representing state employees, as agreed to by the  
10      Speaker and President; the Director of the Women's Commission,  
11      or his or her designee; and the Director of the Office of Equal  
12      Employment Opportunity, or his or her designee.

13      (b) The commission shall seek input from and invite the  
14      Commissioner of Labor or his or her designee and the  
15      Director of the Personnel Division of the Department of  
16      Administration or his or her designee to attend meetings of  
17      the commission.

18      (c) One of the members of the Senate and one of the  
19      members of the House of Delegates, as designated by the  
20      President and the Speaker respectively, shall serve as  
21      cochairs of the commission.

22      (d) The members of the House of Delegates, the members  
23      of the Senate and the state employee representative members  
24      shall be appointed to serve two-year terms.

25      (e) Any member whose term has expired shall serve until  
26      his or her successor has been duly appointed. Any person  
27      appointed to fill a vacancy shall serve only for the unexpired  
28      term. Any member is eligible for reappointment.

29      (f) Any vacancies occurring in the membership of the  
30      commission shall be filled in the same manner as the original  
31      appointment for the position being vacated. The vacancy  
32      shall not affect the power of the remaining members to  
33      execute the duties of the commission.

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**CHAPTER 113**

**(S. B. 388 - By Senators Bowman,  
Boley, Browning, Foster, Minard, Palumbo,  
Snyder, Sypolt, White, Williams and Yost)**

[Passed March 10, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact §8A-2-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8A-8-3 of said code, all relating to municipal planning commissions and municipal boards of zoning appeals; and specifying the number of members by municipal classifications.

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

That §8A-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8A-8-3 of said code be amended and reenacted, all to read as follows:

**Article**

- 2. Planning Commissions.**
- 8. Board of Zoning Appeals.**

**ARTICLE 2. PLANNING COMMISSIONS.**

**§8A-2-3. Municipal planning commission.**

- 1 (a) A municipal planning commission in a Class I, II or
- 2 III city shall have not less than five nor more than fifteen
- 3 members, the exact number to be specified in the ordinance
- 4 creating the planning commission. A municipal planning

5 commission in a Class IV town or village shall have not less  
6 than three nor more than nine members, the exact number to  
7 be specified in the ordinance creating the planning  
8 commission.

9 (b) The members of a municipal planning commission  
10 must be:

11 (1) Residents of the municipality; and

12 (2) Qualified by knowledge and experience in matters  
13 pertaining to the development of the municipality.

14 (c) At least three fifths of all of the members must have  
15 been residents of the municipality for at least three years  
16 prior to nomination or appointment and confirmation.

17 (d) The members of a municipal planning commission  
18 must fairly represent different areas of interest, knowledge  
19 and expertise, including, but not limited to, business,  
20 industry, labor, government and other relevant disciplines.  
21 One member must be a member of the municipal governing  
22 body or a designee and one member must be a member of the  
23 administrative department of the municipality or a designee.  
24 The term of membership for these two members is the same  
25 as their term of office.

26 (e) The Legislature finds that there are persons willing to  
27 serve on planning commissions who may also own interests  
28 in businesses that regularly conduct business in front of or  
29 with planning commission staff. Such persons may have  
30 experience and expertise which would be valuable assets to  
31 a planning commission. For those reasons, notwithstanding  
32 any other provisions in this code to the contrary, any person  
33 employed by, owning an interest in or otherwise associated  
34 with a business that regularly conducts business in front of or  
35 with planning commission staff may also serve as a member



36 of a planning commission and shall not be disqualified from  
37 serving as a member because of a conflict of interest as  
38 defined in section fifteen, article ten, chapter sixty-one of this  
39 code and shall not be subject to prosecution under provisions  
40 of that chapter when the violation is created solely as a result  
41 of his or her relationship with the business. This member  
42 must recuse himself or herself from any vote, discussion,  
43 participation or other activity regarding the conflicting issue.

44 (f) The Legislature finds that there are persons willing to  
45 serve on planning commissions who may also own interests  
46 in businesses who regularly conduct business in front of or  
47 with planning commission staff. Such persons may have  
48 experience and expertise which would be valuable assets to  
49 a planning commission. For those reasons, notwithstanding  
50 any other provisions in this code to the contrary, any person  
51 employed by, owning an interest in or otherwise associated  
52 with a business that regularly conducts business in front of or  
53 with planning commission staff may also serve as a member  
54 of a planning commission and shall not be in violation of  
55 subsection (g), section five, article two, chapter six-b of this  
56 code if the member recuses himself or herself from any vote,  
57 discussion, participation or other activity regarding the  
58 conflicting issue: *Provided*, That such members do not  
59 constitute a majority of the members of the planning  
60 commission at the same time.

61 (g) The remaining members of the municipal planning  
62 commission first selected shall serve respectively for terms  
63 of one year, two years and three years, divided equally or as  
64 nearly equally as possible between these terms. Thereafter,  
65 members shall serve three-year terms. Vacancies shall be  
66 filled for the unexpired term and made in the same manner as  
67 original selections were made.

68 (h) The members of a municipal planning commission  
69 shall serve without compensation, but shall be reimbursed for

70 all reasonable and necessary expenses actually incurred in the  
71 performance of their official duties.

72 (i) Nominations for municipal planning commission  
73 membership shall be made by the administrative authority  
74 and confirmed by the governing body when the  
75 administrative authority and the governing body are separate,  
76 or appointed and confirmed by the governing body where the  
77 administrative authority and governing body are the same.

78 (j) An individual may serve as a member of a municipal  
79 planning commission, a county planning commission, a  
80 multicounty planning commission, a regional planning  
81 commission or a joint planning commission, at the same  
82 time.

83 (k) The governing body of the municipality may establish  
84 procedures for the removal of members of the planning  
85 commission for inactivity, neglect of duty or malfeasance.  
86 The procedures must contain provisions requiring that the  
87 person to be removed be provided with a written statement of  
88 the reasons for removal and an opportunity to be heard on the  
89 matter.

## **ARTICLE 8. BOARD OF ZONING APPEALS.**

### **§8A-8-3. Municipal board of zoning appeals.**

1 (a) A municipal board of zoning appeals in a Class I, II  
2 or III city shall have five members to be appointed by the  
3 governing body of the municipality. A municipal board of  
4 zoning appeals in a Class IV town or village shall have not  
5 less than three nor more than five members to be appointed  
6 by the governing body of the municipality.

7 (b) The members of a municipal board of zoning appeals  
8 must be:

9           (1) Residents of the municipality for at least three years  
10 preceding his or her appointment;

11           (2) Cannot be a member of the municipal planning  
12 commission; and

13           (3) Cannot hold any other elective or appointive office in  
14 the municipal government.

15           (c) Upon the creation of a board of zoning appeals, the  
16 members shall be appointed for the following terms: One for  
17 a term of one year; two for a term of two years; and two for  
18 a term of three years. The terms shall expire on the first day  
19 of January of the first, second and third year, respectively,  
20 following their appointment. Thereafter, members shall  
21 serve three-year terms. If a vacancy occurs, the governing  
22 body of the municipality shall appoint a member for the  
23 unexpired term.

24           (d) The governing body of the municipality may appoint  
25 up to three additional members to serve as alternate members  
26 of the municipal board of zoning appeals. The alternate  
27 members must meet the same eligibility requirements as set  
28 out in subsection (b) of this section. The term for an alternate  
29 member is three years. The governing body of the  
30 municipality may appoint alternate members on a staggered  
31 term schedule.

32           (e) An alternate member shall serve on the board when  
33 one of the regular members is unable to serve. The alternate  
34 member shall serve until a final determination is made in the  
35 matter to which the alternate member was initially called on  
36 to serve.

37           (f) The municipal board of zoning appeals shall establish  
38 rules and procedures for designating an alternate member.  
39 An alternate member shall have the same powers and duties  
40 of a regular board member.

41 (g) The members and alternate members of a county  
42 board of zoning appeals shall serve without compensation,  
43 but shall be reimbursed for all reasonable and necessary  
44 expenses actually incurred in the performance of their official  
45 duties.

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## CHAPTER 114

**(S. B. 595 - By Senators  
McCabe and Minard)**

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[Passed March 11, 2010; in effect from passage.]  
[Approved by the Governor on March 22, 2010.]

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AN ACT to amend and reenact §8A-4-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8A-5-12 of said code, all relating to subdivisions; extending the approval term of certain uses and permits associated with a subdivision plan or plat and extending the vesting period for a subdivision or land development plan or plat.

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

That §8A-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8A-5-12 of said code be amended and reenacted, all to read as follows:

**Article**

4. **Subdivision and Land Development Ordinance.**
5. **Subdivision or Land Development Plan and Plat.**

### **ARTICLE 4. SUBDIVISION AND LAND DEVELOPMENT ORDINANCE.**

**§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  
19 development 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  
35 shall 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  
39 proportioned to the cost of checking and verifying proposed  
40 plats;

41 (13) The process for granting waivers from the  
42 minimum standards of the subdivision and land  
43 development ordinance;

44 (14) Improvement location permit process, including a  
45 requirement that a structure or development of land is  
46 prohibited without an improvement location permit;

47 (15) The acceptable methods of payment to cover the  
48 cost of the water and sewer service infrastructure, which can  
49 include, but are not limited to, bonds, impact fees, escrow  
50 fees and proffers;

51 (16) The process for cooperating and coordinating with  
52 other governmental agencies affected by the subdivision and  
53 land development and use; and

54 (17) Penalties for violating the subdivision and land  
55 development ordinance.

56 (b) A subdivision and land development ordinance may  
57 include the following provisions:

- 58           (1) Establishing a board of subdivision and land  
59       development appeals with the same powers, duties and  
60       appeals process as set out for the board of zoning appeals  
61       under the provisions of article eight of this chapter;
- 62           (2) Requirements for green space, common areas, public  
63       grounds, walking and cycling paths, recreational trails,  
64       parks, playgrounds and recreational areas;
- 65           (3) Encourage the use of renewable energy systems and  
66       energy-conserving building design;
- 67           (4) Vested property right, including requirements;
- 68           (5) Exemptions of certain types of land development  
69       from the subdivision and land development ordinance  
70       requirements, including, but not limited to, single-family  
71       residential structures and farm structures; and
- 72           (6) Any other provisions consistent with the  
73       comprehensive plan the governing body considers necessary.
- 74           (c) All requirements, for the vesting of property rights  
75       contained in an ordinance enacted pursuant to this section  
76       that require the performance of any action within a certain  
77       time period for any subdivision or land development plan or  
78       plat valid under West Virginia law and outstanding as of  
79       January 1, 2010, shall be extended until July 1, 2012, or  
80       longer as agreed to by the municipality, county commission  
81       or planning commission. The provisions of this subsection  
82       also apply to any requirement that a use authorized pursuant  
83       to a special exception, special use permit, conditional use  
84       permit or other agreement or zoning action be terminated or  
85       ended by a certain date or within a certain number of years.

**ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT  
PLAN AND PLAT.**

PART I. MINOR SUBDIVISION OR  
LAND DEVELOPMENT PROCESS.

**\*§8A-5-12. Vested property right.**

1 (a) A vested property right is a right to undertake and  
2 complete the land development. The right is established when  
3 the land development plan and plat is approved by the planning  
4 commission and is only applicable under the terms and  
5 conditions of the approved land development plan and plat.

6 (b) Failure to abide by the terms and conditions of the  
7 approved land development plan and plat will result in  
8 forfeiture of the right.

9 (c) The vesting period for an approved land  
10 development plan and plat which creates the vested property  
11 right is five years from the approval of the land development  
12 plan and plat by the planning commission.

13 (d) Without limiting the time when rights might  
14 otherwise vest, a landowner's rights vest in a land use or  
15 development plan and cannot be affected by a subsequent  
16 amendment to a zoning ordinance or action by the planning  
17 commission when the landowner:

18 (1) Obtains or is the beneficiary of a significant  
19 affirmative governmental act which remains in effect  
20 allowing development of a specific project;

21 (2) Relies in good faith on the significant affirmative  
22 governmental act; and

23 (3) Incurs extensive obligations or substantial expenses  
24 in diligent pursuit of the specific project in reliance on the  
25 significant affirmative governmental act.

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\*CLERK'S NOTE: This section was also amended by S. B. 41 (Chapter 115)  
which passed subsequent to this act.



26 (e) A vested right is a property right, which cannot be  
27 taken without compensation. A court may award damages  
28 against the local government in favor of the landowner for  
29 monetary losses incurred by the landowner and court costs  
30 and attorneys' fees, resulting from the local government's  
31 bad faith refusal to recognize that the landowner has  
32 obtained vested rights.

33 (f) Any subdivision or land development plan or plat,  
34 whether recorded or not yet recorded, valid under West  
35 Virginia law and outstanding as of January 1, 2010, shall  
36 remain valid until July 1, 2012, or such later date provided for  
37 by the terms of the planning commission or county  
38 commission's local ordinance or for a longer period as agreed  
39 to by the planning commission or county commission. Any  
40 other plan or permit associated with the subdivision or land  
41 development plan or plat shall also be extended for the same  
42 time period. *Provided, That* the land development plan or plat  
43 has received at least preliminary approval by the planning  
44 commission or county commission by March 1, 2010.

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## CHAPTER 115

**(S. B. 41 - By Senators McCabe,  
Minard, Foster, Palumbo and Chafin)**

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[Passed March 11, 2010; in effect from passage.]  
[Approved by the Governor on March 22, 2010.]

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AN ACT to amend and reenact §8A-5-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13E-2 and §16-13E-4 of said code; and to amend said code by adding thereto a new section, designated §16-13E-10a, all relating to generally to subdivision or land development plans

or plats; extending the vesting period for certain subdivision or land development plans and plats; providing definitions relating to the development of community enhancement districts; and excepting from a utility's submission relating to petitions for the creation of a district the capacity of the district to provide its own utility services.

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

That §8A-5-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §16-13E-2 and §16-13E-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-13E-10a, all to read as follows:

**Chapter**

**8A. Land Use Planning.**

**16. Public Health.**

**CHAPTER 8A. LAND USE PLANNING.**

**ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.**

**\*§8A-5-12. Vested property right.**

1           (a) A vested property right is a right to undertake and  
2 complete the land development. The right is established when  
3 the land development plan and plat is approved by the planning  
4 commission and is only applicable under the terms and  
5 conditions of the approved land development plan and plat.

6           (b) Failure to abide by the terms and conditions of the  
7 approved land development plan and plat will result in  
8 forfeiture of the right.

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\***CLERK'S NOTE:** This section was also amended by S. B. 595 (Chapter 114) which passed prior to this act.

9           (c) Subject to section ten-a, article thirteen-e, chapter  
10 sixteen of this code, the vesting period for an approved land  
11 development plan and plat which creates the vested property  
12 right is five years from the approval of the land development  
13 plan and plat by the planning commission.

14           (d) Without limiting the time when rights might  
15 otherwise vest, a landowner's rights vest in a land use or  
16 development plan and cannot be affected by a subsequent  
17 amendment to a zoning ordinance or action by the planning  
18 commission when the landowner:

19           (1) Obtains or is the beneficiary of a significant  
20 affirmative governmental act which remains in effect  
21 allowing development of a specific project;

22           (2) Relies in good faith on the significant affirmative  
23 governmental act; and

24           (3) Incurs extensive obligations or substantial expenses  
25 in diligent pursuit of the specific project in reliance on the  
26 significant affirmative governmental act.

27           (e) A vested right is a property right, which cannot be  
28 taken without compensation. A court may award damages  
29 against the local government in favor of the landowner for  
30 monetary losses incurred by the landowner and court costs  
31 and attorneys' fees resulting from the local government's  
32 bad faith refusal to recognize that the landowner has  
33 obtained vested rights.

34           (f) Any subdivision or land development plan or plat,  
35 whether recorded or not yet recorded, valid under West  
36 Virginia law and outstanding as of January 1, 2010, shall  
37 remain valid until July 1, 2012, or such later date provided  
38 for by the terms of the planning commission or county  
39 commission's local ordinance or for a longer period as  
40 agreed to by the planning commission or county

41 commission. Any other plan or permit associated with the  
 42 subdivision or land development plan or plat shall also be  
 43 extended for the same time period. *Provided*, That the land  
 44 development plan or plat has received at least preliminary  
 45 approval by the planning commission or county commission  
 46 by March 1, 2010.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 13E. COMMUNITY ENHANCEMENT ACT.

§16-13E-2. Definitions.

§16-13E-4. Petition for creation or expansion of community enhancement district;  
 petition requirements.

§16-13E-10a. Extension of vesting period for land development plans and plats; approval  
 of phases.

#### §16-13E-2. Definitions.

1 For purposes of this article:

2 (a) “Assessment bonds” means special obligation bonds  
 3 or notes issued by a community enhancement district which  
 4 are payable from the proceeds of assessments.

5 (b) “Assessment” means the fee, including interest, paid  
 6 by the owner of real property located within a community  
 7 enhancement district to pay for the cost of a project or  
 8 projects constructed upon or benefitting or protecting such  
 9 property and administrative expenses related thereto, which  
 10 fee is in addition to all taxes and other fees levied on the  
 11 property.

12 (c) “Board” means a Community Enhancement Board  
 13 created pursuant to this article.

14 (d) “Community enhancement district” or “district”  
 15 means a community enhancement district created pursuant  
 16 to this article.

17 (e) "Cost" means the cost of:

18 (1) Construction, reconstruction, renovation and  
19 acquisition of all lands, structures, real or personal property,  
20 rights, rights-of-way, franchises, easements and interests  
21 acquired or to be acquired by the district;

22 (2) All machinery and equipment, including machinery  
23 and equipment needed to expand or enhance county or city  
24 services to the district;

25 (3) Financing charges and interest prior to and during  
26 construction and, if deemed advisable by the district or  
27 governing body, for a limited period after completion of the  
28 construction;

29 (4) Interest and reserves for principal and interest,  
30 including costs of municipal bond insurance and any other  
31 type of financial guaranty;

32 (5) Costs of issuance in connection with the issuance of  
33 assessment bonds;

34 (6) The design of extensions, enlargements, additions  
35 and improvements to the facilities of any district;

36 (7) Architectural, engineering, financial and legal  
37 services;

38 (8) Plans, specifications, studies, surveys and estimates  
39 of costs and revenues;

40 (9) Administrative expenses necessary or incident to  
41 determining to proceed with any project; and

42 (10) Other expenses as may be necessary or incident to  
43 the construction, acquisition and financing of a project.

44 (f) “Development concept” means the following items,  
45 to the extent set forth or specified in the subject subdivision  
46 or land development plan and plat:

47 (1) The maximum aggregate number of lots or parcels  
48 into which the subject land is to be subdivided.

49 (2) The size and boundaries of the individual lots or  
50 parcels into which the subject land is to be subdivided.

51 (3) The density of the land development.

52 (4) Designation of use of the individual lots or parcels.

53 (5) The location of roads, streets, parking lots, sidewalks  
54 and other paved areas.

55 (6) The location of ingress and egress for the land  
56 development.

57 (7) Setback lines and distances and buildable areas.

58 (8) The finished layout and grade of the land.

59 (g) “Development concept vesting period” means the  
60 period commencing upon approval of the subject land  
61 development plan and plat by the planning commission and  
62 terminating on the maturity date of the subject assessment  
63 bonds or tax increment financing obligation. The  
64 development concept vesting period pertains only to the  
65 vested property right in a development concept that is  
66 established upon approval by the planning commission of a  
67 land development plan and plat in which a development  
68 concept is set forth or specified.

69           (h) “Five-year vesting period” means the five-year  
70 vesting period for an approved land development plan and  
71 plat provided under subsection (c), section twelve, article  
72 five, chapter eight-a of this code.

73           (i) “Governing body” means, in the case of a county, the  
74 county commission and in the case of a municipality, the  
75 mayor and council together, the council or the board of  
76 directors as charged with the responsibility of enacting  
77 ordinances and determining the public policy of such  
78 municipality.

79           (j) “Governmental agency” means the state government  
80 or any agency, department, division or unit thereof;  
81 counties; municipalities; any watershed enhancement  
82 districts, soil conservation districts, sanitary districts, public  
83 service districts, drainage districts, school districts, urban  
84 renewal authorities or regional governmental authorities  
85 established pursuant to this code.

86           (k) “Person” means an individual, firm, partnership,  
87 corporation, voluntary association or any other type of  
88 entity.

89           (l) “Project” means the design, construction,  
90 reconstruction, establishment, acquisition, improvement,  
91 renovation, extension, enlargement, equipping, maintenance,  
92 repair (including replacements) and start-up operation of  
93 water source of supply, treatment, transmission and  
94 distribution facilities, sewage treatment, collection and  
95 transmission facilities, stormwater systems, police stations,  
96 fire stations, libraries, museums, schools, other public  
97 buildings, hospitals, piers, docks, terminals, drainage  
98 systems, culverts, streets, roads, bridges (including  
99 approaches, causeways, viaducts, underpasses and  
100 connecting roadways), motor vehicle parking facilities

101 (including parking lots, buildings, ramps, curb-line parking,  
102 meters and other facilities deemed necessary, appropriate,  
103 useful, convenient or incidental to the regulation, control  
104 and parking of motor vehicles), public transportation, public  
105 recreation centers, public recreation parks, swimming pools,  
106 tennis courts, golf courses, equine facilities, motor vehicle  
107 competition and recreational facilities, flood protection or  
108 relief projects, or the grading, regrading, paving, repaving,  
109 surfacing, resurfacing, curbing, recurbing, widening,  
110 lighting or otherwise improving any street, avenue, road,  
111 highway, alley or way, or the building or renewing of  
112 sidewalks and flood protection; and the terms shall mean  
113 and include any project as a whole, and all integral parts  
114 thereof, including all necessary, appropriate, useful,  
115 convenient or incidental appurtenances and equipment in  
116 connection with any one or more of the above.

**§16-13E-4. Petition for creation or expansion of community  
enhancement district; petition requirements.**

1 (a) The owners of at least sixty-one percent of the real  
2 property, determined by acreage, located within the  
3 boundaries of the area described in the petition, by metes  
4 and bounds or otherwise in a manner sufficient to describe  
5 the area, may petition a governing body to create or expand  
6 a community enhancement district.

7 (b) The petition for the creation or expansion of a  
8 community enhancement district shall include, where  
9 applicable, the following:

10 (1) The proposed name and proposed boundaries of such  
11 district and a list of the names and addresses of all owners  
12 of real property within the proposed district;

13 (2) A detailed project description;



14       (3) A map showing the proposed project, including all  
15       proposed improvements;

16       (4) A list of estimated project costs and the preliminary  
17       plans and specifications for such improvements, if available;

18       (5) A list of nonproject costs and how they will be  
19       financed;

20       (6) A consultant study outlining the projected  
21       assessments, setting forth the methodology for determining  
22       the assessments and the methodology for allocating portions  
23       of an initial assessment against a parcel expected to be  
24       subdivided in the future to the various lots into which the  
25       parcel will be subdivided and demonstrating that such  
26       assessments will adequately cover any debt service on bonds  
27       issued to finance the project and ongoing administrative  
28       costs;

29       (7) A development schedule;

30       (8) A list of recommended members for the board;

31       (9) If the project includes water, wastewater or sewer  
32       improvements, written evidence from the utility or utilities  
33       that will provide service to the district, if any, that said  
34       utility or utilities:

35       (A) Currently has adequate capacity to provide service  
36       without significant upgrades or modifications to its  
37       treatment, storage or source of supply facilities, except  
38       facilities which the community enhancement district will  
39       provide as described in the petition;

40       (B) Will review and approve all plans and specifications  
41       for the improvements to determine that the improvements

42 conform to the utility's reasonable requirements and, if the  
43 improvement consists of water transmission or distribution  
44 facilities, that the improvements provide for adequate fire  
45 protection for the district; and

46 (C) If built in conformance with said plans and  
47 specifications, will accept the improvements following their  
48 completion, unless such projects are to be owned by the  
49 district;

50 (10) If the project includes improvements other than as  
51 set forth in subdivision (9) of this subsection that will be  
52 transferred to another governmental agency, written  
53 evidence that such agency will accept such transfer, unless  
54 such projects are to be owned by the district;

55 (11) The benefits that can be expected from the creation  
56 of the district and the project; and

57 (12) A certification from each owner of real property  
58 within the proposed district who joins in the petition that he  
59 or she is granting an assessment against his or her property  
60 in such an amount as to pay for the costs of the project and  
61 granting a lien for said amount upon said property  
62 enforceable in accordance with this article.

63 (c) After reviewing the petition presented pursuant to  
64 this section, the governing body may by order or ordinance  
65 determine the necessity and economic feasibility of creating  
66 a community enhancement district and developing,  
67 constructing, acquiring, improving or extending a project  
68 therein. If the governing body determines that the creation  
69 of a community enhancement district and construction of the  
70 project is necessary and economically feasible, it shall set a  
71 date for the public meeting required under section five of

72 this article and shall cause the petition to be filed with the  
73 clerk of the county commission or the clerk or recorder of  
74 the municipality, as the case may be, and be made available  
75 for inspection by interested persons before the meeting.

76 (d) Notwithstanding any other contrary provision of this  
77 article, nothing in this article shall modify:

78 (1) The jurisdiction of the Public Service Commission  
79 to determine the convenience and necessity of the  
80 construction of utility facilities, to resolve disputes between  
81 utilities relating to which utility should provide service to a  
82 district or otherwise to regulate the orderly development of  
83 utility infrastructure in the state; or

84 (2) The authority of the Infrastructure and Jobs  
85 Development Council as to the funding of utility facilities to  
86 the extent that loans, loan guarantees, grants or other  
87 funding assistance from a state infrastructure agency are  
88 involved.

**§16-13E-10a. Extension of vesting period for land development  
plans and plats; approval of phases.**

1 (a) The five-year vesting period is extended to the  
2 development concept vesting period with respect to the  
3 development concept if: (i) The land development will be  
4 wholly contained within a community enhancement district;  
5 and (ii) either:

6 (A) Such community enhancement district has been  
7 created and is in existence, and such facts have been  
8 communicated to the planning commission, at the time the  
9 planning commission approves the subject land  
10 development plan and plat (whether such plan and plat is

11 denominated final, preliminary, phased preliminary, concept  
12 or otherwise); or

13 (B) Such community enhancement district is created  
14 after the initial approval of the subject land development  
15 plan and plat and the planning commission subsequently  
16 ratifies the approval of such plan and plat with the  
17 knowledge of the existence of the community enhancement  
18 district; and (iii) assessment bonds or tax increment  
19 financing obligations payable from or secured by, in whole,  
20 or in part, assessments against real property located within  
21 the district are issued within the five-year vesting period.

22 (b) Nothing herein shall be deemed to extend or  
23 otherwise modify the five-year vesting period with respect  
24 to items other than those included in the development  
25 concept.

26 (c) When a land development will be wholly contained  
27 within a community enhancement district, a land  
28 development plan and plat that otherwise pertains to and  
29 seeks approval of only a portion or phase of the land  
30 development may also contain the development concept for  
31 a greater portion, multiple phases or the entirety of the land  
32 development if the plan and plat expressly so provides.  
33 Approval of a land development plan and plat by the  
34 planning commission constitutes approval of, and the  
35 establishment of a vested property right in, the entire  
36 development concept contained in the land development  
37 plan and plat.

38 (d) This section shall apply to all community  
39 enhancement districts, regardless of whether created prior or  
40 subsequent to enactment of this section.

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**CHAPTER 116**

**(Com. Sub. for S. B. 240 - By Senators  
Minard, Snyder, Prezioso, Unger,  
Boley and K. Facemyer)**

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[Passed March 11, 2010; in effect from passage.]  
[Approved by the Governor on March 22, 2010.]

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AN ACT to amend and reenact article 2, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Administration; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rule with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rule with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Division of Personnel to promulgate a legislative rule relating to the administration of the division; authorizing the Department of Administration to promulgate a legislative rule relating to state-owned vehicles; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers Retirement System; authorizing the

Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employees Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement and loan interest factors; and authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police.

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

That article 2, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF  
ADMINISTRATION TO PROMULGATE  
LEGISLATIVE RULES.**

§64-2-1. Division of Personnel.

§64-2-2. Department of Administration.

§64-2-3. Consolidated Public Retirement Board.

**§64-2-1. Division of Personnel.**

1           The legislative rule filed in the State Register on July 30,  
2           2009, authorized under the authority of section ten, article  
3           six, chapter nineteen of this code, (Administrative Rule of the  
4           West Virginia Division of Personnel, 143 CSR 1), is  
5           authorized with the following amendments:

6           On page six, subsection 3.88, by striking out “1000 ” and  
7           inserting in lieu thereof “720 ”;

8           And,

9           On page twenty, subsection 9.4, by striking out “1000 ”  
10          and inserting in lieu thereof “720 ”.

**§64-2-2. Department of Administration.**

1       The legislative rule filed in the State Register on July 30,  
2       2009, authorized under the authority of section forty-eight,  
3       article three, chapter five-a of this code, modified by the  
4       Department of Administration to meet the objections of the  
5       Legislative Rule-Making Review Committee and refiled in  
6       the State Register on October 21, 2009, relating to the  
7       Department of Administration (State Owned Vehicles, 148  
8       CSR 3), is authorized, with the following amendment:

9       On page two, subsection 2.15, by striking out said  
10      subsection 2.15 in its entirety and inserting in lieu thereof a  
11      new subsection 2.15 to read as follows:

12      ‘2.15. “Vehicle” means any state or agency owned  
13      passenger-type vehicle including but is not limited to sedans,  
14      station wagons, minivans, pickup trucks classified as less  
15      than one ton, sport utility vehicles, or vans used primarily for  
16      the transportation of the driver and no more than 15  
17      passengers.’;

18      On page nine, subsection 10.3, in the first sentence of  
19      said subsection, by striking out the words ‘Vehicles shall be  
20      leased from the Travel Management Office’ and inserting in  
21      lieu thereof the words ‘The Travel Management Office may  
22      lease vehicles to spending units’; and

23      On page ten, subsection 10.10, by striking out the words  
24      ‘An invoice will be issued on a regular basis.’ and inserting  
25      in lieu thereof the words ‘The Travel Management Office  
26      shall issue regular invoices to spending units for vehicle  
27      leases and services.’

### **§64-2-3. Consolidated Public Retirement Board.**

1       (a) The legislative rule filed in the State Register on July  
2       30, 2009, authorized under the authority of section one,  
3       article ten-d, chapter five of this code, modified by the

4 Consolidated Public Retirement Board to meet the objections  
5 of the Legislative Rule-Making Review Committee and  
6 refiled in the State Register on September 23, 2009, relating  
7 to the Consolidated Public Retirement Board (Teachers'  
8 Retirement System, 162 CSR 4), is authorized.

9 (b) The legislative rule filed in the State Register on July  
10 30, 2009, authorized under the authority of section one,  
11 article ten-d, chapter five of this code, modified by the  
12 Consolidated Public Retirement Board to meet the objections  
13 of the Legislative Rule-Making Review Committee and  
14 refiled in the State Register on September 23, 2009, relating  
15 to the Consolidated Public Retirement Board (Public  
16 Employees Retirement System, 162 CSR 5), is authorized.

17 (c) The legislative rule filed in the State Register on July  
18 30, 2009, authorized under the authority of section one,  
19 article ten-d, chapter five of this code, relating to the  
20 Consolidated Public Retirement Board (Refund,  
21 Reinstatement and Loan Interest Factors, 162 CSR 7), is  
22 authorized.

23 (d) The legislative rule filed in the State Register on July  
24 30, 2009, authorized under the authority of section one,  
25 article ten-d, chapter five of this code, modified by the  
26 Consolidated Public Retirement Board to meet the objections  
27 of the Legislative Rule-Making Review Committee and  
28 refiled in the State Register on September 23, 2009, relating  
29 to the Consolidated Public Retirement Board (West Virginia  
30 State Police, 162 CSR 9), is authorized with the following  
31 amendment:

32 On page four, subsection 6.3., by striking out the words  
33 "subdivision 9.3.2." and inserting in lieu thereof the words  
34 "subsection 3.2."



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## CHAPTER 117

**(Com. Sub. for S. B. 273 - By Senators  
Minard, Snyder, Prezioso, Unger,  
Boley and K. Facemyer)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to solid waste management; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the covered electronic devices takeback program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management systems; authorizing the Department of Environmental Protection to promulgate a

legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources of air pollution which cause or contribute to nonattainment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the National Pollutant Discharge Elimination System (NPDES) Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing groundwater standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to water pollution control permit fee schedules; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the WV/NPDES rules for coal mining facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to monitoring wells; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to monitoring well design standards; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to oil and gas wells and other wells.

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

That article 3, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.**

**§64-3-1. Department of Environmental Protection.**

1 (a) The legislative rule filed in the State Register on July  
2 30, 2009, authorized under the authority of section five,  
3 article fifteen, chapter twenty-two of this code, modified by  
4 the Department of Environmental Protection to meet the  
5 objections of the Legislative Rule-Making Review  
6 Committee and refiled in the State Register on December 11,  
7 2009, relating to the Department of Environmental Protection  
8 (Solid Waste Management, 33 CSR 1), is authorized.

9 (b) The legislative rule filed in the State Register on April  
10 9, 2009, authorized under the authority of section twenty-  
11 nine, article fifteen-a, chapter twenty-two of this code,  
12 relating to the Department of Environmental Protection  
13 (Covered Electronic Devices Takeback Program, 33 CSR  
14 11), is authorized.

15 (c) The legislative rule filed in the State Register on July  
16 30, 2009, authorized under the authority of section six, article  
17 eighteen, chapter twenty-two of this code, modified by the  
18 Department of Environmental Protection to meet the  
19 objections of the Legislative Rule-Making Review  
20 Committee and refiled in the State Register on December 14,  
21 2009, relating to the Department of Environmental Protection  
22 (Hazardous Waste Management Systems, 33 CSR 20), is  
23 authorized.

24 (d) The legislative rule filed in the State Register on July  
25 28, 2009, authorized under the authority of section four,  
26 article five, chapter twenty-two of this code, relating to the  
27 Department of Environmental Protection (Ambient Air  
28 Quality Standards, 45 CSR 8), is authorized.

29 (e) The legislative rule filed in the State Register on July  
30 28, 2009, authorized under the authority of section four,  
31 article five, chapter twenty-two of this code, modified by the  
32 Department of Environmental Protection to meet the  
33 objections of the Legislative Rule-Making Review  
34 Committee and refiled in the State Register on December 14,  
35 2009, relating to the Department of Environmental Protection  
36 (Permits for Construction and Major Modification of Major  
37 Stationary Sources of Air Pollution for the Prevention of  
38 Significant Deterioration, 45 CSR 14), is authorized.

39 (f) The legislative rule filed in the State Register on July  
40 28, 2009, authorized under the authority of section four,  
41 article five, chapter twenty-two of this code, relating to the  
42 Department of Environmental Protection (Standards of  
43 Performance for New Stationary Sources, 45 CSR 16), is  
44 authorized.

45 (g) The legislative rule filed in the State Register on July  
46 28, 2009, authorized under the authority of section four,  
47 article five, chapter twenty-two of this code, relating to the  
48 Department of Environmental Protection (Permits for  
49 Construction and Major Modification of Major Stationary  
50 Sources of Air Pollution Which Cause or Contribute to  
51 Nonattainment, 45 CSR 19), is authorized.

52 (h) The legislative rule filed in the State Register on July  
53 28, 2009, authorized under the authority of section four,  
54 article five, chapter twenty-two of this code, relating to the  
55 Department of Environmental Protection (Control of Air  
56 Pollution from Hazardous Waste Treatment, Storage or  
57 Disposal Facilities, 45 CSR 25), is authorized.

58 (i) The legislative rule filed in the State Register on July  
59 28, 2009, authorized under the authority of section four,  
60 article five, chapter twenty-two of this code, relating to the  
61 Department of Environmental Protection (Acid Rain  
62 Provisions and Permits, 45 CSR 33), is authorized.

63 (j) The legislative rule filed in the State Register on July  
64 28, 2009, authorized under the authority of section four,  
65 article five, chapter twenty-two of this code, relating to the  
66 Department of Environmental Protection (Emission  
67 Standards for Hazardous Air Pollutants, 45 CSR 34), is  
68 authorized.

69 (k) The legislative rule filed in the State Register on July  
70 30, 2009, authorized under the authority of section four,  
71 article eleven, chapter twenty-two of this code, modified by  
72 the Department of Environmental Protection to meet the  
73 objections of the Legislative Rule-Making Review  
74 Committee and refiled in the State Register on September 17,  
75 2009, relating to the Department of Environmental Protection  
76 (National Pollutant Discharge Elimination System (NPDES)  
77 Program, 47 CSR 10), is authorized.

78 (l) The legislative rule filed in the State Register on July  
79 30, 2009, authorized under the authority of section four,  
80 article twelve, chapter twenty-two of this code, modified by  
81 the Department of Environmental Protection to meet the  
82 objections of the Legislative Rule-Making Review  
83 Committee and refiled in the State Register on September 18,  
84 2009, relating to the Department of Environmental Protection  
85 (Requirements Governing Ground Water Standards, 47 CSR  
86 12), is authorized with the following amendment:

87 On pages three through five by striking out all of  
88 Appendix A and inserting in lieu thereof a new Appendix A  
89 to read as follows:

90

**APPENDIX A**

91

**Organic Compounds**

92	<b><u>Constituent</u></b>	<b><u>Limit (mg/L)</u></b>
		<b>(except where noted)</b>
93	Alachlor	0.002
94	Aldicarb	0.003
95	Aldicarb sulfone	0.002
96	Aldicarb sulfoxide	0.004
97	Atrazine	0.003
98	Benzene	0.005
99	Benzo (a) pyrene (PAH)	0.0002
100	Bromodichloromethane (THM) <sup>1</sup>	0.08
101	Bromoform (THM) <sup>1</sup>	0.08
102	Carbofuran	0.04
103	Carbon tetrachloride	0.005
104	Chlordane	0.002
105	Chloroform (THM) <sup>1</sup>	0.08
106	2, 4-D	0.07
107	Dalapon	0.2
108	Di(2-ethylhexyl)adipate	0.4
109	Di(2-ethylhexyl)phthalate	0.006
110	Dibromochloromethane (THM) <sup>1</sup>	0.08
111	Dibromochloropropane (DBCP)	0.0002
112	Dichloroacetic acid	0.06
113	Dichlorobenzene p-	0.075
114	Dichlorobenzene o-	0.6
115	Dichlorobenzene m-	0.6
116	Dichloroethane (1, 2)	0.005
117	Dichloroethylene (1, 1-)	0.007
118	Dichloroethylene (cis-1, 2-)	0.07
119	Dichloroethylene (trans-1, 2-)	0.1
120	Dichloromethane	0.005
121	Dichloropropane (1, 2-)	0.005
122	Dinoseb	0.007

123	Diquat	0.02
124	Endothall	0.1
125	Endrin	0.002
126	Ethylbenzene	0.7
127	Ethylene dibromide (EDB)	0.00005
128	Glyphosate	0.7
129	Heptachlor	0.0004
130	Heptachlor epoxide	0.0002
131	Hexachlorobenzene	0.001
132	Hexachlorocyclopentadiene	0.05
133	Lindane	0.0002
134	Methoxychlor	0.04
135	Monochloroacetic acid <sup>2</sup>	0.06
136	Monochlorobenzene	0.1
137	Oxamyl (Vydate)	0.2
138	Pentachlorophenol	0.001
139	Picloram	0.5
140	Polychlorinated biphenyls	0.0005
141	Simazine	0.004
142	Styrene	0.1
143	2, 3, 7, 8-TCDD (Dioxin)	0.00000003
144	Tetrachlorethylene	0.005
145	Toluene	1.0
146	Toxaphene	0.003
147	2, 4, 5-TP (Silvex)	0.05
148	Trichloroacetic acid <sup>2</sup>	0.06
149	Trichlorobenzene (1, 2, 4-)	0.07
150	Trichloroethane (1, 1, 1-)	0.2
151	Trichloroethane (1, 1, 2-)	0.005
152	Trichloroethylene	0.005
153	Vinyl Chloride	0.002
154	Xylenes (Total)	10

155

**Inorganic Compounds**

156	<b><u>Constituent</u></b>	<b><u>Limit (mg/L)</u></b> (except where noted)
157	Arsenic	0.01
158	Asbestos	7 MFL <sup>3</sup>
159	Barium	2.0
160	Beryllium	0.004
161	Bromate	0.01
162	Cadmium	0.005
163	Chloramine	4.0
164	Chlorine	4.0
165	Chlorine dioxide	0.8
166	Chlorite	1.0
167	Chromium (Total)	0.1
168	Copper	1.3
169	Cyanide	0.2
170	Fluoride	4.0
171	Lead	0.015
172	Mercury (Inorganic)	0.002
173	Nitrate (as N)	10
174	Nitrate (as N)	1.0
175	Total Nitrate and Nitrite (both as N)	10
176	Selenium	0.05
177	Thallium	0.002

178

**Radionuclides**

179	Beta particle and photon activity	4 mrem <sup>4</sup>
180	Gross alpha particle activity	15 pCi/L <sup>5</sup>
181	Combined Radium 226 and 228	5 pCi/L
182	Radon	300 pCi/L
183	Uranium	30 µg/L <sup>6</sup>



184 1-The total of the trihalomethanes (THM) is 0.08 mg/L

185 2-The total of the haloacetic acids is 0.06 mg/L

186 3 – MFL = million fibers per liter

187 4 – mrem = millirem (rem = roentgen – equivalent – man)

188 5 – pCi = picocurie

189 6 – ug/L = microgram per liter

190 (m) The legislative rule filed in the State Register on July  
191 30, 2009, authorized under the authority of section ten, article  
192 eleven, chapter twenty-two of this code, modified by the  
193 Department of Environmental Protection to meet the  
194 objections of the Legislative Rule-Making Review  
195 Committee and refiled in the State Register on September 17,  
196 2009, relating to the Department of Environmental Protection  
197 (Water Pollution Control Permit Fee Schedules, 47 CSR 26),  
198 is authorized.

199 (n) The legislative rule filed in the State Register on July  
200 31, 2009, authorized under the authority of section four,  
201 article eleven, chapter twenty-two of this code, modified by  
202 the Department of Environmental Protection to meet the  
203 objections of the Legislative Rule-Making Review  
204 Committee and refiled in the State Register on September 17,  
205 2009, relating to the Department of Environmental Protection  
206 (WV/NPDES Rules for Coal Mining Facilities, 47 CSR 30),  
207 is authorized with the following amendments:

208 On page ten, subparagraph 4.5.a.6.L., by striking out the  
209 words "Licensed Land" and inserting in lieu there of the word  
210 "Professional";

211 And,

212 On page fourteen, part 4.5.d.1.A.11., by striking out the  
213 words "Licensed Land" and inserting in lieu there of the word  
214 "Professional".

215 (o) The legislative rule filed in the State Register on July  
216 27, 2009, authorized under the authority of section five,  
217 article twelve, chapter twenty-two of this code, modified by  
218 the Department of Environmental Protection to meet the  
219 objections of the Legislative Rule-Making Review  
220 Committee and refiled in the State Register on December 16,  
221 2009, relating to the Department of Environmental Protection  
222 (Monitoring Wells, 47 CSR 59), is authorized.

223 (p) The legislative rule filed in the State Register on July  
224 27, 2009, authorized under the authority of section five,  
225 article twelve, chapter twenty-two of this code, modified by  
226 the Department of Environmental Protection to meet the  
227 objections of the Legislative Rule-Making Review  
228 Committee and refiled in the State Register on December 16,  
229 2009, relating to the Department of Environmental Protection  
230 (Monitoring Well Design Standards, 47 CSR 60), is  
231 authorized with the following amendment:

232 On page seventeen, subdivision 19.3.a., after the words  
233 “eighty percent (80%)” by inserting the word “silica”.

234 (q) The legislative rule filed in the State Register on April  
235 21, 2009, authorized under the authority of section two,  
236 article six, chapter twenty-two, of this code, modified by the  
237 Department of Environmental Protection to meet the  
238 objections of the Legislative Rule-Making Review  
239 Committee and refiled in the State Register on January 15,  
240 2010, relating to the Department of Environmental Protection  
241 (oil and gas wells and other wells, 35 CSR 4), is authorized  
242 with the following amendment:

243 On page twenty-five, subdivision 16.4.d., by striking out  
244 the words “authorized by the Office, based on soil analysis  
245 from the operator, to be suitable to prevent seepage or  
246 leakage” and inserting in lieu thereof the words “deemed to

247 be suitable to prevent seepage or leakage based on soil  
248 analysis from the operator and standards developed and  
249 certified by a registered professional engineer and approved  
250 by the Office. Before deeming pits suitable to prevent  
251 seepage or leakage without a synthetic liner, the chief shall  
252 notify the surface owner that the surface owner is entitled to  
253 receive notice of the application for the well work permit and  
254 that the operator has requested that the pit be deemed suitable  
255 to prevent seepage or leakage without a synthetic liner. If the  
256 surface owner objects, the chief shall hold a hearing pursuant  
257 to article five, chapter twenty-nine-A of the Code of West  
258 Virginia before determining that the pit is suitable to prevent  
259 seepage or leakage.

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## CHAPTER 118

**(Com. Sub. for S. B. 286 - By Senators  
Minard, Snyder, Prezioso, Unger,  
Boley and K. Facemyer)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate

certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Health Care Authority to promulgate a legislative rule relating to hospital ambulatory health care facilities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to Grade "A" pasturized milk; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the distribution of state aid funds to local boards of health; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the nurse aid abuse registry; and authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to out-of-school time child care center licensing requirements.

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

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

§64-5-1. Health Care Authority.

§64-5-2. Department of Health and Human Resources.

**§64-5-1. Health Care Authority.**

1       The legislative rule filed in the State Register on July 15,  
2       2009, authorized under the authority of section four, article  
3       two-d, chapter sixteen of this code, modified by the Health  
4       Care Authority to meet the objections of the Legislative  
5       Rule-Making Review Committee and refiled in the State  
6       Register on August 14, 2009, relating to the Health Care

7 Authority (Hospital Ambulatory Health Care Facilities, 65  
8 CSR 27), is authorized.

**§64-5-2. Department of Health and Human Resources.**

1 (a) The legislative rule filed in the State Register on July 31,  
2 2009, authorized under the authority of section five, article  
3 seven, chapter sixteen of this code, modified by the Department  
4 of Health and Human Resources to meet the objections of the  
5 Legislative Rule-Making Review Committee and refiled in the  
6 State Register on November 30, 2009, relating to the  
7 Department of Health and Human Resources (Grade "A"  
8 Pasturized Milk, 64 CSR 34), is authorized.

9 (b) The legislative rule filed in the State Register on July  
10 31, 2009, authorized under the authority of section eleven,  
11 article one, chapter sixteen of this code, modified by the  
12 Department of Health and Human Resources to meet the  
13 objections of the Legislative Rule-Making Review  
14 Committee and refiled in the State Register on November 30,  
15 2009, relating to the Department of Health and Human  
16 Resources (Fees for Services, 64 CSR 51), is authorized.

17 (c) The legislative rule filed in the State Register on July  
18 31, 2009, authorized under the authority of section four,  
19 article one, chapter sixteen of this code, modified by the  
20 Department of Health and Human Resources to meet the  
21 objections of the Legislative Rule-Making Review  
22 Committee and refiled in the State Register on November 30,  
23 2009, relating to the Department of Health and Human  
24 Resources (Distribution of State Aid Funds to Local Boards  
25 of Health, 64 CSR 67), is authorized.

26 (d) The legislative rule filed in the State Register on July  
27 31, 2009, authorized under the authority of section two,  
28 article six, chapter nine of this code, modified by the  
29 Department of Health and Human Resources to meet the  
30 objections of the Legislative Rule-Making Review  
31 Committee and refiled in the State Register on November 20,

32 2009, relating to the Department of Health and Human  
33 Resources (Nurse Aid Abuse Registry, 69 CSR 6), is  
34 authorized with the following amendments:

35       On page seven, section nine, by striking out “§69-6-9 ”  
36 and inserting in lieu thereof “§69-6-8 ”,

37       And, by renumbering the remaining sections.

38       (e) The legislative rule filed in the State Register on July 31,  
39 2009, authorized under the authority of section four, article two-  
40 b, chapter forty-nine of this code, modified by the Department  
41 of Health and Human Resources to meet the objections of the  
42 Legislative Rule-Making Review Committee and refiled in the  
43 State Register on January 20, 2010, relating to the Department  
44 of Health and Human Resources (Out-of-School-Time Child  
45 Care Center Licensing Requirements, 78 CSR 21), is authorized  
46 with the following amendment:

47       On page three, subsection 3.7., after the word “except” by  
48 striking out the colon and subdivisions 3.7.a. through 3.7.f.  
49 in their entirety and inserting in lieu thereof the words “those  
50 facilities, centers, programs, and individuals set forth in W.  
51 Va. Code §49-2B-3(e).”.

52       On page five, subsection 3.27, line six, by striking the  
53 words “was regulated care and”;

54       On page nineteen, paragraph 7.9.a.3, by striking the  
55 paragraph in its entirety and renumbering the remaining  
56 paragraphs;

57       On page nineteen, paragraph 7.9.b.3, by striking the  
58 paragraph in its entirety and renumbering the remaining  
59 paragraphs; and

60       On page nineteen, paragraph 7.9.c.3, by striking the  
61 paragraph in its entirety and renumbering the remaining  
62 paragraphs.

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**CHAPTER 119**

**(Com. Sub. for H. B. 4081 - By Delegates  
Brown, D. Poling, Miley, Talbott,  
Overington and Sobonya)**

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[Passed March 11, 2010; in effect from passage.]

[Approved by the Governor on March 22, 2010.]

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AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Military Affairs and Public Safety; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the State Police to promulgate legislative rules relating to West Virginia State Police Career Progression System (81 CSR 3) and carrying of handguns by retired or medically discharged members (81 CSR 6); authorizing the Fire Commission to promulgate legislative rules relating to the state

fire code (87 CSR 1) and state building code (87 CSR 4); authorizing the Division of Corrections to promulgate legislative rules relating to the recording of inmate telephone calls (90 CSR 5) and the monitoring of inmate mail (90 CSR 7); authorizing the Division of Homeland Security and Emergency Management to promulgate a legislative rule relating to industrial accident rapid response (170 CSR 2).

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

That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. AUTHORIZATION FOR THE DEPARTMENT  
OF MILITARY AFFAIRS AND PUBLIC  
SAFETY TO PROMULGATE LEGISLATIVE  
RULES.**

§64-6-1. State Police.

§64-6-2. Fire Commission.

§64-6-3. Division of Corrections.

§64-6-4. Division fo Homeland Security and Emergency Management.

**§64-6-1. State Police.**

1           (a) The legislative rule filed in the State Register on July 31,  
2 2009, authorized under the authority of section five, article two,  
3 chapter fifteen, of this code, modified by the State Police to meet  
4 the objections of the Legislative Rule-Making Review  
5 Committee and refiled in the State Register on January 12, 2010,  
6 relating to the State Police (West Virginia State Police Career  
7 Progression System, 81 CSR 3), is authorized.

8           (b) The legislative rule filed in the state register on July  
9 31, 2009, authorized under the authority of section twenty-  
10 five, article two, chapter fifteen, of this code, modified by the  
11 State Police to meet the objections of the Legislative Rule-  
12 Making Review Committee and refiled in the State Register  
13 on January 12, 2010, relating to the State Police (carrying of



14 handguns by retired or medically discharged members, 81  
15 CSR 6), is authorized.

### **§64-6-2. Fire Commission.**

1 (a) The legislative rule filed in the state register on July  
2 21, 2009, authorized under the authority of section five,  
3 article three, chapter twenty-nine, of this code, modified by  
4 the Fire Commission to meet the objections of the Legislative  
5 Rule-Making Review Committee and refiled in the State  
6 Register on December 16, 2009, relating to the Fire  
7 Commission (state fire code, 87 CSR 1), is authorized.

8 (b) The legislative rule filed in the State Register on July  
9 21, 2009, authorized under the authority of section five-b,  
10 article three, chapter twenty-nine, of this code, modified by  
11 the Fire Commission to meet the objections of the Legislative  
12 Rule-Making Review Committee and refiled in the State  
13 Register on December 16, 2009, relating to the Fire  
14 Commission (state building code, 87 CSR 4), is authorized,  
15 with the following amendments:

16 On page two, subdivision 4.1.6, by restoring the  
17 subdivision to its current language; and

18 On page three, subdivision 4.1.7, following the word  
19 “inches” and the period and before the word “Section” by  
20 inserting the following words: “Section R313: Automatic  
21 Fire Sprinkler Systems, in its entirety, is specifically  
22 excluded from the scope of this rule series.”.

### **§64-6-3. Division of Corrections.**

1 (a) The legislative rule filed in the State Register on June 16,  
2 2009, authorized under the authority of section seventeen, article  
3 one, chapter twenty-five, of this code, modified by the Division  
4 of Corrections to meet the objections of the Legislative Rule-  
5 Making Review Committee and refiled in the State Register on

6 July 22, 2009, relating to the Division of Corrections (recording  
7 of inmate telephone calls, 90 CSR 5), is authorized.

8 (b) The legislative rule filed in the State Register on June 16,  
9 2009, authorized under the authority of section eighteen, article  
10 one, chapter twenty-five, of this code, modified by the Division  
11 of Corrections to meet the objections of the Legislative Rule-  
12 Making Review Committee and refiled in the State Register on  
13 July 22, 2009, relating to the Division of Corrections  
14 (monitoring of inmate mail, 90 CSR 7), is authorized.

**§64-6-4. Division of Homeland Security and Emergency  
Management.**

1 The legislative rule filed in the State Register on August  
2 4, 2009, authorized under the authority of section three-A,  
3 article five-B, chapter fifteen, of this code, relating to the  
4 Division of Homeland Security and Emergency Management  
5 (industrial accident rapid response, 170 CSR 2), is  
6 authorized, with the following amendments:

7 On page 3, section 3, subsection 3.1., line 4 after the  
8 word “Director” by inserting the following, “within fifteen  
9 minutes of ascertaining the occurrence of an emergency event  
10 at an industrial facility”;

11 On page five, after the section caption “§170-2-5.  
12 Penalties.” by inserting a new subsection 5.1, to read as  
13 follows:

14 5.1. Penalty Amount. The director shall impose a civil  
15 penalty on the industrial facility if he or she determines that  
16 the industrial facility failed to comply with the reporting or  
17 communications and access requirements in this rule. In no  
18 case shall the total penalty for all violations exceed \$100,000  
19 for an emergency event.;

20 And renumbering the remaining subsections.

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## CHAPTER 120

**(Com. Sub. for S. B. 407 - By Senators  
Minard, Snyder, Prezioso, Unger,  
Boley and K. Facemyer)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on April 2, 2010.]

---

AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the State Tax Department to promulgate a legislative rule relating to the film industry investment tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to the Consumers Sales and Service Tax and Use Tax - drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices per se exemption; motor

vehicles per se exemption; authorizing the State Tax Department to promulgate a legislative rule relating to the residential solar energy tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to the corporation net income tax; authorizing the Directors of the West Virginia Health Insurance Plan to promulgate a legislative rule relating to a premium subsidy; authorizing the Directors of the West Virginia Health Insurance Plan to promulgate a legislative rule relating to a preexisting conditions exclusion; authorizing the Insurance Commissioner to promulgate a legislative rule relating to variable life insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to annuity disclosure; authorizing the Insurance Commissioner to promulgate a legislative rule relating to Medicare supplement insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to coordination of health benefits; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the West Virginia Life and Health Insurance Guaranty Association Act notice requirements; authorizing the Insurance Commissioner to promulgate a legislative rule relating to mental health parity; authorizing the Insurance Commissioner to promulgate a legislative rule relating to viatical settlements; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the preventive care pilot program; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the use of senior-specific certifications and professional designations in the sale of life insurance and annuities; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures; authorizing the West Virginia State Athletic Commission to promulgate a legislative rule relating to the administration of the commission; and authorizing the Lottery Commission to promulgate a legislative rule relating to limited gaming facilities.

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

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF  
TAX AND REVENUE TO PROMULGATE  
LEGISLATIVE RULES.**

§64-7-1. State Tax Department.

§64-7-2. Directors of the West Virginia Health Insurance Plan.

§64-7-3. Insurance Commissioner.

§64-7-4. Alcohol Beverage Control Commission.

§64-7-5. Athletic Commission.

§64-7-6. Lottery Commission.

**§64-7-1. State Tax Department.**

1           (a) The legislative rule filed in the State Register on July  
2   30, 2009, authorized under the authority of section nine,  
3   article thirteen-x, chapter eleven of this code, modified by the  
4   State Tax Department to meet the objections of the  
5   Legislative Rule-Making Review Committee and refiled in  
6   the State Register on January 21, 2010, relating to the State  
7   Tax Department (Film Industry Investment Tax Credit, 110  
8   CSR 13X), is authorized.

9           (b) The legislative rule filed in the State Register on June 23,  
10  2009, authorized under the authority of section five, article ten,  
11  chapter eleven of this code, modified by the State Tax  
12  Department to meet the objections of the Legislative Rule-  
13  Making Review Committee and refiled in the State Register on  
14  November 30, 2009, relating to the State Tax Department  
15  (Consumer Sales and Service Tax and Use Tax - Drugs, Durable  
16  Medical Goods, Mobility Enhancing Equipment and Prosthetic  
17  Devices Per Se Exemption; and Motor Vehicles Per Se  
18  Exemption, 110 CSR 15C), is authorized.

19           (c) The legislative rule filed in the State Register on July  
20  30, 2009, authorized under the authority of section three,  
21  article thirteen-z, chapter eleven of this code, modified by the

22 State Tax Department to meet the objections of the  
23 Legislative Rule-Making Review Committee and refiled in  
24 the State Register on November 30, 2009, relating to the  
25 State Tax Department (Residential Solar Energy Tax Credit,  
26 110 CSR 21D), is authorized with the following  
27 amendments:

28 On page two, beginning on line twenty, by striking out  
29 subdivision 2.2.d in its entirety and redesignating the  
30 remaining subdivisions accordingly;

31 On page five, subsection 4.2, line twenty-one, following  
32 the word “incentive”, by changing the comma to a period and  
33 striking out the remainder of the sentence;

34 On page nine, subsection 9.1, line thirteen, following the  
35 words “until the” by striking out the following:

36 “earlier of the following:

37 9.1.a. Four taxable years have elapsed; or

38 9.1.b. The full”;

39 And,

40 On page nine, line twenty-two, by striking out subsection  
41 9.4 in its entirety.

42 (d) The legislative rule filed in the State Register on July  
43 31, 2009, authorized under the authority of section five,  
44 article ten, chapter eleven of this code, modified by the State  
45 Tax Department to meet the objections of the Legislative  
46 Rule-Making Review Committee and refiled in the State  
47 Register on January 21, 2010, relating to the State Tax

48 Department (Corporation Net Income Tax, 110 CSR 24), is  
49 authorized with the following amendments:

50 On page eight, 5.1.a.3, line eighteen, following the words  
51 “superseding state”, by striking out the word “of” and  
52 inserting in lieu thereof the word “or”;

53 On page sixteen, 7.5.c.1, line eleven, following the words  
54 “~~such the~~”, by inserting the word “the”;

55 On page eighteen, 7.6.c.1, line twenty-three, by striking  
56 out the word “employees” and inserting in lieu thereof the  
57 word “employee”;

58 On page twenty-nine, 7a.1.a, line thirty-one, following  
59 the words “apportionment method” by inserting the words  
60 “are subject to apportionment as described in the following  
61 paragraph”;

62 On page thirty, 7a.1.a.1, line ten, following the words  
63 “special apportionment members” by striking out the comma;

64 On page thirty-one, 8.4.a, line twenty-three, following the  
65 words “which are determined” by striking out the comma;

66 On page thirty-two, 8.5.a.2, line ten, following the words  
67 “W. Va. Code §11-24-8(e)” by striking out the comma;

68 On page forty-one, 13a.1.a, line one, following the words  
69 “insurance company” by striking out the comma;

70 On page forty-one, 13a.1.a, line three, following the  
71 words “shall not be included” by inserting the word “in”;

72 On page forty-two, 13a.2.b.2, line twelve, following the  
73 words “the stock of”, by striking out the words “~~such that~~”  
74 and inserting in lieu thereof the word “the”;

75 On page forty-two, 13a.2.b.2, line fifteen, following the  
76 words “income of”, by striking out the words “such this” and  
77 inserting in lieu thereof the word “the”;

78 On page forty-three, 13a.3.a.6, line thirty-four, following  
79 the words “below in”, by striking out the word “paragraph”  
80 and inserting in lieu thereof the word “subparagraph”;

81 On page fifty-four, 13a.3.d.1, line fourteen, following the  
82 word “member” by striking out the comma;

83 On page seventy, 13d.4.a.2, line thirteen, by reinserting  
84 the word “see”;

85 On page ninety-nine, 13e.2.a.3, beginning on line three,  
86 following the word “privileges”, by reinserting the word  
87 “must” and striking out the word “shall”;

88 On page ninety-nine, 13e.2.a.3, line four, following the  
89 words “and it”, by reinserting the word “must” and striking  
90 out the word “shall”;

91 On page one hundred, 13e.4.c, line seventeen, following  
92 the words “group return” by striking out the comma;

93 On page one hundred, 13e.4.e, line twenty-two, following  
94 the words “group return” by striking out the comma;

95 On page one hundred two, 13e.8, line twenty-two,  
96 following the word “corporation” and the comma, by striking  
97 out the word “then”;

98 On page one hundred ten, 26.4, line nineteen, following  
99 the words “transactions include”, by inserting a colon;

100 On page one hundred ten, 26.4, line twenty, following the  
101 word “property” and the semi-colon, by striking out the



102 words “sales or transfers” and inserting in lieu thereof the  
103 words “the sale or transfer”;

104 On page one hundred ten, 26.4, line twenty-one, by  
105 striking out the words “the owner or for consideration” and  
106 inserting in lieu thereof the words “the owner; or  
107 consideration”;

108 And,

109 On page one hundred fifteen, 27.2.c.6, line five,  
110 following the word “annual”, by striking out the word “of”.

**§64-7-2. Directors of the West Virginia Health Insurance Plan.**

1 (a) The legislative rule filed in the State Register on July  
2 17, 2009, authorized under the authority of section seven-b,  
3 article forty-eight, chapter thirty-three of this code, modified  
4 by the Directors of the West Virginia Health Insurance Plan  
5 to meet the objections of the Legislative Rule-Making  
6 Review Committee and refiled in the State Register on  
7 January 25, 2010, relating to the Directors of the West  
8 Virginia Health Insurance Plan (Premium Subsidy, 113 CSR  
9 1), is authorized.

10 (b) The legislative rule filed in the State Register on July  
11 17, 2009, authorized under the authority of section ten, article  
12 two, chapter thirty-three of this code, modified by the  
13 Directors of the West Virginia Health Insurance Plan to meet  
14 the objections of the Legislative Rule-Making Review  
15 Committee and refiled in the State Register on January 26,  
16 2010, relating to the Directors of the West Virginia Health  
17 Insurance Plan (Pre-existing Conditions Exclusion, 113 CSR  
18 2), is authorized.

**§64-7-3. Insurance Commissioner.**

1 (a) The legislative rule filed in the State Register on July  
2 17, 2009, authorized under the authority of section ten, article  
3 two, chapter thirty-three of this code, modified by the  
4 Insurance Commissioner to meet the objections of the  
5 Legislative Rule-Making Review Committee and refiled in  
6 the State Register on January 26, 2010, relating to the  
7 Insurance Commissioner (Variable Life Insurance, 114 CSR  
8 11D), is authorized.

9 (b) The legislative rule filed in the State Register on July  
10 17, 2009, authorized under the authority of section ten, article  
11 two, chapter thirty-three of this code, modified by the  
12 Insurance Commissioner to meet the objections of the  
13 Legislative Rule-Making Review Committee and refiled in  
14 the State Register on January 25, 2010, relating to the  
15 Insurance Commissioner (Annuity Disclosure, 114 CSR  
16 11E), is authorized.

17 (c) The legislative rule filed in the State Register on July  
18 17, 2009, authorized under the authority of section ten, article  
19 two, chapter thirty-three of this code, modified by the  
20 Insurance Commissioner to meet the objections of the  
21 Legislative Rule-Making Review Committee and refiled in  
22 the State Register on January 26, 2010, relating to the  
23 Insurance Commissioner (Medicare Supplement Insurance,  
24 114 CSR 24), is authorized.

25 (d) The legislative rule filed in the State Register on July  
26 17, 2009, authorized under the authority of section ten, article  
27 two, chapter thirty-three of this code, relating to the  
28 Insurance Commissioner (Coordination of Health Benefits,  
29 114 CSR 28), is authorized with the following amendments:

30 On page one, subsection 1.1, after the word “after” by  
31 striking out the words “the effective date of this rule” and  
32 inserting in lieu thereof the words “January 21, 2011.”;

33           And,

34           On page one, subsection 1.1, after the word “before” by  
35 striking out the words “the effective date of this rule” and  
36 inserting in lieu thereof the words “January 21, 2011,”.

37           (e) The legislative rule filed in the State Register on July  
38 31, 2009, authorized under the authority of section ten, article  
39 two, chapter thirty-three of this code, relating to the  
40 Insurance Commissioner (West Virginia Life and Health  
41 Insurance Guaranty Association Act Notice Requirements,  
42 114 CSR 36), is authorized.

43           (f) The legislative rule filed in the State Register on July  
44 17, 2009, authorized under the authority of section ten, article  
45 two, chapter thirty-three of this code, modified by the  
46 Insurance Commissioner to meet the objections of the  
47 Legislative Rule-Making Review Committee and refiled in  
48 the State Register on December 17, 2009, relating to the  
49 Insurance Commissioner (Mental Health Parity, 114 CSR  
50 64), is authorized.

51           (g) The legislative rule filed in the State Register on July  
52 24, 2009, authorized under the authority of section seventeen,  
53 article thirteen-c, chapter thirty-three of this code, relating to  
54 the Insurance Commissioner (Viatical Settlements, 114 CSR  
55 80), is authorized with the following amendments:

56           On page two, subsection 2.6., after the word “viators” by  
57 striking out the words “by viatical settlement providers”;

58           On page four, subsection 4.2., subdivision b., after the  
59 word “domicile” by striking out the words “and a West  
60 Virginia business license from the Secretary of State’s  
61 Office”;

62 On page five, by striking out subdivision 4.2.c. in its  
63 entirety;

64 And, by renumbering the remaining subdivisions;

65 On page five, subsection 4.2., subdivision f., by striking  
66 out the words “all information” and inserting in lieu thereof  
67 the word “informational”;

68 On page five, subsection 4.2., subdivision f., after the  
69 word “viators” by inserting the words “describing the viatical  
70 settlement process”;

71 On page five, subsection 4.3., subdivision b., after the  
72 word “five” by inserting the word “consecutive”;

73 On page six, by striking out subsection 4.6. in its entirety;

74 And, by renumbering the remaining subsections;

75 On page six, subsection 4.8., after the word “license.” by  
76 striking out the words “All viatical settlement broker  
77 licenses, as fixed by the Commissioner, shall expire at  
78 midnight on the thirty first day of May next following the  
79 date of issuance.” and inserting in lieu thereof the words  
80 “The date upon which the viatical settlement broker license  
81 shall expire for individuals and entities shall be at the  
82 discretion of the Commissioner.”;

83 On page six, subsection 4.10., subdivision a., after the  
84 word “directions” by striking out the word “posited” and  
85 inserting in lieu thereof the word “posted”;

86 On page nine, subsection 6.2., after the word “broker” by  
87 inserting the words “and each insurance producer whose  
88 viatical settlement activities are incidental to their business  
89 activities”;

90           On page twelve, section 9, after the word “A” by striking  
91           out the word “person” and inserting in lieu thereof the words  
92           “viatical settlement provider”;

93           On page twelve, section 9, after the word “similar” by  
94           striking the word “ro” and inserting in lieu thereof the word  
95           “to”;

96           And,

97           On page fourteen, subsection 12.1., subdivision b., after  
98           the words “case of” by striking the word “in” and inserting in  
99           lieu thereof the word “an”.

100           (h) The legislative rule filed in the State Register on July  
101           17, 2009, authorized under the authority of section ten, article  
102           two, chapter thirty-three of this code, modified by the  
103           Insurance Commissioner to meet the objections of the  
104           Legislative Rule-Making Review Committee and refiled in  
105           the State Register on January 25, 2010, relating to the  
106           Insurance Commissioner (Preventive Care Pilot Program,  
107           114 CSR 87), is authorized.

108           (i) The legislative rule filed in the State Register on July  
109           17, 2009, authorized under the authority of section ten, article  
110           two, chapter thirty-three of this code, modified by the  
111           Insurance Commissioner to meet the objections of the  
112           Legislative Rule-Making Review Committee and refiled in  
113           the State Register on December 12, 2009, relating to the  
114           Insurance Commissioner (Use of Senior-Specific  
115           Certifications and Professional Designations in the Sale of  
116           Life Insurance and Annuities, 114 CSR 89), is authorized.

#### **§64-7-4. Alcohol Beverage Control Commission.**

1           The legislative rule filed in the State Register on July 16,  
2           2009, authorized under the authority of section twenty-two-a,  
3           article sixteen, chapter eleven of this code, modified by the

4 Alcohol Beverage Control Commission to meet the  
5 objections of the Legislative Rule-Making Review  
6 Committee and refiled in the State Register on January 21,  
7 2010, relating to the Alcohol Beverage Commission  
8 (Nonintoxicating Beer Licensing and Operations Procedures,  
9 176 CSR 1), is authorized.

**§64-7-5. Athletic Commission.**

1 The legislative rule filed in the State Register on July 31,  
2 2009, authorized under the authority of section twenty-four,  
3 article five-a, chapter twenty-nine of this code, modified by  
4 the Athletic Commission to meet the objections of the  
5 Legislative Rule-Making Review Committee and refiled in  
6 the State Register January 8, 2010, relating to the Athletic  
7 Commission (Administrative Rules of the West Virginia  
8 State Athletic Commission, 177 CSR 1), is authorized.

**§64-7-6. Lottery Commission.**

1 The legislative rule filed in the State Register on July 27,  
2 2009, authorized under the authority of section five, article  
3 twenty-five, chapter twenty-nine of this code, modified by  
4 the Lottery Commission to meet the objections of the  
5 Legislative Rule-Making Review Committee and refiled in  
6 the State Register on January 20, 2010, relating to the Lottery  
7 Commission (Limited Gaming Facility Rule, 179 CSR 4), is  
8 authorized with the following amendments:

9 On page fifty-one, line seven, following the word  
10 “through”, by striking out the numeral “37” and inserting in  
11 lieu thereof the numeral “38”;

12 On page fifty-one, beginning on line eight, by striking out  
13 section thirty-eight in its entirety;

14 On page eighty-one, 57.5.c, line thirty-four, following the  
15 word “section”, by striking out the word “fifty-three” and  
16 inserting in lieu thereof the word “thirty-three”;

17 On page eighty-four, 57.6.d, line six, following the word  
18 “fifteen”, by striking out the word “thirty-three” and inserting  
19 in lieu thereof the word “sixteen”;

20 On page one hundred twelve, 88.2.b, line thirteen,  
21 following the word “paragraphs”, by striking out the  
22 numerals “88.1.i.2 to 88.1.i.4” and inserting in lieu thereof the  
23 numerals “88.1.g.2 to 88.1.g.4”;

24 On page one hundred thirty-three, beginning on line  
25 seventeen, by striking out the following:

26 “~~115.5.c.2.~~ 115.5.b.1. Dice;

27 ~~115.5.c.3.~~ 115.5.b.1. Tokens;

28 ~~115.5.c.4.~~ 115.5.b.1. Playing cards; and

29 ~~115.5.c.5.~~ 115.5.b.1. Positions on the roulette wheel.”

30 and inserting in lieu thereof the following:

31 “~~115.5.c.2.~~ 115.5.b.2. Dice;

32 ~~115.5.c.3.~~ 115.5.b.3. Tokens;

33 ~~115.5.c.4.~~ 115.5.b.4. Playing cards; and

34 ~~115.5.c.5.~~ 115.5.b.5. Positions on the roulette wheel.”;

35 On page one hundred forty-one, line two, following the  
36 numeral “~~119.3.b.~~” by striking out the numeral “119.2.a.” and  
37 inserting in lieu thereof the numeral “119.2.b.”;

38 On page one hundred forty-one, line three, following the  
39 numeral “~~119.3.c.~~” by striking out the numeral “119.2.a.” and  
40 inserting in lieu thereof the numeral “119.2.c.”;

41 On page one hundred forty-three, line twenty, following  
42 the numeral “~~121.3.a.3.~~” by striking out the numeral

43 “121.3.a.4.” and inserting in lieu thereof the numeral  
44 “121.3.a.2.”;

45 On page one hundred forty-three, line twenty-one, following  
46 the numeral “~~121.3.a.4.~~” by striking out the numeral  
47 “121.3.a.5.” and inserting in lieu thereof the numeral  
48 “121.3.a.3.”;

49 On page one hundred fifty-eight, 145.1, line thirty-one,  
50 by striking out the numeral “§25-25-22a” and inserting in  
51 lieu the numeral “§29-25-22a”;

52 And,

53 On page one hundred seventy, 173.1, line thirty-one,  
54 following the word “gambling”, by inserting a comma.



## CHAPTER 121

**(Com. Sub. for S. B. 291 - By Senators  
Minard, Snyder, Prezioso, Unger,  
Boley and K. Facemyer)**

[Passed March 13, 2010; in effect from passage.]

[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Transportation; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing



certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the denial, suspension, revocation, restriction or nonrenewal of driving privileges; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the collection of tax on the sale of a motor vehicle; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the use of state road rights-of-way and adjacent areas; and authorizing the Commissioner of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways.

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

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF  
TRANSPORTATION TO PROMULGATE  
LEGISLATIVE RULES.**

§64-8-1. Division of Motor Vehicles.

§64-8-2. Commissioner of Highways.

**§64-8-1. Division of Motor Vehicles.**

1 (a) The legislative rule filed in the State Register on  
2 October 29, 2009, authorized under the authority of section  
3 nine, article two, chapter seventeen-a of this code, modified  
4 by the Division of Motor Vehicles to meet the objections of  
5 the Legislative Rule-Making Review Committee and refiled  
6 in the State Register on November 23, 2009, relating to the  
7 Division of Motor Vehicles (Denial, Suspension, Revocation,  
8 Restriction or Nonrenewal of Driving Privileges, 91 CSR 5),  
9 is authorized, with the following amendments:

10 On page four, paragraph 3.3.c.1, line one, by striking the  
11 words “does not present a danger to the public safety or  
12 welfare” and inserting in lieu thereof the words “is competent  
13 to operate a motor vehicle”;

14 On page four paragraph 3.3.c.2., line one, by striking the  
15 words “does not present a danger to the public safety or  
16 welfare” and inserting in lieu thereof the words “is competent  
17 to operate a motor vehicle”;

18 On page four paragraph 3.3.c.3., line one, by striking the  
19 word “licensee” and inserting in lieu thereof the word  
20 “licensee’s”;

21 On page four paragraph 3.3.c.3., line one, by striking the  
22 words “present a danger to the public safety or welfare and  
23 his or her”;

24 On page eight, subdivision 3.6.a, line four, after the  
25 number “3.2 ” by inserting a comma and striking the word  
26 “or”;

27 On page eight, subdivision 3.6.a, line four, after the  
28 number “3.3 ” by inserting the following, “and 3.6 ”;

29 On page twenty-two, subdivision 9.2.e., line one, after the  
30 word “court or”, by striking the word “an” and inserting in  
31 lieu thereof the words “a designated”; and

32 On page twenty-two, subdivision 9.2.e., line three, by  
33 striking the words “presents a danger to public safety or  
34 welfare” and inserting in lieu thereof the words “is competent  
35 to operate a motor vehicle”.

36 (b) The legislative rule filed in the State Register on  
37 October 29, 2009, authorized under the authority of section  
38 three-c, article fifteen, chapter eleven of this code, relating to  
39 the Division of Motor Vehicles (Collection of Tax on the  
40 Sale of a Motor vehicle, 91 CSR 9), is authorized.

**§64-8-2. Commissioner of Highways.**

1 (a) The legislative rule filed in the State Register on  
2 August 4, 2009, authorized under the authority of section  
3 one, article twenty, chapter seventeen of this code, modified  
4 by the Commissioner of Highways to meet the objections of  
5 the Legislative Rule-Making Review Committee and refiled  
6 in the State Register on December 16, 2009, relating to the  
7 Commissioner of Highways (Use of State Road Rights of  
8 Way and Adjacent Areas, 157 CSR 6), is authorized.

9 (b) The legislative rule filed in the State Register on July  
10 30, 2009, authorized under the authority of section seven,  
11 article eighteen, chapter twenty-two of this code, modified by  
12 the Commissioner of Highways to meet the objections of the  
13 Legislative Rule-Making Review Committee and refiled in  
14 the State Register on December 16, 2009, relating to the  
15 Commissioner of Highways (Transportation of Hazardous  
16 Wastes upon the Roads and Highways, 157 CSR 7), is  
17 authorized.

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**CHAPTER 122**

**(Com. Sub. for H. B. 4108 - By Delegates  
Brown, D. Poling, Miley and Talbott)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on April 1, 2010.]

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AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of

certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the State Board of Examiners for Licensed Practical Nurses to promulgate a legislative rule relating to policies and procedures for development and maintenance of educational programs in practical nursing (10 CSR 1); authorizing the Board of Examiners in Counseling to promulgate legislative rules relating to marriage and family license renewal and continuing professional education (27 CSR 10), licensed professional counselor fees (27 CSR 2), licensed professional counselor license renewal and continuing professional education requirements (27 CSR 3), marriage and family therapists licensing (27 CSR 8), and marriage and family therapists fees (27 CSR 9); authorizing the Board of Medicine to promulgate a legislative rule relating to fees for services rendered by the Board of Medicine including assistance to the Board-designated physician health program for physicians, podiatrists and physician assistants (11 CSR 4); authorizing the Conservation Agency to promulgate a legislative rule relating to the operation of the West Virginia State Conservation Committee and conservation districts (63 CSR 1); authorizing the Commissioner of Agriculture to promulgate legislative rule relating to animal disease control (61 CSR 1), integrated pest management programs in schools and child care centers and facilities (61 CSR 12J), West Virginia shellfish (61 CSR 23B), and best management practices for land application of waste products from aquaculture facilities (61 CSR 27); authorizing the Board of Barbers and Cosmetologists to promulgate legislative rule

relating to continuing education (3 CSR 11), qualifications, training, examination and licensure of instructors in barbering and beauty culture (3 CSR 2), licensing schools of barbering and beauty culture (3 CSR 3), operation of barber, beauty shops and schools of barbering and beauty culture (3 CSR 5), schedule of fees (3 CSR 6), and schedule of fines (3 CSR 7); authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to licensure of speech-pathology and audiology (29 CSR 1); authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate legislative rules relating to the requirements for licensure and certification (190 CSR 2) and the renewal of licensure or certification (190 CSR 3); authorizing the Board of Osteopathy to promulgate legislative rules relating to fees for services rendered by the Board (24 CSR 5), licensing procedures for osteopathic physicians (24 CSR 1), and the formation and approval of professional limited liability companies (24 CSR 4); authorizing the Secretary of State to promulgate legislative rules relating to early voting in person satellite precincts (153 CSR 13), Vote-by-mail Pilot Project Phase 1: Class IV Early Voting by Mail (153 CSR 38) and Vote-by-mail Pilot Project Phase 2: Voting by Mail (153 CSR 39); authorizing the Board of Occupational Therapy to promulgate legislative rules relating to the administrative rules of the Board of Occupational Therapy and licensure of occupational therapists and occupational therapy assistants (13 CSR 1), fees for services rendered by the Board (13 CSR 3), continuing education and competence (13 CSR 4), competency standards for advance practice by occupational therapists and occupational therapy assistants (13 CSR 5) and ethical standards of practice (13 CSR 6); authorizing the Board of Psychologists to promulgate a legislative rule relating to the qualifications for licensure as a psychologist or a school psychologist (17 CSR 3); and authorizing the Governor's Office of Health Enhancement and Lifestyle Planning to promulgate a legislative rule relating to prescription drug advertising expense reporting (210 CSR 1).

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

That article nine, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.**

- §64-9-1. State Board of Examiners for Licensed Practical Nurses.
- §64-9-2. Board of Examiners in Counseling.
- §64-9-3. Board of Medicine.
- §64-9-4. Conservation Agency.
- §64-9-5. Commissioner of Agriculture.
- §64-9-6. Board of Barbers and Cosmetologists.
- §64-9-7. Board of Examiners for Speech-Language Pathology and Audiology.
- §64-9-8. Real Estate Appraiser Licensing and Certification Board.
- §64-9-9. Board of Osteopathy.
- §64-9-10. Secretary of State.
- §64-9-11. Board of Occupational Therapy.
- §64-9-12. Board of Psychologists.
- §64-9-13. Governor's Office of Health Enhancement and Lifestyle Planning.

**§64-9-1. State Board of Examiners for Licensed Practical Nurses.**

1           The legislative rule filed in the State Register on July 9,  
2           2009, authorized under the authority of section five, article  
3           seven-a, chapter thirty, of this code, modified by the State  
4           Board of Examiners for Licensed Practical Nurses to meet  
5           the objections of the Legislative Rule-Making Review  
6           Committee and refiled in the State Register on October 19,  
7           2009, relating to the State Board of Examiners for Licensed  
8           Practical Nurses (policies and procedures for development  
9           and maintenance of educational programs in practical  
10          nursing, 10 CSR 1), is authorized.

**§64-9-2. Board of Examiners in Counseling.**

1           (a) The legislative rule filed in the State Register on July  
2           31, 2009, authorized under the authority of section six, article

3 thirty-one, chapter thirty, of this code, modified by the Board  
4 of Examiners in Counseling to meet the objections of the  
5 Legislative Rule-Making Review Committee and refiled in  
6 the State Register on November 25, 2009, relating to the  
7 Board of Examiners in Counseling (licensed professional  
8 counselor fees, 27 CSR 2), is authorized.

9 (b) The legislative rule filed in the State Register on July  
10 31, 2009, authorized under the authority of section six, article  
11 thirty-one, chapter thirty, of this code, modified by the Board  
12 of Examiners in Counseling to meet the objections of the  
13 Legislative Rule-Making Review Committee and refiled in  
14 the State Register on October 19, 2009, relating to the Board  
15 of Examiners in Counseling (licensed professional counselor  
16 license renewal and continuing professional education  
17 requirements, 27 CSR 3), is authorized with the following  
18 amendment:

19 On page one, subsection 1.2., by striking out “§30-31-  
20 5(b)(18)” and inserting in lieu thereof “§30-31-6”.

21 (c) The legislative rule filed in the State Register on July  
22 31, 2009, authorized under the authority of section six, article  
23 thirty-one, chapter thirty, of this code, modified by the Board  
24 of Examiners in Counseling to meet the objections of the  
25 Legislative Rule-Making Review Committee and refiled in  
26 the State Register on November 25, 2009, relating to the  
27 Board of Examiners in Counseling (marriage and family  
28 therapists licensing, 27 CSR 8), is authorized.

29 (d) The legislative rule filed in the State Register on July  
30 31, 2009, authorized under the authority of section six, article  
31 thirty-one, chapter thirty, of this code, modified by the Board  
32 of Examiners in Counseling to meet the objections of the  
33 Legislative Rule-Making Review Committee and refiled in  
34 the State Register on November 25, 2009, relating to the  
35 Board of Examiners in Counseling (marriage and family  
36 therapists fees, 27 CSR 9), is authorized.

37 (e) The legislative rule filed in the State Register on July  
38 31, 2009, authorized under the authority of section six, article  
39 thirty-one, chapter thirty, of this code, modified by the Board  
40 of Examiners in Counseling to meet the objections of the  
41 Legislative Rule-Making Review Committee and refiled in  
42 the State Register on October 19, 2009, relating to the Board  
43 of Examiners in Counseling (marriage and family license  
44 renewal and continuing professional education, 27 CSR 10),  
45 is authorized with the following amendments:

46 On page one, subsection 1.2., by striking out “§30-31-  
47 5(b)” and inserting in lieu thereof “§30-31-6”.

48 On page one section 2.1, by striking the words “of  
49 Marriage and Family Therapist and code of ethics.” and  
50 inserting in lieu thereof the following words, “for Marriage  
51 and Family Therapy Code of Ethics.”;

52 On page two section 2.7 by striking the words, “you  
53 attend” and inserting in lieu thereof the word, “attended”;

54 On page three section 4.1, striking the word “Therapist”  
55 and inserting in lieu of the word, “Therapy”;

56 On page four section 4.9 striking the word “therapist” and  
57 inserting in lieu of the following word, “therapy”;

58 On page four section 4.10 striking the words, “of  
59 Marriage and Family Therapist” and inserting in lieu thereof  
60 the following words, “for Marriage and Family Therapy”;

61 On page six, subparagraph (I) by striking the apostrophe;

62 On page seven, subparagraph (D) by striking the  
63 apostrophe;



64           On page eight paragraph 6 by striking the words, “of  
65   Marriage and Family Therapist” and inserting in lieu thereof  
66   the following words, “for Marriage and Family Therapy”;

67           On page nine, subparagraph (C) by striking out the  
68   words, “of Marriage and Family Therapist” and inserting in  
69   lieu of the following words, “for Marriage and Family  
70   Therapy”.

#### **§64-9-3. Board of Medicine.**

1           The legislative rule filed in the State Register on July 30,  
2   2009, authorized under the authority of section seven, article  
3   three, chapter thirty, of this code, relating to the Board of  
4   Medicine (fees for services rendered by the Board of  
5   Medicine including assistance to the Board-designated  
6   physician health program for physicians, podiatrists and  
7   physician assistants, 11 CSR 4), is authorized.

#### **§64-9-4. Conservation Agency.**

1           The legislative rule filed in the State Register on July 29,  
2   2009, authorized under the authority of section six, article  
3   twenty-one-a, chapter nineteen, of this code, modified by the  
4   Conservation Agency to meet the objections of the  
5   Legislative Rule-Making Review Committee and refiled in  
6   the State Register on October 23, 2009, relating to the  
7   Conservation Agency (operation of the West Virginia State  
8   Conservation Committee and conservation districts, 63 CSR  
9   1), is authorized.

#### **§64-9-5. Commissioner of Agriculture.**

1           (a) The legislative rule filed in the State Register on July  
2   28, 2009, authorized under the authority of section two,  
3   article nine, chapter nineteen, of this code, modified by the  
4   Commissioner of Agriculture to meet the objections of the

5 Legislative Rule-Making Review Committee and refiled in  
6 the State Register on September 22, 2009, relating to the  
7 Commissioner of Agriculture (animal disease control, 61  
8 CSR 1), is authorized.

9 (b) The legislative rule filed in the State Register on July  
10 21, 2009, authorized under the authority of section four,  
11 article sixteen-a, chapter nineteen, of this code, modified by  
12 the Commissioner of Agriculture to meet the objections of  
13 the Legislative Rule-Making Review Committee and refiled  
14 in the State Register on September 4, 2009, relating to the  
15 Commissioner of Agriculture (integrated pest management  
16 programs in schools and child care centers and facilities, 61  
17 CSR 12J), is authorized.

18 (c) The legislative rule filed in the State Register on July  
19 31, 2009, authorized under the authority of section one,  
20 article twenty-nine, chapter nineteen, of this code, modified  
21 by the Commissioner of Agriculture to meet the objections of  
22 the Legislative Rule-Making Review Committee and refiled  
23 in the State Register on September 23, 2009, relating to the  
24 Commissioner of Agriculture (West Virginia shellfish, 61  
25 CSR 23B), is authorized with the following amendments:

26 On page 4, by striking out subdivision 4.1.i. in its entirety  
27 and inserting in lieu thereof a new subdivision 4.1.i. to read  
28 as follows:

29 “Refer violations to a court of competent jurisdiction for  
30 the violation of this rule as allowed under West Virginia  
31 laws. Nothing in this rule shall be construed as requiring the  
32 commissioner to report for prosecution or institute an  
33 embargo, detainment or quarantine for the violation of this  
34 rule when he or she believes that the public interest may best  
35 be served by a written notice of the violation.”

36 On page 6, after subdivision 7.1.j. by adding a new  
37 subsection, designated 7.2 to read as follows:

38           “7.2. Any person who violates the provisions of this rule  
39 shall have his or her Shellfish Certificate suspended until the  
40 facility is in compliance with the provisions of this rule.”;

41           On pages 6 and 7, by striking §61-23A-8 in its entirety;

42           And, by renumbering the remaining section.

43           (d) The legislative rule filed in the State Register on July  
44 15, 2009, authorized under the authority of section six, article  
45 twenty-nine, chapter nineteen, of this code, modified by the  
46 Commissioner of Agriculture to meet the objections of the  
47 Legislative Rule-Making Review Committee and refiled in  
48 the State Register on January 14, 2010, relating to the  
49 Commissioner of Agriculture (best management practices for  
50 land application of waste products from aquaculture facilities,  
51 61 CSR 27), is authorized.

#### **§64-9-6. Board of Barbers and Cosmetologists.**

1           (a) The legislative rule filed in the State Register on July  
2 31, 2009, authorized under the authority of section six, article  
3 twenty-seven, chapter thirty, of this code, modified by the  
4 Board of Barbers and Cosmetologists to meet the objections  
5 of the Legislative Rule-Making Review Committee and  
6 refiled in the State Register on December 14, 2009, relating  
7 to the Board of Barbers and Cosmetologists (qualifications,  
8 training, examination and licensure of instructors in barbering  
9 and beauty culture, 3 CSR 2), is authorized with the  
10 following amendments:

11           On page one, after the caption “SERIES 2”, by striking  
12 out the word “Licensure” and inserting in lieu thereof the  
13 word “Certification”;

14           On page one, subsection 1.1, by striking out the word  
15 “licensure” and inserting in lieu thereof the word  
16 “certification”;

17           On page one, in the “§3-2-2” caption, by striking out the  
18 word “Licensure” and inserting in lieu thereof the word  
19 “Certification”.

20           On page one, subsection 2.1, by striking out said  
21 subsection 2.1 in its entirety and inserting in lieu thereof a  
22 new subsection 2.1 to read as follows:

23           2.1. An individual seeking certification must;

24           On page one, subdivision 2.1.3, by striking out the word  
25 “offered” and inserting in lieu thereof the word “approved”.

26           On page two, subdivision 2.1.9, by striking out said  
27 subdivision 2.1.9 in its entirety and inserting in lieu thereof  
28 a new subdivision 2.1.9 to read as follows:

29           “2.1.9. Submit a letter from a school owner or manager  
30 certifying that the applicant has completed 375 hours of  
31 instructor training and attesting to the applicant’s  
32 professional capabilities.”

33           On page two, subdivision 2.1.11, at the beginning of said  
34 subdivision, by striking out the word “Must”;

35           On page two, subdivision 2.1.12, at the beginning of said  
36 subdivision, by striking out the word “Must”;

37           On page two, subdivision 2.1.13, by striking out the word  
38 “license” and inserting in lieu thereof the word  
39 “certification”;

40           On page two, subsection 3.1, by striking out the word  
41 “licensure” and inserting in lieu thereof the word  
42 “certification”;

43 On page two, subdivision 3.1.1, by striking out the word  
44 “Licensure” and inserting in lieu thereof the word  
45 “Certification”;

46 On page two, subdivision 3.1.6, by striking out said  
47 subdivision 3.1.6 in its entirety and inserting in lieu thereof  
48 a new subdivision 3.1.6 to read as follows:

49 “3.1.6. Submit a letter from a school owner or manager  
50 certifying that the applicant has completed 375 hours of  
51 instructor training and attesting to the applicant’s  
52 professional capabilities and employment and instructing  
53 experience.”

54 On page three, subdivision 3.1.8, at the beginning of said  
55 subdivision, by striking out the word “Must”;

56 On page three, subdivision 3.1.9, at the beginning of said  
57 subdivision, by striking out the word “Must”;

58 On page three, subdivision 3.1.10, by striking out the  
59 word “license” and inserting in lieu thereof the word  
60 “certification”;

61 On page three, subsection 3.2, by striking out subsection  
62 3.2 in its entirety and inserting in lieu thereof a new  
63 subsection 3.2 to read as follows:

64 3.2. An instructor certification must be renewed annually  
65 or biennially on or before January 1.;

66 On page three, subsection 3.3, by striking out the word  
67 “registered” and inserting in lieu thereof the word “certified”;

68 On page three, subsection 3.3, by striking out the word  
69 “license” and inserting in lieu thereof the word “certificate”;

70           On page three, in the “§3-2-4” caption, by striking out the  
71 word “Licensure” and inserting in lieu thereof the word  
72 “Certification”;

73           On page three, subsection 4.1, by striking out the word  
74 “licensure” and inserting in lieu thereof the word  
75 “certification”;

76           On page three, subsection 4.1, in the last sentence, by  
77 striking out the underlined word “student”;

78           On page four, in the “§3-2-5” caption, by striking out the  
79 word “Licensure” and inserting in lieu thereof the word  
80 “Certification”;

81           On page four, subsection 5.2, by striking out the last  
82 sentence that reads: “This ~~rule~~ section applies to only 1800  
83 hour barber graduates.”;

84           On page five, in the “§3-2-6” caption, by striking out the  
85 word “Licensure” and inserting in lieu thereof the word  
86 “Certification”;

87           On page five, by striking out subsection 6.1 in its entirety  
88 and renumbering the remaining subsections;

89           On page five, subsection 6.2, by striking out the word  
90 “license” and inserting in lieu thereof the words “a  
91 certificate”;

92           On page six, by striking out subsection 7.1 in its entirety  
93 and inserting in lieu thereof a new subsection 7.1 to read as  
94 follows:

95           7.1. An applicant from another state seeking certification  
96 as an instructor or master instructor is eligible for  
97 certification by reciprocity if the applicant has acquired

98 training in another state equal to the requirements established  
99 in this rule for the respective certificate requested: Provided,  
100 that the state in which said applicant is certified extends the  
101 same privilege to certified instructors from this State.;

102 On page six, in the “§3-2-8” caption, by striking out the  
103 word “License” and inserting in lieu thereof the word  
104 “Certificate”;

105 On page six, subsection 8.1, by striking out the word  
106 “license” and inserting in lieu thereof the word “certificate”;

107 On page six, subsection 8.2, by striking out the word  
108 ‘whose’ and inserting in lieu thereof the words “who is”;

109 On page six, subsection 8.2, by striking out the word  
110 “licensed” and inserting in lieu thereof the word “certified”;

111 And,

112 On page six, subsection 9.1, by striking out the words  
113 “contested case”.

114 (b) The legislative rule filed in the State Register on July  
115 31, 2009, authorized under the authority of section six, article  
116 twenty-seven, chapter thirty, of this code, modified by the  
117 Board of Barbers and Cosmetologists to meet the objections  
118 of the Legislative Rule-Making Review Committee and  
119 refiled in the State Register on December 14, 2009, relating  
120 to the Board of Barbers and Cosmetologists (licensing  
121 schools of barbering and beauty culture, 3 CSR 3), is  
122 authorized with the following amendments:

123 On page one, subdivision 2.1.d, by striking said  
124 subdivision 2.1.d in its entirety and inserting in lieu thereof  
125 a new subdivision 2.1.d to read as follows:

126       “The applicant has employed or contracted with at least  
127       2 licensed master instructors, and such additional licensed  
128       instructors as necessary to meet the instructor-to-student ratio  
129       requirements of 3 CSR 4 (Title 3, Legislative Rule of the  
130       Board of Barbers and Cosmetologists, Series 4, Operational  
131       Standards for Schools of Barbering and Beauty Culture).”;

132       On page two, subdivision 3.1.5, by striking out  
133       subdivision 3.1.5 in its entirety and inserting in lieu thereof  
134       a new subdivision 3.1.5 to read as follows:

135       3.1.5. A copy of a proposed floor plan of the school,  
136       which arrangement shall have at least two (2) classrooms for  
137       each profession taught and a room for clinical and  
138       demonstration work. On page three, subdivision 3.1.13, by  
139       striking said subdivision 3.1.13 in its entirety and inserting in  
140       lieu thereof a new subdivision 3.1.13 to read as follows:

141       “A statement by the applicant that the school is  
142       handicapped accessible.”;

143       On page four, subsection 3.6, by striking said subsection  
144       3.6 in its entirety and inserting in lieu thereof a new  
145       subsection 3.6 to read as follows:

146       “Applicants who acquire or relocate an existing school  
147       must meet the requirements set forth in this section.”;

148       On page four, subsection 4.4, after the words “The  
149       Board” by striking the word “shall” and inserting in lieu  
150       thereof the word “may”, and after the words “general  
151       grounds” by inserting the word “suspend,”; and

152       On page four, subdivision 4.4.3, by striking said  
153       subdivision 4.4.3 in its entirety and inserting in lieu thereof  
154       a new subdivision 4.4.3 to read as follows:



155           “A licensee, owner, administrator, manager, director or  
156 other key interested party is convicted of a felony or  
157 misdemeanor relating to the school or its operation.”.

158           (c) The legislative rule filed in the State Register on July  
159 31, 2009, authorized under the authority of section six, article  
160 twenty-seven, chapter thirty, of this code, modified by the  
161 Board of Barbers and Cosmetologists to meet the objections  
162 of the Legislative Rule-Making Review Committee and  
163 refiled in the State Register on December 14, 2009, relating  
164 to the Board of Barbers and Cosmetologists (operation of  
165 barber, beauty shops and schools of barbering and beauty  
166 culture, 3 CSR 5), is authorized with the following  
167 amendments:

168           On page one, subsection 1.1, by striking out the  
169 subsection and inserting in lieu thereof “Scope - This  
170 legislative rule governs the sanitary requirements for salons  
171 and schools licensed by the Board of Barbers and  
172 Cosmetologists.”;

173           On page one, subsection 2.1, after the word “All”, by  
174 striking out the words “barber, beauty, nail and aesthetic  
175 shops/salons or schools of barbering and beauty culture” and  
176 inserting in lieu thereof the words “salons or schools”;

177           On page one, subsection 2.2, after the word “All”, by  
178 striking out the words “shop’s or school’s” and inserting in  
179 lieu thereof the words “salons’ and schools”;

180           On page one, subsection 2.2, after the word “such”, by  
181 striking out the word “shop” and inserting in lieu thereof the  
182 word “salon”;

183           On page one, subsection 2.2, after the word “such”, by  
184 striking out the word “shops” and inserting in lieu thereof the  
185 word “salons”;

186 On page one, subsection 2.3, after the word “Each”, by  
187 striking out the words “barber, cosmetologist, aesthetician,  
188 nail technician/manicurist,”;

189 On page two, subsection 2.6, by striking out the word  
190 “in” and inserting in lieu thereof the word “is”;

191 On page two, subsection 2.8, after the word “All”, by  
192 striking out the words “barber, beauty, nail and aesthetic  
193 shops/”;

194 On page two, subsection 2.9, after the word “for”, by  
195 striking out the words “barber, beauty, nail and aesthetic  
196 shops/”;

197 On page two, subsection 2.9, after the word “in”, by  
198 striking out the words “barber or beauty shops” and inserting  
199 in lieu thereof the word “salons”;

200 On page two, subsection 2.9, by striking out the word  
201 “Shops” and inserting in lieu thereof the word “salons”;

202 On page three, subsection 2.15, after the word “each”, by  
203 striking out the word “shop” and inserting in lieu thereof the  
204 word “salon”;

205 On page three, subsection 2.15, after the word “the”, by  
206 striking out the word “shop” and inserting in lieu thereof the  
207 word “salon”;

208 On page three, subsection 2.16, after the word “Each”, by  
209 striking out the words “barber, aesthetician, nail technician/  
210 manicurist, or cosmetologist” and inserting in lieu thereof the  
211 word “licensee”;

212 On page three, subsection 2.16, after the word “student”,  
213 by striking out the words “barber, aesthetician, nail  
214 technician/manicurist, or cosmetologist”;

215           On page three, subsection 2.16, after the word “such”, by  
216 striking out the words “barber, aesthetician, nail technician/  
217 manicurist, or cosmetologist” and inserting in lieu thereof the  
218 word “licensee”;

219           On page three, subsection 2.17, after the word “Every”,  
220 by striking out the words “barber, aesthetician, nail  
221 technician/manicurist, or cosmetologist” and inserting in lieu  
222 thereof the word “licensee”;

223           On page three, subsection 2.19, by striking out the words  
224 “marks and where possible” and inserting in lieu thereof the  
225 words “and, where possible”;

226           On page three, subsection 2.20, by striking out subsection  
227 2.20 in its entirety and inserting in lieu thereof a new  
228 subsection 2.20 to read as follows:

229           2.20. Any member of the Board, or its inspectors may  
230 enter or inspect any barber, beauty, nail and aesthetic  
231 shops/salons or school of barbering or beauty culture during  
232 business hours to check any part of the premises in order to  
233 ascertain whether or not any part of these rules are being  
234 violated, and to take any other action necessary to properly  
235 enforce the law;

236           On page four, subsection 2.21, after the word “every”, by  
237 striking out the words “barber, beauty, nail and aesthetic  
238 shops/salons” and inserting in lieu thereof the word “salon”;

239           On page four, subsection 2.24, after the word “All”, by  
240 striking out the words “barber, beauty, nail and aesthetic  
241 shops/salons and beauty shops or” and inserting in lieu  
242 thereof the words “salons and”;

243           On page four, subsection 2.24, after the word “the”, by  
244 striking out the word “shop” and inserting in lieu thereof the  
245 words “salon or school”;

246 On page four, subsection 2.25, by striking out the word  
247 “have” and inserting in lieu thereof the word “operate”;

248 On page four, subsection 2.25, after the word “the”, by  
249 striking out the word “shop” and inserting in lieu thereof the  
250 word “salon”;

251 On page four, subsection 2.26, after the word “All”, by  
252 striking out the words “barber, beauty, nail and aesthetic  
253 shops/salons and shop” and inserting in lieu thereof the word  
254 “salon”;

255 On page four, subsection 2.27, after the word “All”, by  
256 striking out the words “barber, beauty, nail and aesthetic  
257 shops/salons and beauty shops” and inserting in lieu thereof  
258 the word “salons”;

259 On page four, subsection 2.27, by striking out the words  
260 “water marks or stains,”;

261 On page four, subsection 3.1, after the word “all”, by  
262 striking out the words “barber, beauty, nail and aesthetic  
263 shops/salons, barber or beauty” and inserting in lieu thereof  
264 the words “salons and”;

265 On page four, subsection 3.1, after the word “all”, by  
266 striking out the words “licensed barbers, cosmetologists,  
267 aestheticians, nail technicians/manicurists” and inserting in  
268 lieu thereof the word “licensees”;

269 And,

270 On page four, subsection 4.1, after the word “a” by  
271 striking out the words “contested case”.

272 (d) The legislative rule filed in the State Register on July  
273 31, 2009, authorized under the authority of section six, article

274 twenty-seven, chapter thirty, of this code, relating to the  
275 Board of Barbers and Cosmetologists (schedule of fees, 3  
276 CSR 6), is authorized with the following amendments:

277 On page one, subsection 1.1, after the word  
278 “Cosmetologists” by striking out the remainder of the  
279 sentence;

280 And,

281 On page one, subsection 1.2, by striking out “§30-27-1”  
282 and inserting in lieu thereof “§30-27-6”.

283 (e) The legislative rule filed in the State Register on July  
284 31, 2009, authorized under the authority of section six, article  
285 twenty-seven, chapter thirty, of this code, modified by the  
286 Board of Barbers and Cosmetologists to meet the objections  
287 of the Legislative Rule-Making Review Committee and  
288 refiled in the State Register on December 14, 2009, relating  
289 to the Board of Barbers and Cosmetologists (schedule of  
290 fines, 3 CSR 7), is authorized with the following amendment:

291 On page one, section 2, after the words “any person  
292 licensed” by striking out the words “and/or licensed facility”  
293 and inserting in lieu thereof the following words “or holding  
294 a salon license”;

295 On page ten, subsection 2.63, by striking out the word  
296 “Failure” and inserting in lieu thereof the word “Failing”;

297 On page eleven, subsection 2.64, by striking out the word  
298 “Failure” and inserting in lieu thereof the word “Failing”;

299 On page eleven, subsection 2.65, by striking out the  
300 words “Failure for a shop or shop owner” and inserting in  
301 lieu thereof the word “Failing”;

302 On page eleven, subsection 2.66, by striking out the  
303 words “Failure for a shop or shop manager” and inserting in  
304 lieu thereof the word “Failing”;

305 On page eleven, by striking out subsection 2.68 in its  
306 entirety and by renumbering the remaining subsections;

307 And,

308 On page twelve, by striking out subsections 2.71 and 2.72  
309 in their entirety.

310 (f) The legislative rule filed in the State Register on July  
311 31, 2009, authorized under the authority of section six, article  
312 twenty-seven, chapter thirty, of this code, modified by the  
313 Board of Barbers and Cosmetologists to meet the objections  
314 of the Legislative Rule-Making Review Committee and  
315 refiled in the State Register on December 14, 2009, relating  
316 to the Board of Barbers and Cosmetologists (continuing  
317 education, 3 CSR 11), is authorized with the following  
318 amendments:

319 On page one, subsection 1.1, by striking out the words  
320 “barbering, cosmetology, manicuring/nail technology, and  
321 aesthetics” and inserting in lieu thereof the words “beauty  
322 culture in West Virginia”;

323 On page one, subsection 1.2, by striking out “§30-27-6-  
324 9” and inserting in lieu thereof “§30-27-6”.

325 On page one, after the section heading “§3-11-2  
326 Definitions” by striking out everything after the said section  
327 heading and inserting in lieu thereof the following, all to read  
328 as follows:

329 “2.1. ‘Approved academic course’ means a formal course  
330 of study offered by an accredited postsecondary educational  
331 institution as it relates to the barbering, cosmetology,  
332 manicuring/nail technology, and aesthetics.

333           2.2. 'Approved provider' means a local, state or national  
334 agency, organization or association recognized by the Board.

335           2.3. 'Audit' means the selection of licensees for  
336 verification of satisfactory completion of continuing  
337 education during a specified time period, or the selection of  
338 approved providers for verification of adherence to  
339 continuing education approved provider requirements during  
340 a specified time period.

341           2.4. 'Beauty Culture' means the act or practice of  
342 aesthetics, barbering, barbering crossover, barber permanent  
343 waving, cosmetology, cosmetology crossover and nail care.;

344           2.5. 'Contact person' means a person submitting a  
345 Request for Approval Form.

346           2.6. 'Continuing education' means planned, organized  
347 learning activities engaged in following initial licensure and  
348 designed to maintain, improve, or expand beauty knowledge  
349 and skills or to develop new knowledge and skills related to  
350 beauty culture practice, education, or theory development.

351           2.7. 'Continuing education activity' means a learning activity  
352 that is planned, organized and administered to enhance the  
353 professional knowledge and skills underlying the professional  
354 performance that the licensee uses to provide services the public.  
355 To qualify as continuing education, the activity must provide  
356 sufficient depth and scope of a subject area.

357           2.8. 'Continuing education credit' means credit earned  
358 for completing a continuing education activity, expressed in  
359 units as provided in section 3.1 of this rule.

360           2.9. 'Continuing Education Provider License' means a  
361 licensed provider of continuing education.

362           2.10. 'Documentation' means proof of participation in a  
363 continuing education activity.

364           2.11. 'Formal offering' means an extension course,  
365 independent study, or other course which is offered, for  
366 college credit, by a recognized educational institution.

367           2.12. 'Informal offering' means a workshop, seminar,  
368 institute, conference, lecture, or short term course, which is  
369 offered for credit in continuing education units.

370           2.13. 'Objectives' means an expression in measurable  
371 and observable terms of what the participant will learn as a  
372 result of the educational activity.

373           2.14. 'Sponsor' means an organization, including  
374 professional societies, academic institutions, individuals,  
375 corporations, or governmental agencies, which plans,  
376 organizes, supports, endorses, subsidizes and/or administers  
377 educational activities, and is responsible for the content,  
378 quality and integrity of the educational activity.

### **§3-11-3. Continuing Education.**

1           3.1. Each applicant for renewal or reinstatement of a  
2 license shall verify that he or she has satisfactorily completed  
3 four (4) credits of continuing education during the prescribed  
4 year reporting period.

5           3.1.a. Units of measurement for continuing education  
6 credits are calculated as follows:

7           30 to 49 minutes = 0.5 CE credits

8           50 to 74 minutes = 1 CE credits

9           75 to 99 minutes = 1.5 CE credits



10           100 minutes = 2 CE credits

11           Activities lasting less than 30 minutes are not eligible for  
12           credit.

13           3.1.b. Writing an article which is published in a magazine  
14           directly related to the profession will qualify for 4 credits of  
15           continuing education within the continuing education  
16           reporting period. A copy of the article must be maintained by  
17           the licensee for a period of 3 years following the continuing  
18           education activity.

19           3.2. Credits may not be granted for identical continuing  
20           education activities submitted during any single year  
21           reporting period. Credits may not be accumulated for use in  
22           a future single year reporting period.

23           3.3. Documentation of continuing education credits must  
24           be submitted with applications for license renewal.

#### **§3-11-4. Exceptions to Continuing Education Requirements.**

1           4.1. Reciprocity applicants and newly licensed applicants  
2           are exempt from the continuing education requirements until  
3           the first renewal period after initial West Virginia licensure.

4           4.2. A licensee who resides outside of West Virginia and  
5           who holds a current license to practice in a state other than  
6           West Virginia shall satisfy the continuing education  
7           requirements for West Virginia in order to renew his or her  
8           license in this state.

9           4.3. The Board may grant a waiver to a licensee who has  
10           a physical or mental disability or illness or who is providing  
11           direct care to a member of his or her immediate family during  
12           all or a portion of the reporting period. A waiver provides for  
13           an extension of time or exception from some or all of the

14 continuing education requirements. Any licensee may  
15 request an application for a waiver from the Board. The  
16 Board may approve or deny an application for waiver after  
17 review of the application. The Board may not grant a waiver  
18 of continuing education requirements for more than one (1)  
19 year reporting period.

**§3-11-5. Failure to Meet Requirements or Exceptions to Requirements.**

1 5.1. The Board may place the licensee on inactive status  
2 without penalty and may waive the continuing education  
3 requirements, providing that the licensee notifies the Board  
4 in writing of his or her desire to have the Board place his or  
5 her license on inactive status before the last day of the  
6 reporting period.

7 5.2. The Board may suspend the license of any person  
8 who fails to notify the Board, in writing, prior to the last day  
9 of the reporting period that he or she wishes to place his or  
10 her license on the inactive status.

**§3-11-6. Reinstatement of a License on Inactive Status or Issuance of a Probationary Temporary License.**

1 6.1. A person wishing to reinstate a license from inactive  
2 status or from suspended status shall:

3 6.1.a. Make application for reinstatement of the license  
4 from inactive status or suspended status;

5 6.1.b. Meet the continuing education requirements as set  
6 forth in this rule; and

7 6.1.c. Pay the fee for reinstatement suspended license as  
8 specified in the Board's rule, Schedule of fees for services  
9 rendered.

**§3-11-7. Audit of Licensee.**

1       7.1. The Board may select any licensee who holds a  
2       current license to audit for compliance with continuing  
3       education requirements no fewer than 60 days prior to the  
4       expiration of the license.

5       7.2. To comply with the audit request from the Board, a  
6       licensee shall submit legible copies of certificates of  
7       attendance at continuing education activities.

8       7.3. The licensee shall submit the required documents  
9       within thirty (30) days of the date he or she receives  
10      notification of the audit. The Board may grant an extension  
11      of time for submission of the documents, on an individual  
12      basis in cases of hardship, if the licensee makes a written  
13      request for an extension of time and provides justification for  
14      such the request.

15      7.4. Licensees shall keep certificates of attendance at  
16      continuing education activities, letters verifying special  
17      approval for informal offerings from non-approved providers,  
18      transcripts of courses, and documentation of compliance with  
19      exceptions for a three (3) year period following the  
20      continuing education activities.

21      7.5. The Board shall complete the audit within 30 days of  
22      receipt of required documentation and shall notify the  
23      licensee of the satisfactory completion of the audit.

24      7.6. If a person fails to submit the audit information  
25      requested by the Board, the Board may not renew the license  
26      Board before the information is received and the audit is  
27      completed.

28      7.7. Licensees shall notify the Board of any changes of  
29      mailing address, and are not absolved from the audit  
30      requirements.

**§3-11-8. Minimum Standards for Approved Provider.**

1           8.1. All providers of continuing education shall complete  
2 an application, and pay the required fees, and obtain a  
3 Continuing Education Provider License, before offering to  
4 provide continuing education.

5           8.2. The Board shall maintain a current list of approved  
6 providers which is available to the public upon request.

7           8.3. The Board shall notify providers who fail to meet the  
8 minimum acceptable provider standards, in writing, of  
9 specific deficiencies and offer a reasonable period of time to  
10 correct deficiencies.

11          8.4. The Board may remove an approved provider who  
12 fails to meet the approved provider standards from the list of  
13 approved providers.

14          8.5. The providers shall provide a certificate to the  
15 licensee indicating the following information:

16           8.5.a. Name of licensee who attended the continuing  
17 education class;

18           8.5.b. The date attended;

19           8.5.c. The value of continuing education credits; and

20           8.5.d. Contact information for the continuing education  
21 provider.

22          8.6. The providers shall provide a list to the State Board  
23 in a Microsoft Excel format in paper and disc form within 30  
24 days of the continuing education class. The list shall include:

25           8.6.a. Names of licensees;

- 26        8.6.b. License numbers of licensee;
- 27        8.6.c. Location of class;
- 28        8.6.d. The date held; and
- 29        8.6.e. Title of continuing education class or activity.
- 30        8.7. The application for a continuing education provider  
31 license shall provide detailed descriptions of the subject  
32 areas, sponsors, speakers, instructors, training courses,  
33 events, demonstrations or shows for which the applicant  
34 seeks approval.

### **§3-11-9. Continuing Education Subjects/Events.**

- 1        9.1. Continued education offerings shall consist of one or  
2 more of the following subject areas or events:
- 3        9.1.a. Product information or training;
- 4        9.1.b. Events, speakers, or shows by third party  
5 administrators held at beauty schools/conventions;
- 6        9.1.c. Tax, business, or computer training or courses;
- 7        9.1.d. Styling or application demonstrations;
- 8        9.1.e. Sanitation courses;
- 9        9.1.f. HIV/AIDS awareness and other communicable  
10 disease awareness courses;
- 11        9.1.g. Training or courses on West Virginia state laws  
12 governing the practices licensed by the board; and
- 13        9.1.h. Continuing education activities sponsored by the  
14 National Cosmetology Association (NCA), National

15 Interstate Council of State Boards of Cosmetology (NIC),  
16 National Cosmetology Seminar, Aesthetic International  
17 Association, National Association of Barbering and  
18 Hairstyling, National Association of Barber Boards of  
19 American approved courses, seminars, and demonstrations or  
20 any other national association approved by the Board.

**§3-11-10. Activities Not Acceptable for Continuing Education Credit.**

1 10.1. The following activities are not acceptable for  
2 continuing education credit:

3 10.1.a. Job related practice;

4 10.1.b. Development and presentation of programs as  
5 part of the licensee's on-going job responsibilities;

6 10.1.c. Orientation to and update of policies and  
7 procedures specific to the licensee's employing facility;

8 10.1.d. Activities which are part of a licensee's usual job  
9 responsibility; and/or

10 10.1.e. In-house training from a regular employee,  
11 manager or owner of the facility.”.

**§64-9-7. Board of Examiners for Speech-Language Pathology and Audiology.**

1 The legislative rule filed in the State Register on the  
2 seventeenth day of June, two thousand nine, authorized under  
3 the authority of section ten, article thirty-two, chapter thirty,  
4 of this code, modified by the Board of Examiners for Speech-  
5 Language Pathology and Audiology to meet the objections of  
6 the Legislative Rule-Making Review Committee and refiled  
7 in the State Register on July 23, 2009, relating to the Board

8 of Examiners for Speech-Language Pathology and Audiology  
9 (licensure of speech-pathology and audiology, 29 CSR 1), is  
10 authorized with the following amendment:

11 On page 6, subsection 12.2, by striking out the second  
12 sentence of the subsection “These continuing education hours  
13 may only be credited if they are acquired during the 2-year  
14 licensure period, unless the licensee falls under 12.1.a.” and  
15 inserting in lieu thereof a new second sentence “Licensees  
16 who exceed the minimum continuing education requirement  
17 may carry a maximum of 6 hours forward to the next  
18 reporting period only.”.

**§64-9-8. Real Estate Appraiser Licensing and Certification Board.**

1 (a) The legislative rule filed in the State Register on July  
2 31, 2009, authorized under the authority of section nine,  
3 article thirty-eight, chapter thirty, of this code, modified by  
4 the Real Estate Appraiser Licensing and Certification Board  
5 to meet the objections of the Legislative Rule-Making  
6 Review Committee and refiled in the State Register on  
7 September 22, 2009, relating to the Real Estate Appraiser  
8 Licensing and Certification Board (requirements for licensure  
9 and certification, 190 CSR 2), is authorized.

10 (b) The legislative rule filed in the State Register on  
11 March 23, 2009, authorized under the authority of section  
12 nine, article thirty-eight, chapter thirty, of this code, relating  
13 to the Real Estate Appraiser Licensing and Certification  
14 Board (renewal of licensure or certification, 190 CSR 3), is  
15 authorized.

**§64-9-9. Board of Osteopathy.**

1 (a) The legislative rule filed in the State Register on July  
2 31, 2009, authorized under the authority of section four,

3 article fourteen, chapter thirty, of this code, modified by the  
4 Board of Osteopathy to meet the objections of the Legislative  
5 Rule-Making Review Committee and refiled in the State  
6 Register on October 3, 2009, relating to the Board of  
7 Osteopathy (licensing procedures for osteopathic physicians,  
8 24 CSR 1), is authorized.

9 (b) The legislative rule filed in the State Register on July  
10 31, 2009, authorized under the authority of section nine-a,  
11 article fourteen, chapter thirty, of this code, modified by the  
12 Board of Osteopathy to meet the objections of the Legislative  
13 Rule-Making Review Committee and refiled in the State  
14 Register on November 24, 2009, relating to the Board of  
15 Osteopathy (formation and approval of professional limited  
16 liability companies, 24 CSR 4), is authorized.

17 (c) The legislative rule filed in the State Register on July  
18 31, 2009, authorized under the authority of section four,  
19 article fourteen, chapter thirty, of this code, modified by the  
20 Board of Osteopathy to meet the objections of the Legislative  
21 Rule-Making Review Committee and refiled in the State  
22 Register on October 23, 2009, relating to the Board of  
23 Osteopathy (fees for services rendered by the Board, 24 CSR  
24 5), is authorized.

#### **§64-9-10. Secretary of State.**

1 (a) The legislative rule filed in the State Register on the  
2 July 31, 2009, authorized under the authority of two-a, article  
3 three, chapter three, of this code, modified by the Secretary  
4 of State to meet the objections of the Legislative Rule-  
5 Making Review Committee and refiled in the State Register  
6 on November 19, 2009, relating to the Secretary of State  
7 (early voting in person satellite precincts, 153 CSR 13), is  
8 authorized with the following amendment:



9       On page 5, section 7.3, after the word, “workers” by  
10       inserting a comma and the following words, “of differing  
11       political affiliation.”

12       (b) The legislative rule filed in the State Register on July  
13       31, 2009, authorized under the authority of three, article  
14       three-a, chapter three, of this code, modified by the Secretary  
15       of State to meet the objections of the Legislative Rule-  
16       Making Review Committee and refiled in the State Register  
17       on November 5, 2009, relating to the Secretary of State  
18       (Vote-by-mail Pilot Project Phase 1: Class IV Early Voting  
19       by Mail, 153 CSR 38), is authorized.

20       (c) The legislative rule filed in the State Register on July  
21       31, 2009, authorized under the authority of three, article  
22       three-a, chapter three, of this code, modified by the Secretary  
23       of State to meet the objections of the Legislative Rule-  
24       Making Review Committee and refiled in the State Register  
25       on November 5, 2009, relating to the Secretary of State  
26       (Vote-by-mail Pilot Project Phase 2: Voting by Mail, 153  
27       CSR 39), is authorized with the following amendments:

28       On page 2, by inserting a new subdivision designated,  
29       3.1.e. to read as follows:

30       “3.1.e. A municipality shall submit the required  
31       information to the Office of the Secretary of State by  
32       November 11, 2010.”;

33       On page 2, subparagraph 3.1.d.6, by striking the word,  
34       “pubic” and inserting the word, “public”;

35       On page 3, subdivision 3.2.a, by striking the words, “an  
36       ordinance” and inserting the words, “a resolution”.

**§64-9-11. Board of Occupational Therapy.**

1 (a) The legislative rule filed in the State Register on July  
2 7, 2009, authorized under the authority of section seven,  
3 article twenty-eight, chapter thirty, of this code, modified by  
4 the Board of Occupational Therapy to meet the objections of  
5 the Legislative Rule-Making Review Committee and refiled  
6 in the State Register on November 24, 2009, relating to the  
7 Board of Occupational Therapy (administrative rules of the  
8 Board of Occupational Therapy and licensure of occupational  
9 therapists and occupational therapy assistants, 13 CSR 1), is  
10 authorized with the following amendments:

11 On page five, subsection 9.1., after the colon, by inserting  
12 a new subdivision to read as follows:

13 9.1.a. Is of good moral character;

14 And, by renumbering the remaining subdivisions;

15 On page twelve, after the words, 'are dependent upon the',  
16 by inserting a colon;

17 On page twelve, by striking subdivisions 12.5.b and 12.5.c  
18 their entirety and inserting in lieu thereof new subdivisions  
19 12.5.b and 12.5.c to read as follows:

20 12.5.b. A licensed supervising occupational therapist or  
21 occupational therapy assistant must maintain direct continuous  
22 supervision over aides;

23 12.5.c. A licensed supervising occupational therapist must  
24 maintain direct continuous supervision over occupational  
25 therapy students. As the occupational therapy student  
26 demonstrates competency in performance, supervision can  
27 progress to direct close supervision at the discretion of the  
28 supervising occupational therapist;

29 And,

30 On page twelve, by inserting two new subdivisions  
31 designated 12.5.d and 12.5.e to read as follows:

32 12.5.d. A licensed supervising occupational therapist or  
33 occupational therapy assistant must maintain direct  
34 continuous supervision over occupational therapy assistant  
35 students. As the occupational therapy assistant student  
36 demonstrates competency in performance, supervision can  
37 progress to direct close supervision at the discretion of the  
38 supervising occupational therapist / occupational therapy  
39 assistant;

40 12.5.e. Direct supervision is demonstrated through co-  
41 signatures on all paperwork or electronic notes pertaining to  
42 the practice of occupational therapy for the person requiring  
43 direct supervision. All paperwork or electronic notes  
44 pertaining to the practice of occupational therapy must be  
45 signed and dated, electronically or otherwise, by the  
46 supervising licensed occupational therapist.

47 (b) The legislative rule filed in the State Register on July  
48 7, 2009, authorized under the authority of section seven,  
49 article twenty-eight, chapter thirty, of this code, modified by  
50 the Board of Occupational Therapy to meet the objections of  
51 the Legislative Rule-Making Review Committee and refiled  
52 in the State Register on November 24, 2009, relating to the  
53 Board of Occupational Therapy (fees for services rendered by  
54 the Board, 13 CSR 3), is authorized with the following  
55 amendment:

56 On page one, subsection 1.2., by striking out “§30-28-6”  
57 and inserting “§30-28-7”.

58 (c) The legislative rule filed in the State Register on July  
59 7, 2009, authorized under the authority of section seven,  
60 article twenty-eight, chapter thirty, of this code, modified by  
61 the Board of Occupational Therapy to meet the objections of

62 the Legislative Rule-Making Review Committee and refiled  
63 in the State Register on November 24, 2009, relating to the  
64 Board of Occupational Therapy (continuing education and  
65 competence, 13 CSR 4), is authorized with the following  
66 amendment:

67 On page one, subsection 1.2., by striking out “§30-28-6”  
68 and inserting in lieu thereof “§30-28-7”.

69 (d) The legislative rule filed in the State Register on July  
70 7, 2009, authorized under the authority of section seven,  
71 article twenty-eight, chapter thirty, of this code, modified by  
72 the Board of Occupational Therapy to meet the objections of  
73 the Legislative Rule-Making Review Committee and refiled  
74 in the State Register on November 24, 2009, relating to the  
75 Board of Occupational Therapy (competency standards for  
76 advance practice by occupational therapists and occupational  
77 therapy assistants, 13 CSR 5), is authorized with the  
78 following amendments:

79 On page one, subsection 1.2, by striking out “§30-28-6”  
80 and inserting in lieu thereof “§30-28-7”;

81 On page two, by striking subdivisions 4.5.a, 4.5.b, 4.5.c,  
82 and 4.5.d in their entirety and inserting in lieu thereof new  
83 subdivisions 4.5.a, 4.5.b, and 4.5.c to read as follows:

84 4.5.a. Accredited educational programs;

85 4.5.b. Specific certification as endorsed by the American  
86 Occupational Therapy Association or its successor, or as  
87 approved by the WV BOT;

88 4.5.c. Successful completion of an appropriate continuing  
89 education course which includes theory, indications, contra-  
90 indications and applications;

91 And,

92 On page two, by inserting a new subdivision 4.6.a to read  
93 as follows:

94 4.6.a. The Board shall conduct random audits of  
95 occupational therapy assistants to substantiate competency in  
96 physical agent modalities.

97 (e) The legislative rule filed in the State Register on July  
98 7, 2009, authorized under the authority of section seven,  
99 article twenty-eight, chapter thirty, of this code, modified by  
100 the Board of Occupational Therapy to meet the objections of  
101 the Legislative Rule-Making Review Committee and refiled  
102 in the State Register on November 24, 2009, relating to the  
103 Board of Occupational Therapy (ethical standards of practice,  
104 13 CSR 6), is authorized with the following amendment:

105 On page one, subsection 1.2., by striking out “§30-28-6”  
106 and inserting in lieu thereof “§30-28-7”.

#### **§64-9-12. Board of Psychologists.**

1 The legislative rule filed in the State Register on July 27,  
2 2009, authorized under the authority of section six, article  
3 twenty-one, chapter thirty, of this code, modified by the Board  
4 of Psychologists to meet the objections of the Legislative Rule-  
5 Making Review Committee and refiled in the State Register on  
6 January 14, 2010, relating to the Board of Psychologists  
7 (qualifications for licensure as a psychologist or a school  
8 psychologist, 17 CSR 3), is authorized with the following  
9 amendment:

10 On page 3, section 5.1, after the words “*W. Va. Code* §30-  
11 21-2.”, by adding the following:

12 “For the purposes of this rule, the supervised  
13 professionally oriented teaching, supervising and research

14 activities of applicants who are full-time, university clinical  
15 faculty members may apply towards the required hours of  
16 supervised work experience.”

**§64-9-13. Governor’s Office of Health Enhancement and  
Lifestyle Planning.**

1 The legislative rule filed in the State Register on October  
2 30,2009, authorized under the authority of section eight,  
3 article twenty-nine-H, chapter sixteen, of this code, relating  
4 to the Governor’s Office of Health Enhancement and  
5 Lifestyle Planning (prescription drug advertising expense  
6 reporting, 210 CSR 1), is authorized.

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## CHAPTER 123

**(Com. Sub. for H. B. 4110 - By Delegates  
Brown, D. Poling, Miley, Talbott,  
Overington and Sobonya)**

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[Passed March 11, 2010; in effect from passage.]  
[Approved by the Governor on March 22, 2010.]

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AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by

the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Natural Resources to promulgate legislative rules relating to commercial whitewater outfitters (58 CSR 12), deer hunting (58 CSR 50) and special fishing (58 CSR 61); authorizing the Board of Trustees of the Outdoor Heritage Conservation Fund to promulgate a legislative rule relating to the Outdoor Heritage Conservation Fund (205 CSR 1); authorizing the Division of Tourism to promulgate a legislative rule relating to direct advertising grants program (144 CSR 1); authorizing the Hatfield-McCoy Regional Recreation Authority to promulgate a legislative rule relating to use of facilities (204 CSR 1); and authorizing the Division of Energy to promulgate a legislative rule relating to community development assessment and real property valuation procedures for the Office of Coalfield Community Development (207 CSR 1).

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

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. AUTHORIZATION FOR BUREAU OF  
COMMERCE TO PROMULGATE  
LEGISLATIVE RULES.**

§64-10-1. Division of Natural Resources.

§64-10-2. Board of Trustees of the Outdoor Heritage Conservation Fund.

§64-10-3. Division of Tourism.

§64-10-4. Hatfield-McCoy Regional Recreation Authority.

§64-10-5. Division of Energy.

**§64-10-1. Division of Natural Resources.**

1 (a) The legislative rule filed in the State Register on July  
2 8, 2009, authorized under the authority of section twenty-  
3 three-a, article two, chapter twenty, of this code, relating to  
4 the Division of Natural Resources (commercial whitewater  
5 outfitters, 58 CSR 12), is authorized.

6 (b) The legislative rule filed in the State Register on July  
7 10, 2009, authorized under the authority of section seven,  
8 article one, chapter twenty, of this code, modified by the  
9 Division of Natural Resources to meet the objections of the  
10 Legislative Rule-Making Review Committee and refiled in  
11 the State Register on August 14, 2009, relating to the  
12 Division of Natural Resources (deer hunting, 58 CSR 50), is  
13 authorized.

14 (c) The legislative rule filed in the State Register on July  
15 31, 2009, authorized under the authority of section seven,  
16 article one, chapter twenty, of this code, relating to the  
17 Division of Natural Resources (special fishing, 58 CSR 61),  
18 is authorized.

**§64-10-2. Board of Trustees of the Outdoor Heritage  
Conservation Fund.**

1 The legislative rule filed in the State Register on July 30,  
2 2009, authorized under the authority of section six, article  
3 two-g, chapter five-b, of this code, modified by the Board of  
4 Trustees of the Outdoor Heritage Conservation Fund to meet  
5 the objections of the Legislative Rule-Making Review  
6 Committee and refiled in the State Register on September 21,  
7 2009, relating to the Board of Trustees of the Outdoor  
8 Heritage Conservation Fund (Outdoor Heritage Conservation  
9 Fund, 205 CSR 1), is authorized.

**§64-10-3. Division of Tourism.**



1       The legislative rule filed in the State Register on July 30,  
2       2009, authorized under the authority of section nine, article  
3       two, chapter five-b, of this code, relating to the Division of  
4       Tourism (direct advertising grants program, 144 CSR 1), is  
5       authorized, with the following amendments:

6       On page two, following subdivision 2.13.5., by inserting  
7       the following: “2.13.6. Destination Camping.”;

8       On page four, subdivision 3.8.2., line three, following the  
9       word “organizations”, by deleting the words “may have”;

10       On page four, subdivision 3.8.3., line one, following the  
11       word “If” by striking the word “they”, and inserting in lieu  
12       thereof the following “the applicant and all of the partners”;

13       On page four, subdivision 3.8.4., line one, following the  
14       word “If”, by striking the word “they are”, and inserting in  
15       lieu thereof the words “the applicant or any partner is”;

16       On page four, subdivision 3.8.4., line two, following the  
17       word “their”, by inserting the word “respective”;

18       On page four, subdivision 3.8.4., line three, by striking  
19       the word “organization” and inserting in lieu thereof the word  
20       “organizations”;

21       On page nine, subdivision 9.1.4., line four, following the  
22       word “reimbursement”, by inserting the word “of”;

23       And,

24       On page ten, subdivision 9.1.9., line four, by striking  
25       “12.4.14” and inserting in lieu thereof “§12-4-14”.

**§64-10-4. Hatfield-McCoy Regional Recreation Authority.**

1           The legislative rule filed in the State Register on July 29,  
2   2009, authorized under the authority of section five, article  
3   fourteen, chapter twenty, of this code, relating to the  
4   Hatfield-McCoy Regional Recreation Authority (rules for use  
5   of facilities, 204 CSR 1), is authorized with the following  
6   amendment:

7           On page six, subsection 4.4., by striking the last sentence  
8   of the subsection in its entirety.

**§64-10-5. Division of Energy.**

1           The legislative rule filed in the State Register on July 31,  
2   2009, authorized under the authority of section twelve, article  
3   two-a, chapter five-b, of this code, modified by the Division  
4   of Energy to meet the objections of the legislative rule-  
5   making review committee and refiled in the State Register on  
6   December 15, 2009, relating to the Division of Energy  
7   (community development assessment and real property  
8   valuation procedures for the Office of Coalfield Community  
9   Development, 207 CSR 1), is authorized, with the following  
10   amendments:

11           On page five, subdivision 5.4.d, line five, following the  
12   word “chief”, by inserting a comma and the words “appointed  
13   by the director pursuant to *W. Va. Code* §5B-2A-4,”;

14           On page five, subdivision 5.6.a, line one preceding the  
15   words “An evaluation” by inserting the words “The office  
16   shall include”;

17           On page five, subdivision 5.6.b, line one preceding the  
18   words “The identification” by inserting the words “The office  
19   shall include”;

20           On page five, paragraph 5.6.c.1, line four, by striking the  
21 words “coalfield community development statement” and  
22 inserting in lieu thereof the words “the applicable county’s  
23 master land use plan”;

24           On page six, section 5.7, line three, following the word  
25 “existing” by striking the words “community development  
26 statements” and inserting in lieu thereof the words “master  
27 land use plan”;

28           On page six, section 5.7, line seven, following the word  
29 “modification”, by inserting “of the land use master plan”;

30           On page six, section 5.7, line fourteen, following the  
31 word “existing”, by striking the words “community impact  
32 statement” and inserting in lieu thereof the words “land use  
33 master plan”;

34           On page six, section 5.7, line seventeen, following the  
35 word “existing” by striking the words “community development  
36 statement” and inserting in lieu thereof “master land use  
37 plan”;

38           On page six, section 5.8, line two, following the word  
39 “update” by striking the words “of this action report”;

40           And,

41           On page seven, subdivision 6.5.g, line three, following  
42 the word “statement”, by inserting the words “on file with the  
43 Office”.

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## CHAPTER 124

**(S. B. 477 - By Senators Tomblin,  
(Mr. President), Palumbo, Stollings  
and Plymale)**

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[Passed March 1, 2010; in effect from passage.]  
[Approved by the Governor on March 8, 2010.]

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AN ACT to amend and reenact §4-1-23 of the Code of West Virginia, 1931, as amended, relating to reports to be filed with the Legislature; requiring copies of the reports to be submitted to the Legislative Librarian; requiring the copies to be submitted as required by the Legislative Manager or in electronic form via the Internet; and providing that failure to comply is nonfeasance.

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

That §4-1-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES;  
APPROPRIATIONS; INVESTIGATIONS;  
DISPLAY OF FLAGS; RECORDS; USE OF  
CAPITOL BUILDING; PREFILING OF  
BILLS AND RESOLUTIONS; STANDING  
COMMITTEES; INTERIM MEETINGS;  
NEXT MEETING OF THE SENATE.**

**§4-1-23. Reports to be sent to the Legislative Librarian.**

1           (a) Any state officer, person, office, agency, commission  
 2 or board required by any section of this code to provide a  
 3 report to the Legislature or any committee, commission or  
 4 person employed or elected to the Legislature, shall submit  
 5 an additional copy of the report to the Legislative Librarian  
 6 transmitted electronically via the Internet or as otherwise  
 7 required by the Legislative Manager.

8           (b) Failure to comply with this section is nonfeasance of  
 9 office.



## CHAPTER 125

**(Com. Sub. for S. B. 70 - By Senators  
 McCabe, Foster, Unger, Palumbo  
 and Chafin)**

\_\_\_\_\_  
 [Passed March 13, 2010; in effect July 1, 2010.]  
 [Approved by the Governor on April 2, 2010.]  
 \_\_\_\_\_

AN ACT to amend and reenact §11-8-6e of the Code of West Virginia, 1931, as amended, relating to the clarification in the code that a municipality or county issuing bonds approved by an election pursuant to article one, chapter thirteen of said code is not subject to the restriction described in subsection (c), section six-e, article eight, chapter eleven of said code.

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

That §11-8-6e of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

**ARTICLE 8. LEVIES.**

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

1           (a) Notwithstanding any other provision of law, where  
2 any annual appraisal, triennial appraisal or general valuation  
3 of property would produce an assessment that would cause an  
4 increase of one percent or more in the total projected property  
5 tax revenues that would be realized were the then current  
6 regular levy rates by the county commission and the  
7 municipalities to be imposed, the rate of levy shall be  
8 reduced proportionately as between the county commission  
9 and the municipalities and for all classes of property for the  
10 forthcoming tax year so as to cause such rate of levy to  
11 produce no more than one hundred one percent of the  
12 previous year's projected property tax revenues from  
13 extending the county commission and municipality levy  
14 rates, unless there has been compliance with subsection (c) of  
15 this section.

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

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

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

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

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

43           (4) Divide the total regular levy tax revenues, thus  
44 increased in subdivision (3) of this subsection, by the total  
45 weighted net assessed value as calculated in subdivision (2)  
46 of this subsection and multiply the resulting product by one  
47 hundred; the resulting number is the Class I regular levy rate,  
48 stated as cents-per-one hundred dollars of assessed value;

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

52           (c) The governing body of a county or municipality may,  
53 after conducting a public hearing, which may be held at the  
54 same time and place as the annual budget hearing, increase  
55 the rate above the reduced rate required in this section if any  
56 such increase is deemed to be necessary by such governing  
57 body: *Provided*, That in no event shall the governing body of  
58 a county or municipality increase the rate above the reduced  
59 rate required by subsection (b) of this section for any single  
60 year in a manner which would cause total property tax  
61 revenues accruing to the governing body of the county or  
62 municipality, excepting additional revenue attributable to  
63 assessed valuations of newly created properties not assessed  
64 in the previous year's tax book for each class of property, to  
65 exceed by more than ten percent those property tax revenues

66 received by the governing body of the county or municipality  
67 for the next preceding year: *Provided, however,* That this  
68 provision shall not restrict the ability of a county or  
69 municipality to enact excess levies as authorized under  
70 existing statutory or constitutional provisions: *Provided*  
71 *further,* That this provision does not restrict the ability of a  
72 county or municipality to issue bonds and enact sufficient  
73 levies to pay for such bonds pursuant to article one, chapter  
74 thirteen of this code when such issuance has been approved  
75 by an election administered pursuant to that article.

76 Notice of the public hearing and the meeting in which the  
77 levy rate shall be on the agenda shall be given at least seven  
78 days before the date for each public hearing by the  
79 publication of a notice in at least one newspaper of general  
80 circulation in such county or municipality: *Provided,* That a  
81 Class IV town or village as defined in section two, article  
82 one, chapter eight of this code, in lieu of the publication  
83 notice required by this subsection, may post no less than four  
84 notices of each public hearing, which posted notices shall  
85 contain the information required by the publication notice  
86 and which shall be in available, visible locations including  
87 the town hall. The notice shall be at least the size of one-  
88 eighth page of a standard size newspaper or one-fourth page  
89 of a tabloid-size newspaper and the headline in the  
90 advertisement shall be in a type no smaller than twenty-four  
91 point. The publication notice shall be placed outside that  
92 portion, if any, of the newspaper reserved for legal notices  
93 and classified advertisements and shall also be published as  
94 a Class II-O legal advertisement in accordance with the  
95 provisions of article three, chapter fifty-nine of this code.  
96 The publication area is the county. The notice shall be in the  
97 following form and contain the following information, in  
98 addition to such other information as the local governing  
99 body may elect to include:



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

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

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

116           3. Effective Rate Increase: The (name of the county or  
117           municipality) proposes to adopt a tax rate of \$..... per \$100  
118           of assessed value for Class I property, \$..... per \$100 of  
119           assessed value for Class II property, \$..... per \$100 of  
120           assessed value for Class III property and \$..... per \$100 of  
121           assessed value for Class IV property. The difference between  
122           the lowered tax rates and the proposed rates would be \$.....  
123           per \$100, or ..... percent for Class I; \$..... per \$100, or .....  
124           percent for Class II; \$..... per \$100, or ..... percent for Class  
125           III and \$..... per \$100, or ..... percent for Class IV. These  
126           differences will be known as the "effective tax rate  
127           increases".

128           Individual property taxes may, however, increase at a  
129           percentage greater than or less than the above percentage.

130           4. Revenue produced last year: \$.....

131           5. Revenue projected under the effective rate increases:  
132           \$.....

133       6. Revenue projected from new property or  
134 improvements: \$.....

135       7. General areas in which new revenue is to be allocated:  
136 A public hearing on the increases will be held on (date and  
137 time) at (meeting place). A decision regarding the rate  
138 increase will be made on (date and time) at (meeting place).

139       (d) All hearings are open to the public. The governing  
140 body shall permit persons desiring to be heard an opportunity  
141 to present oral testimony within such reasonable time limits  
142 as are determined by the governing body.

143       (e) This section shall be effective as to any regular levy  
144 rate imposed by the county commission or a municipality for  
145 taxes due and payable on or after July 1, 1991. If any  
146 provision of this section is held invalid, the invalidity does  
147 not affect other provisions or applications of this section  
148 which can be given effect without the invalid provision or its  
149 application and to this end the provisions of this section are  
150 declared to be severable.

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## CHAPTER 126

**(S. B. 547 - By Senators Tomblin,  
(Mr. President) and Stollings)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §11-8-12 and §11-8-12a of the Code of West Virginia, 1931, as amended, all relating to the dates of certain meetings of county boards of education related to levies.

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

That §11-8-12 and §11-8-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 8. LEVIES.**

§11-8-12. Levy estimate by board of education; certification and publication.

§11-8-12a. Adjourned session of board of education to hear objections to proposed levies; approval of estimate and levy by Tax Commissioner; first levy for bonded and other indebtedness and indebtedness not bonded, second for Permanent Improvement Fund, then for current expenses.

**§11-8-12. Levy estimate by board of education; certification and publication.**

1        Each board of education shall, at the session provided for  
2        in section nine of this article, if the laying of a levy has been  
3        authorized by the voters of the district under article nine,  
4        chapter eighteen of the code, ascertain the condition of the  
5        fiscal affairs of the district, and make a statement setting  
6        forth:

7            (1) The amount due, and the amount that will become due  
8            and collectible during the current fiscal year except from the  
9            levy of taxes to be made for the year;

10           (2) The interest, sinking fund and amortization  
11           requirements for the fiscal year of bonded indebtedness  
12           legally incurred upon a vote of the people, as provided by  
13           law, by any school district existing prior to May 22, 1933,  
14           before the adoption of the Tax Limitation Amendment;

15           (3) Other contractual indebtedness not bonded, legally  
16           incurred by any such school district existing prior to May 22,  
17           1933, before the adoption of the Tax Limitation Amendment,  
18           owing by such district;

19 (4) The amount to be levied for the permanent  
20 improvement fund;

21 (5) The total of all other expenditures to be paid out of  
22 the receipts for the current fiscal year, with proper allowance  
23 for delinquent taxes, exonerations and contingencies;

24 (6) The amount of such total to be raised by the levy of  
25 taxes for the current fiscal year;

26 (7) The proposed rate of levy in cents on each \$100  
27 assessed valuation of each class of property;

28 (8) The separate and aggregate amounts of the assessed  
29 valuation of real, personal and public utility property within  
30 each class.

31 The secretary of the board shall forward immediately a  
32 certified copy of the statement to the Auditor and shall  
33 publish the statement immediately. The session shall then  
34 stand adjourned until the third Tuesday in April, at which  
35 time it shall reconvene except where otherwise permitted by  
36 section nine of this article: *Provided*, That no provision of  
37 this section or section nine of this article may be construed to  
38 abrogate any requirement imposed on the board of education  
39 by article nine-b, chapter eighteen of this code.

**§11-8-12a. Adjourned session of board of education to hear objections to proposed levies; approval of estimate and levy by Tax Commissioner; first levy for bonded and other indebtedness and indebtedness not bonded, second for Permanent Improvement Fund, then for current expenses.**

1 Each board of education, when it reconvenes as provided  
2 by section twelve of this article, shall proceed in a manner

3 similar in all respects to that provided for in section ten-a of  
4 this article. The board may not finally enter any levy until it  
5 has been approved in writing by the Auditor. After receiving  
6 the approval, the board shall enter the statement as approved  
7 in its record of proceedings, together with the written  
8 approval.

9 The board shall levy as many cents per \$100 assessed  
10 valuation on each class of property in the county or in the  
11 area of a preexisting school district, as the case may be, as  
12 will produce the amounts, according to the last assessment,  
13 shown to be necessary by the statement in the following  
14 order:

15 First, for the bonded debt and for the contractual debt not  
16 bonded, if any, of any school district of the county existing  
17 before May 22, 1933, and incurred before the adoption of the  
18 Tax Limitation Amendment;

19 Second, for the Permanent Improvement Fund;

20 Third, for general current expenses.

21 The rates of levy for each purpose may not exceed the  
22 amounts fixed by section six-c unless another rate is  
23 authorized by the Tax Commissioner or set by the Legislature  
24 in accordance with this article. When less than the maximum  
25 levies are imposed, the levies on each class of property shall  
26 be in the same proportions as the maximums authorized.

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## CHAPTER 127

**(Com. Sub. for S. B. 696 - By Senators  
Kessler, Browning, Chafin, Jenkins,  
Palumbo, Snyder, Stollings,  
Williams, Yost and Hall)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2010.]

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AN ACT to amend and reenact §47B-10-1 and §47B-10-4 of the Code of West Virginia, 1931, as amended, all relating generally to limited liability partnerships; updating registration requirements; establishing procedures for and consequences of administrative dissolution and reinstatement; and setting notice requirements and appellate options with regard to administrative decisions on dissolution and reinstatement.

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

That §47B-10-1 and §47B-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 10. LIMITED LIABILITY PARTNERSHIP.**

§47B-10-1. Registered limited liability partnerships.

§47B-10-4. Applicability of article to foreign and interstate commerce.

#### **§47B-10-1. Registered limited liability partnerships.**

- 1 (a) To become a registered limited liability partnership,
- 2 a partnership shall deliver and file with the Secretary of State
- 3 a statement of registration stating:

- 4           (1) The name of the partnership;
- 5           (2) The address of its principal office;
- 6           (3) The address of a registered office;
- 7           (4) The name and address of a registered agent for  
8 service of process, if any;
- 9           (5) An e-mail address to where informational notices and  
10 reminders of annual filings may be sent, unless there is a  
11 technical inability to comply;
- 12          (6) A brief statement of the business in which the  
13 partnership engages;
- 14          (7) The name and address of each partner authorized to  
15 execute instruments on behalf of the partnership;
- 16          (8) Any other matters that the partnership determines to  
17 include; and
- 18          (9) That the partnership thereby registers as a registered  
19 limited liability partnership.
- 20          (b) The registration shall be executed by one or more  
21 partners authorized to execute a registration.
- 22          (c) The registration shall be accompanied by a fee of  
23 \$250.
- 24          (d) The Secretary of State shall register as a registered  
25 limited liability partnership any partnership that submits a  
26 completed registration with the required fee and deliver to the  
27 partnership or its representative a receipt for the record and  
28 the fees.

29 (e) A partnership registered under this section shall pay,  
30 in each year following the year in which its registration is  
31 filed, an annual fee of \$500. The fee shall be accompanied  
32 by a notice, on a form provided by the Secretary of State, of  
33 any material changes in the information contained in the  
34 partnership's registration. The annual notice and fee is due  
35 between January 1 and July 1 of each year.

36 (f) Registration is effective:

37 (1) Immediately after the date a registration is filed; or

38 (2) On a date specified in the statement of registration,  
39 which date shall not be more than sixty days after the date of  
40 filing.

41 (g) Registration remains effective until:

42 (1) It is voluntarily withdrawn by filing with the  
43 Secretary of State a statement of withdrawal; or

44 (2) It is administratively dissolved by the Secretary of  
45 State: *Provided*, That the Secretary of State commenced a  
46 proceeding to dissolve the limited liability partnership and  
47 notification of the administrative proceeding to dissolve the  
48 limited liability partnership was delivered to the limited  
49 liability partnership. The Secretary of State may commence  
50 the administrative proceeding due to:

51 (A) A limited liability partnership's failure to pay fees  
52 imposed by this chapter or any other law within sixty days  
53 after the fees were due; or

54 (B) A limited liability partnership's failure to deliver its  
55 annual notice to the Secretary of State within sixty days after  
56 the notice was due.



57 (h) The procedure for administrative dissolution is as  
58 follows:

59 (1) If the Secretary of State determines that one or more  
60 grounds exist under this section for dissolving a limited  
61 liability partnership, he or she shall notify the limited liability  
62 partnership in writing, of his or her determination.

63 (2) If the limited liability partnership does not correct  
64 each ground for dissolution or demonstrate to the reasonable  
65 satisfaction of the Secretary of State that each ground  
66 determined by the Secretary of State does not exist within  
67 sixty days after service of the Secretary of State's notice, the  
68 Secretary of State shall administratively dissolve the limited  
69 liability partnership by issuing a certificate of administrative  
70 dissolution that recites the ground or grounds for dissolution  
71 and its effective date. The Secretary of State shall send a  
72 copy of the administrative dissolution to the limited liability  
73 partnership.

74 (i) A limited liability partnership administratively  
75 dissolved continues its existence but may not carry on any  
76 business except that necessary to wind up and liquidate its  
77 business and affairs and notify claimants of such.

78 (j) The administrative dissolution of a limited liability  
79 partnership does not terminate the authority of its registered  
80 agent.

81 (k) A limited liability partnership administratively  
82 dissolved under this section may apply to the secretary of  
83 state for reinstatement within two years after the effective  
84 date of dissolution. The application must:

85 (1) Recite the name of the limited liability partnership  
86 and the effective date of its administrative dissolution;

87       (2) State that the ground or grounds for dissolution either  
88       did not exist or have been eliminated;

89       (3) Contain a certificate from the tax commissioner  
90       reciting that all taxes owed by the limited liability partnership  
91       have been paid.

92       (1) If the Secretary of State determines that the  
93       application contains the information required by subsection  
94       (k) of this section and that the information is correct, he or  
95       she shall cancel the certificate of dissolution and prepare a  
96       certificate of reinstatement that recites his or her  
97       determination and the effective date of reinstatement, file the  
98       original of the certificate and send a copy to the limited  
99       liability partnership.

100       (m) When the reinstatement is effective, it relates back to  
101       and takes effect as of the effective date of the administrative  
102       dissolution and the limited liability partnership resumes  
103       carrying on its business as if the administrative dissolution  
104       had never occurred.

105       (n) If the Secretary of State denies a limited liability  
106       partnership's application for reinstatement following  
107       administrative dissolution, he or she shall notify the limited  
108       liability partnership in writing to explain the reason or  
109       reasons for denial.

110       (o) The limited liability partnership may appeal the denial  
111       of reinstatement to the circuit court of the county where the  
112       limited liability partnership is located within thirty days after  
113       service of the Secretary of State's notice. The appeal to the  
114       circuit court to set aside the dissolution shall include copies  
115       of the Secretary of State's certificate of dissolution, the  
116       limited liability's application for reinstatement and the  
117       Secretary of State's notice of denial.

118 (p) The circuit court may summarily order the Secretary  
119 of State to reinstate the dissolved limited liability partnership  
120 or may take other action the circuit court considers  
121 appropriate.

122 (q) The circuit court's final decision may be appealed as  
123 in other civil proceedings.

124 (r) The status of a partnership as a registered limited  
125 liability partnership and the liability of the partners thereof  
126 shall not be affected by:

127 (1) Errors in the information contained in a statement of  
128 registration under subsection (a) of this section or notice  
129 under subsection (e) of this section; or

130 (2) Changes after the filing of the statement of  
131 registration or notice in the information stated in the  
132 registration or notice.

133 (s) The Secretary of State may provide forms for the  
134 statement of registration under subsection (a) of this section  
135 or a notice under subsection (e) of this section.

136 (t) All fees and moneys collected by the Secretary of  
137 State pursuant to the provisions of this article shall be  
138 deposited by the Secretary of State as follows: One-half shall  
139 be deposited in the state General Revenue Fund and one-half  
140 shall be deposited in the service fees and collections account  
141 established by section two, article one, chapter fifty-nine of  
142 this code for the operation of the office of the Secretary of  
143 State. The Secretary of State shall dedicate sufficient  
144 resources from that fund or other funds to provide the  
145 services required in this article.

**§47B-10-4. Applicability of article to foreign and interstate  
commerce.**

1 (a) A registered limited liability partnership formed under  
2 this article may conduct its business, carry on its operations  
3 and have and exercise the powers granted by this chapter in  
4 any state, territory, district or possession of the United States  
5 or in any foreign country.

6 (b) It is the intent of the Legislature that the legal  
7 existence of registered limited liability partnerships formed  
8 under this article be recognized outside the boundaries of this  
9 state and that the laws of this state governing such registered  
10 limited liability partnerships doing business outside this state  
11 be granted the protection of full faith and credit under the  
12 Constitution of the United States.

13 (c) Notwithstanding section six, article one of this  
14 chapter, the internal affairs of registered limited liability  
15 partnerships formed under this article, including the liability  
16 of partners for debts, obligations and liabilities of or  
17 chargeable to the partnership, shall be subject to and  
18 governed by the laws of this state.

19 (d) Before transacting business in this state, a foreign  
20 registered limited liability partnership shall:

21 (1) Comply with any statutory or administrative  
22 registration or filing requirements governing the specific type  
23 of business in which the partnership is engaged; and

24 (2) File a notice with the Secretary of State, stating the  
25 name of the partnership or if its name is unavailable for use  
26 in this state, a limited partnership name that satisfies the  
27 requirements of section four-e of this article, including a  
28 copy of the resolution of its partners adopting the fictitious  
29 name; the address of its principal office; the address of a  
30 registered office and the name and address of a registered  
31 agent for service of process, if any; an e-mail address to  
32 where informational notices and reminders of annual filings  
33 may be sent, unless there is a technical inability to comply;

34 a brief statement of the business in which the partnership  
35 engages; the name and address of each partner authorized to  
36 execute instruments on behalf of the partnership and any  
37 other matters that the partnership determines to include; and  
38 a brief statement of the business in which the partnership  
39 engages. Such notice shall be effective for two years from  
40 the date of filing, after which time the partnership shall file  
41 a new notice.

42 (e) The name of a foreign registered limited liability  
43 partnership doing business in this state shall contain the  
44 words "Registered Limited Liability Partnership" or the  
45 abbreviation "L.L.P." or "LLP" as the last words or letters of  
46 its name.

47 (f) Notwithstanding section six, article one of this  
48 chapter, the internal affairs of foreign registered limited  
49 liability partnerships, including the liability of partners for  
50 debts, obligations and liabilities of or chargeable to the  
51 partnership, shall be subject to and governed by the laws of  
52 the jurisdiction in which the foreign registered limited  
53 liability partnership is registered.

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## CHAPTER 128

**(S. B. 627 - By Senators Stollings,  
Browning and Unger)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2010.]

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AN ACT to amend and reenact §22-15A-3 and §22-15A-4 of the Code of West Virginia, 1931, as amended, all relating to the crime of littering; increasing criminal and civil penalties; and

directing the Secretary of the Department of Environmental Protection to organize a statewide litter reporting program.

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

That §22-15A-3 and §22-15A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.**

§22-15A-3. West Virginia litter control and recycling programs; transfer of programs and employees; additional duties of secretary; grants to counties and municipalities; and rules relating thereto.

§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

**§22-15A-3. West Virginia litter control and recycling programs; transfer of programs and employees; additional duties of secretary; grants to counties and municipalities; and rules relating thereto.**

1 (a) After July 1, 2005, the litter control and recycling  
2 programs heretofore operated and managed by the Division  
3 of Natural Resources shall transfer to the Department of  
4 Environmental Protection.

5 With the transfer of the West Virginia Litter Control and  
6 Recycling Programs from the jurisdiction of the Division of  
7 Natural Resources to the jurisdiction of the Department of  
8 Environmental Protection, all records, assets and contracts,  
9 along with rights and obligations thereunder, obtained or  
10 signed on behalf of the Litter Control and Recycling  
11 Programs are hereby transferred and assigned to the  
12 Department of Environmental Protection.

13 (b) The Commissioner of the Division of Natural  
14 Resources and the Secretary of the Department of  
15 Environmental Protection shall determine which employees  
16 of the Division of Natural Resources will be transferred to  
17 the Department of Environmental Protection. All employees  
18 including administrators of the litter control and recycling  
19 programs are subject to being transferred to the Department  
20 of Environmental Protection. Employees in the classified  
21 service who have gained permanent status as of the effective  
22 date of this article, enacted during the 2005 regular session of  
23 the Legislature, will not be subject to further qualifying  
24 examination in their respective classifications by reason of  
25 the transfer required by the provisions of this section.  
26 Nothing contained in this section may be construed to either  
27 abridge the rights of employees within the classified service  
28 of the state to the procedures and protections set forth in  
29 article six, chapter twenty-nine of this code or to preclude the  
30 reclassification or reallocation of positions in accordance  
31 with procedures set forth in said article. The Division of  
32 Personnel shall work with the commission and secretary to  
33 efficiently transfer employees from the Division of Natural  
34 Resources to the Department of Environmental Protection.

35 (c) In addition to all other powers, duties and  
36 responsibilities granted and assigned to the Secretary of the  
37 Department of Environmental Protection in this chapter and  
38 elsewhere by law, the secretary, in the administration of the  
39 West Virginia Litter Control Program created by this section,  
40 shall:

41 (1) Coordinate all industry and business organizations  
42 seeking to aid in the litter control and recycling effort;

43 (2) Cooperate with all local governments to accomplish  
44 coordination of local litter control and recycling efforts;

45 (3) Encourage, organize, coordinate and increase public  
46 awareness of and participation in all voluntary litter control

47 and recycling campaigns, including citizen litter watch  
48 programs, seeking to focus the attention of the public on the  
49 litter control and recycling programs of the state and local  
50 governments and of private recycling centers;

51 (4) Recommend to local governing bodies that they adopt  
52 ordinances similar to the provisions of section four of this  
53 article;

54 (5) Investigate the methods and success of techniques of  
55 litter control, removal and disposal utilized in other states,  
56 and develop, encourage, organize and coordinate local litter  
57 control programs funded by grants awarded pursuant to  
58 subsection (d) of this section utilizing such successful  
59 techniques;

60 (6) Investigate the availability of, and apply for, funds  
61 available from any and all private or public sources to be  
62 used in the litter control program created by this section;

63 (7) Attract to the state persons or industries that purchase,  
64 process or use recyclable materials;

65 (8) Contract for the development, production and  
66 broadcast of radio and television messages promoting the  
67 West Virginia Litter Control Program. The messages should  
68 increase public awareness of and promote citizen  
69 responsibility toward the reduction of litter; and

70 (9) Encourage, organize, coordinate and increase public  
71 awareness of, and participation in, a volunteer litter reporting  
72 program state-wide.

73 (d) All authority to promulgate rules pursuant to article  
74 three, chapter twenty-nine-a of this code establishing criteria  
75 for awarding direct or matching grants for the study of  
76 available research and development in the fields of litter  
77 control, removal and disposal, methods for the



78 implementation of such research and development, and the  
79 development of public educational programs concerning litter  
80 control is hereby transferred from the Division of Natural  
81 Resources to the Secretary of the Department of  
82 Environmental Protection as of the effective date of  
83 enactment of this section and article during the 2005 session  
84 of the Legislature: *Provided*, That any rule promulgated by  
85 the Division of Natural Resources relating to such grants  
86 shall remain in force and effect as though promulgated by the  
87 Department of Environmental Protection until the Secretary  
88 amends the rules in accordance with the provisions of article  
89 three, chapter twenty-nine-a of this code.

90 (e) All authority to promulgate rules pursuant to article  
91 three, chapter twenty-nine-a of this code designating public  
92 areas where litter receptacles shall be placed and the  
93 minimum number of litter receptacles in accordance with  
94 subsection (g), section four of this article is hereby  
95 transferred from the Division of Natural Resources to the  
96 Secretary of the Department of Environmental Protection as  
97 of the effective date of enactment of this section and article  
98 during the 2005 session of the Legislature. Any rule  
99 promulgated by the Division of Natural Resources relating to  
100 littering receptacles shall remain in effect as if promulgated  
101 by the Secretary until amended by the Secretary.

102 (f) Commencing on July 1, 2005, the Secretary shall  
103 expend annually at least fifty percent of the moneys credited  
104 to the Litter Control Fund in the previous fiscal year for  
105 matching grants to counties and municipalities for the  
106 initiation and administration of litter control programs. The  
107 secretary shall promulgate rules pursuant to article three,  
108 chapter twenty-nine-a of this code establishing criteria for the  
109 awarding of matching grants.

110 (g) The Secretary of the Department of Environmental  
111 Protection in cooperation with the Commissioner of  
112 Highways, the Department of Commerce, the West Virginia

113 State Police, the United States Forestry Service and other  
114 local, state and federal law-enforcement agencies shall be  
115 responsible for the administration and enforcement of all  
116 laws and rules relating to the maintenance of cleanliness and  
117 improvement of appearances on and along highways, roads,  
118 streets, alleys and any other private or public areas of the  
119 state. These other agencies shall make recommendations to  
120 the Secretary, from time to time, concerning means and  
121 methods of accomplishing litter control consistent with the  
122 provisions of this chapter. Such cooperation shall include,  
123 but not be limited to, contracts with the Commissioner of  
124 Highways to operate a litter control program.

125 (h) All other state agencies and local governments shall  
126 cooperate with the Secretary in effecting the purposes of the  
127 litter control program.

**§22-15A-4. Unlawful disposal of litter; civil and criminal  
penalty; litter control fund; evidence; notice  
violations; litter receptacle placement; penalty;  
duty to enforce violations.**

1 (a) (1) No person shall place, deposit, dump, throw or  
2 cause to be placed, deposited, dumped or thrown any litter as  
3 defined in section two of this article, in or upon any public or  
4 private highway, road, street or alley; any private property;  
5 any public property; or the waters of the state or within one  
6 hundred feet of the waters of this state, except in a proper  
7 litter or other solid waste receptacle.

8 (2) It is unlawful for any person to place, deposit, dump,  
9 throw or cause to be placed, deposited, dumped or thrown  
10 any litter from a motor vehicle or other conveyance or to  
11 perform any act which constitutes a violation of the motor  
12 vehicle laws contained in section fourteen, article fourteen,  
13 chapter seventeen-c of this code.

14           (3) If any litter is placed, deposited, dumped, discharged,  
15 thrown or caused to be placed, deposited, dumped or thrown  
16 from a motor vehicle, boat, airplane or other conveyance, it  
17 is prima facie evidence that the owner or the operator of the  
18 motor vehicle, boat, airplane or other conveyance intended to  
19 violate the provisions of this section.

20           (4) Any person who violates the provisions of this section  
21 by placing, depositing, dumping or throwing or causing to be  
22 placed, deposited, dumped or thrown any litter, not collected  
23 for commercial purposes, in an amount not exceeding one  
24 hundred pounds in weight or twenty-seven cubic feet in size,  
25 is guilty of a misdemeanor. Upon conviction, he or she is  
26 subject to a fine of not less than \$100 nor more than \$1,000,  
27 or in the discretion of the court, sentenced to perform  
28 community service by cleaning up litter from any public  
29 highway, road, street, alley or any other public park or public  
30 property, or waters of the state, as designated by the court,  
31 for not less than eight nor more than sixteen hours, or both.

32           (5) Any person who violates the provisions of this section  
33 by placing, depositing, dumping or throwing or causing to be  
34 placed, deposited, dumped or thrown any litter, not collected  
35 for commercial purposes, in an amount greater than one  
36 hundred pounds in weight or twenty-seven cubic feet in size,  
37 but less than five hundred pounds in weight or two hundred  
38 sixteen cubic feet in size is guilty of a misdemeanor. Upon  
39 conviction he or she is subject to a fine of not less than  
40 \$1,000 nor more than \$2,000, or in the discretion of the  
41 court, may be sentenced to perform community service by  
42 cleaning up litter from any public highway, road, street, alley  
43 or any other public park or public property, or waters of the  
44 state, as designated by the court, for not less than sixteen nor  
45 more than thirty-two hours, or both.

46           (6) Any person who violates the provisions of this section  
47 by placing, depositing, dumping or throwing or causing to be

48 placed, deposited, dumped or thrown any litter in an amount  
49 greater than five hundred pounds in weight or two hundred  
50 sixteen cubic feet in size or any amount which had been  
51 collected for commercial purposes is guilty of a  
52 misdemeanor. Upon conviction, the person is subject to a  
53 fine not less than \$2,500 or not more than \$25,000 or  
54 confinement in jail for not more than one year or both. In  
55 addition, the violator may be guilty of creating or  
56 contributing to an open dump as defined in section two,  
57 article fifteen, chapter twenty-two of this code and subject to  
58 the enforcement provisions of section fifteen of said article.

59 (7) Any person convicted of a second or subsequent  
60 violation of this section is subject to double the authorized  
61 range of fines and community service for the subsection  
62 violated.

63 (8) The sentence of litter clean up shall be verified by  
64 environmental inspectors from the Department of  
65 Environmental Protection. Any defendant receiving the  
66 sentence of litter clean up shall provide, within a time to be  
67 set by the court, written acknowledgment from an  
68 environmental inspector that the sentence has been completed  
69 and the litter has been disposed of lawfully.

70 (9) Any person who has been found by the court to have  
71 willfully failed to comply with the terms of a litter clean up  
72 sentence imposed by the court pursuant to this section is  
73 subject to, at the discretion of the court, double the amount of  
74 the original fines and community service penalties originally  
75 ordered by the court.

76 (10) All law-enforcement agencies, officers and  
77 environmental inspectors shall enforce compliance with this  
78 section within the limits of each agency's statutory authority.

79 (11) No portion of this section restricts an owner, renter  
80 or lessee in the lawful use of his or her own private property

81 or rented or leased property or to prohibit the disposal of any  
82 industrial and other wastes into waters of this state in a  
83 manner consistent with the provisions of article eleven,  
84 chapter twenty-two of this code. But if any owner, renter or  
85 lessee, private or otherwise, knowingly permits any such  
86 materials or substances to be placed, deposited, dumped or  
87 thrown in such location that high water or normal drainage  
88 conditions will cause any such materials or substances to  
89 wash into any waters of the state, it is prima facie evidence  
90 that the owner, renter or lessee intended to violate the  
91 provisions of this section: *Provided*, That if a landowner,  
92 renter or lessee, private or otherwise, reports any placing,  
93 depositing, dumping or throwing of these substances or  
94 materials upon his or her property to the prosecuting  
95 attorney, county commission, the Division of Natural  
96 Resources or the Department of Environmental Protection,  
97 the landowner, renter or lessee will be presumed to not have  
98 knowingly permitted the placing, depositing, dumping or  
99 throwing of the materials or substances.

100 (b) Any indication of ownership found in litter shall be  
101 prima facie evidence that the person identified violated the  
102 provisions of this section: *Provided*, That no inference may  
103 be drawn solely from the presence of any logo, trademark,  
104 trade name or other similar mass reproduced things of  
105 identifying character appearing on the found litter.

106 (c) Every person who is convicted of or pleads guilty to  
107 disposing of litter in violation of subsection (a) of this section  
108 shall pay a civil penalty in the sum of not less than \$200 nor  
109 more than \$1,000 as costs for clean up, investigation and  
110 prosecution of the case, in addition to any other court costs  
111 that the court is otherwise required by law to impose upon a  
112 convicted person.

113 The clerk of the circuit court, magistrate court or  
114 municipal court in which these additional costs are imposed

115 shall, on or before the last day of each month, transmit fifty  
116 percent of a civil penalty received pursuant to this section to  
117 the State Treasurer for deposit in the State Treasury to the  
118 credit of a special revenue fund to be known as the Litter  
119 Control Fund which is hereby continued and transferred to  
120 the Department of Environmental Protection. Expenditures  
121 for purposes set forth in this section are not authorized from  
122 collections but are to be made only in accordance with  
123 appropriation and in accordance with the provisions of article  
124 three, chapter twelve of this code and upon fulfillment of the  
125 provisions set forth in article two, chapter five-a of this code.  
126 Amounts collected which are found from time to time to  
127 exceed the funds needed for the purposes set forth in this  
128 article may be transferred to other accounts or funds and  
129 designated for other purposes by appropriation of the  
130 Legislature.

131 (d) The remaining fifty percent of each civil penalty  
132 collected pursuant to this section shall be transmitted to the  
133 county or regional solid waste authority in the county where  
134 the litter violation occurred. Moneys shall be expended by  
135 the county or regional solid waste authority for the purpose  
136 of litter prevention, clean up and enforcement. The county  
137 commission shall cooperate with the county or regional solid  
138 waste authority serving the respective county to develop a  
139 coordinated litter control program pursuant to section eight,  
140 article four, chapter twenty-two-c of this code.

141 (e) The Commissioner of the Division of Motor Vehicles,  
142 upon registering a motor vehicle or issuing an operator's or  
143 chauffeur's license, shall issue to the owner or licensee, as  
144 the case may be, a summary of this section and section  
145 fourteen, article fourteen, chapter seventeen-c of the code.

146 (f) The Commissioner of the Division of Highways shall  
147 cause appropriate signs to be placed at the state boundary on  
148 each primary and secondary road, and at other locations

149 throughout the state, informing those entering the state of the  
150 maximum penalty provided for disposing of litter in violation  
151 of subsection (a) of this section.

152 (g) Any state agency or political subdivision that owns,  
153 operates or otherwise controls any public area as may be  
154 designated by the Secretary by rule promulgated pursuant to  
155 subdivision (8), subsection (a), section three of this article  
156 shall procure and place litter receptacles at its own expense  
157 upon its premises and shall remove and dispose of litter  
158 collected in the litter receptacles. After receiving two written  
159 warnings from any law-enforcement officer or officers to  
160 comply with this subsection or the rules of the Secretary, any  
161 state agency or political subdivision that fails to place and  
162 maintain the litter receptacles upon its premises in violation  
163 of this subsection or the rules of the Secretary shall be fined  
164 \$30 per day of the violation.

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## CHAPTER 129

**(S. B. 237 - By Senators McCabe,  
Snyder, Browning, Unger, Guills,  
Yost, Stollings, Chafin, Plymale,  
Edgell, Foster, Bowman, Kessler,  
Caruth and Palumbo)**

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[Passed March 13, 2010; in effect from passage.]  
[Approved by the Governor on March 31, 2010.]

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AN ACT to amend the Code of West Virginia, 1931, as amended,  
by adding thereto a new article, designated §13-2H-1, §13-2H-  
2, §13-2H-3, §13-2H-4, §13-2H-5, §13-2H-6, §13-2H-7, §13-

2H-8, §13-2H-9, §13-2H-10, §13-2H-11 and §13-2H-12; and to amend and reenact §29-22C-27 of said code, all relating to funding distributions from state lottery revenues generally; providing authorization for municipalities, county commissions and certain boards of education to issue revenue bonds secured by lottery revenue for the purpose of acquiring or constructing public projects; and changing the allocation of a certain distribution from the lottery racetrack table games fund to the purse funds of the thoroughbred racetracks from an equal allocation among the tracks to a pro rata distribution.

*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 §13-2H-1, §13-2H-2, §13-2H-3, §13-2H-4, §13-2H-5, §13-2H-6, §13-2H-7, §13-2H-8, §13-2H-9, §13-2H-10, §13-2H-11 and §13-2H-12; and that §29-22C-27 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 13. **Public Bonded Indebtedness.**
- 29. **Miscellaneous Officers.**

**CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.**

**ARTICLE 2H. LOTTERY REVENUE BOND ACT.**

- §13-2H-1. Short title.
- §13-2H-2. Definitions.
- §13-2H-3. Powers conferred on counties and municipalities.
- §13-2H-4. Issuance of lottery revenue bonds by county.
- §13-2H-5. Issuance of lottery revenue bonds by municipality.
- §13-2H-6. Issuance of lottery revenue bonds by board of education.
- §13-2H-7. Use of proceeds from sale of bonds.
- §13-2H-8. Redemption of bonds.
- §13-2H-9. Refunding bonds.
- §13-2H-10. Joint establishment by two or more governmental bodies.
- §13-2H-11. Exemption from taxation.
- §13-2H-12. Construction of article.



**§13-2H-1. Short title.**

1           This article may be known as and may be cited as the  
2    Lottery Revenue Bond Act.

**§13-2H-2. Definitions.**

1           Unless the context clearly indicates otherwise, as used in  
2    this article:

3           (a) “Board of education” means a county board of  
4    education of a growth county, as that term is defined in  
5    section three, article twenty, chapter seven of this code,  
6    which has enacted the Local Powers Act and in which county  
7    a racetrack is located that has participated in the West  
8    Virginia Thoroughbred Development Fund since on or before  
9    January 1, 1991, and is receiving lottery revenues.

10          (b) “Governmental body” means any municipality,  
11    county or board of education that receives lottery revenues.

12          (c) “Lottery revenues” means the funds distributed to a  
13    governmental body pursuant to the provisions of sections ten  
14    and ten-b, article twenty-two-a, chapter twenty-nine of this  
15    code; section one thousand four hundred eight, article  
16    twenty-two-b of said chapter, or section twenty-seven, article  
17    twenty-two-c of said chapter or section twenty-two, article  
18    twenty-five, chapter twenty-nine of this code.

19          (d) “Lottery revenue bonds” means bonds, debentures,  
20    notes, certificates of participation, certificates of beneficial  
21    interest, certificates of ownership or other evidences of  
22    indebtedness or ownership that are issued by a governmental  
23    body, the proceeds of which are used directly or indirectly to  
24    finance or refinance public projects pursuant to this article  
25    and are secured by the lottery revenues of the governmental  
26    body.

27 (e) "Lottery revenue fund" means the fund required to be  
28 established by the governmental body to deposit lottery  
29 revenues if the governmental body issues lottery revenue  
30 bonds.

31 (f) "Public project" means any project approved by a  
32 governmental body to acquire, improve, renovate, extend,  
33 enlarge, increase, repair, construct, equip, maintain and  
34 operate public buildings, structures, fixtures, property, public  
35 infrastructure and appurtenant facilities of any type or types  
36 for which the governmental body is permitted by law to  
37 expend public funds including, but not limited to, those  
38 projects as defined in section one, article sixteen, chapter  
39 eight of this code. Additionally, a public project would  
40 include all roads and transportation infrastructure.

### **§13-2H-3. Powers conferred on counties and municipalities.**

1 In addition to any other powers which a county or  
2 municipality may now have, each county, by and through its  
3 county commission, and each municipality, by and through  
4 its council or other governing body in lieu thereof, may: (a)  
5 Acquire, whether by purchase, construction, gift, lease or  
6 otherwise, one or more public projects, or additions thereto,  
7 which shall be located within this state; and (b) issue and  
8 deliver lottery revenue bonds secured by lottery revenues to  
9 finance or refinance public projects.

### **§13-2H-4. Issuance of lottery revenue bonds by county.**

1 (a) The county commission may issue lottery revenue  
2 bonds of the county as provided in this section to finance or  
3 refinance all or part of a public project and pledge all or any  
4 part of the lottery revenues for the payment of the principal  
5 of and interest on such lottery revenue bonds and for reserves  
6 therefor: *Provided*, That a county commission receiving  
7 lottery revenues pursuant to the provisions of subdivision (3),

8 subsection (c), section twenty-seven, article twenty-two-c,  
9 chapter twenty-nine of this code may only pledge fifty  
10 percent of the lottery revenues to the payment of principal  
11 and interest on the lottery revenue bonds and for reserves  
12 therefor. Any pledge of lottery revenue funds for lottery  
13 revenue bonds is a prior and superior charge on the lottery  
14 revenues and Lottery Revenue Fund over the use of any of  
15 the moneys to pay for the cost of any of the purposes on a  
16 cash basis.

17 (b) The lottery revenue bonds may be authorized and  
18 issued by the county commission to finance or refinance, in  
19 whole or in part, public projects in an aggregate principal  
20 amount not exceeding the amount which the county  
21 commission determines can be paid as to both principal and  
22 interest and reasonable margins for a reserve therefor from  
23 the lottery revenues and the Lottery Revenue Fund. A county  
24 commission issuing lottery revenue bonds shall establish a  
25 fund to deposit lottery revenues and call such fund the  
26 Lottery Revenue Fund. The county commission shall  
27 thereafter deposit all lottery revenues pledged to the payment  
28 of principal and interest of lottery revenue bonds into the  
29 Lottery Revenue Fund.

30 (c) The issuance of lottery revenue bonds may be  
31 authorized by an order of the county commission. The  
32 lottery revenue bonds shall: (1) Bear a date or dates; (2)  
33 mature at a time or times not exceeding forty years from their  
34 respective dates; (3) be in a specific denomination; (4) be in  
35 a registered form with exchangeability and interchangeability  
36 privileges; (5) be payable in a medium of payment and at a  
37 place or places within or without the state; (6) be subject to  
38 terms of prior redemption at those prices; and (7) may have  
39 such other terms and provisions as determined by the county  
40 commission. The lottery revenue bonds shall be signed by  
41 the president of the county commission under the seal of the  
42 county commission, attested by the clerk of the county

43 commission. Lottery revenue bonds may be sold in a manner  
44 as the county commission determines is for the best interests  
45 of the county.

46 (d) The county commission may enter into: (1) Trust  
47 agreements with banks or trust companies within or without  
48 the state and in trust agreements or orders authorizing the  
49 issuance of bonds; (2) valid and legally binding covenants  
50 with the holders of the lottery revenue bonds as to the  
51 custody, safeguarding and disposition of the proceeds of the  
52 lottery revenue bonds, the moneys in the Lottery Revenue  
53 Fund, sinking funds, reserve funds or any other moneys or  
54 funds; as to the rank and priority, if any, or different issues of  
55 lottery revenue bonds by the county commission under the  
56 provisions of this section; (3) agreements as to such  
57 provisions as payment, term, security, default and remedy  
58 provisions as the county commission shall consider necessary  
59 or desirable; and

60 (4) Agreements as to any other matters or provisions  
61 which are considered necessary and advisable by the county  
62 commission in the best interests of the county and to enhance  
63 the marketability of such lottery revenue bonds.

64 (e) The lottery revenue bonds are negotiable instruments  
65 under the Uniform Commercial Code of this state and are not  
66 obligations or debts of the state or of the county issuing the  
67 bonds and the credit or taxing power of the state or county  
68 may not be pledged therefor, but the lottery revenue bonds  
69 may be payable only from the revenue pledged therefor as  
70 provided in this section.

71 (f) A holder of lottery revenue bonds has a lien against  
72 the lottery revenues and the Lottery Revenue Fund for  
73 payment of the lottery revenue bond and the interest thereon  
74 and may bring suit to enforce the lien.

75 (g) A county commission may issue and secure additional  
76 bonds payable out of the lottery revenues and the Lottery  
77 Revenue Fund which bonds may rank on a parity with, or be  
78 subordinate or superior to, other bonds issued by the county  
79 commission and payable from the Lottery Revenue Fund.

**§13-2H-5. Issuance of lottery revenue bonds by municipality.**

1 (a) A municipality may issue lottery revenue bonds as  
2 provided in this section to finance or refinance all or part of  
3 a public project and pledge all or any part of the lottery  
4 revenues for the payment of the principal of and interest on  
5 the lottery revenue bonds and for reserves therefor: *Provided,*  
6 That a municipality receiving lottery revenues pursuant to the  
7 provisions of subdivision (4), subsection (c), section twenty-  
8 seven, article twenty-two-c, chapter twenty-nine of this code  
9 may only pledge fifty percent of the lottery revenues to the  
10 payment of principal and interest on the lottery revenue  
11 bonds and for reserves therefor. Any pledge of lottery  
12 revenue funds for lottery revenue bonds is a prior and  
13 superior charge on the lottery revenues and Lottery Revenue  
14 Fund over the use of any of the moneys to pay for the cost of  
15 any of such purposes on a cash basis.

16 (b) The lottery revenue bonds may be authorized and  
17 issued by the municipality to finance or refinance, in whole  
18 or in part, public projects in an aggregate principal amount  
19 not exceeding the amount which the municipality determines  
20 can be paid as to both principal and interest and reasonable  
21 margins for a reserve therefor from the lottery revenues and  
22 the Lottery Revenue Fund. A municipality issuing lottery  
23 revenue bonds shall establish a fund to deposit lottery  
24 revenues and call the fund the Lottery Revenue Fund. The  
25 municipality shall thereafter deposit all lottery revenues  
26 pledged to the payment of principal and interest of lottery  
27 revenue bonds into the Lottery Revenue Fund.

28 (c) The issuance of lottery revenue bonds may be  
29 authorized by an ordinance of the municipality and such  
30 lottery revenue bonds shall be issued pursuant to the  
31 provisions of article sixteen, chapter eight of this code.

32 (d) The lottery revenue bonds are negotiable instruments  
33 under the Uniform Commercial Code of this state and may  
34 not be considered to be obligations or debts of the state or of  
35 the municipality issuing the bonds and the credit or taxing  
36 power of the state or municipality may not be pledged  
37 therefor, but the lottery revenue bonds may be payable only  
38 from the revenue pledged therefor as provided in this section.

39 (e) A holder of lottery revenue bonds has a lien against  
40 the lottery revenues and the Lottery Revenue Fund for  
41 payment of the lottery revenue bond and the interest thereon  
42 and may bring suit to enforce the lien.

43 (f) A municipality may issue and secure additional bonds  
44 payable out of the lottery revenues and the Lottery Revenue  
45 Fund which bonds may rank on a parity with, or be  
46 subordinate or superior to, other bonds issued by the  
47 municipality and payable from the Lottery Revenue Fund.

**§13-2H-6. Issuance of lottery revenue bonds by board of  
education.**

1 (a) A board of education may issue and deliver lottery  
2 revenue bonds secured by lottery revenues to finance or  
3 refinance public projects. The board of education may issue  
4 lottery revenue bonds of the school district as provided in this  
5 section to finance or refinance all or part of a public project  
6 and pledge all or any part of the lottery revenues for the  
7 payment of the principal of and interest on lottery revenue  
8 bonds and for reserves therefor. Any pledge of lottery  
9 revenue funds for lottery revenue bonds is a prior and  
10 superior charge on the lottery revenues and Lottery Revenue

11 Fund over the use of any of the moneys to pay for the cost of  
12 any of such purposes on a cash basis.

13 (b) Lottery revenue bonds may be authorized and issued  
14 by the board of education to finance or refinance, in whole or  
15 in part, public projects in an aggregate principal amount not  
16 exceeding the amount which the board of education  
17 determines can be paid as to both principal and interest and  
18 reasonable margins for a reserve therefor from the lottery  
19 revenues and the Lottery Revenue Fund. A board of  
20 education issuing lottery revenue bonds shall establish a fund  
21 to deposit lottery revenues and call the fund the Lottery  
22 Revenue Fund. The board of education shall thereafter  
23 deposit all lottery revenues pledged to the payment of  
24 principal and interest of lottery revenue bonds into the  
25 Lottery Revenue Fund.

26 (c) The issuance of lottery revenue bonds may be  
27 authorized by an order of the board of education and the  
28 lottery revenue bonds shall: (1) Bear a specific date or dates;  
29 (2) mature at such time or times not exceeding forty years  
30 from their respective dates; (3) be in a specific denomination;  
31 (4) be in registered form with exchangeability and  
32 interchangeability privileges; (5) be payable in the medium  
33 of payment and at a specific place or places within or without  
34 the state; (6) be subject to terms of prior redemption at  
35 specific prices; and (7) have such other terms and provisions  
36 as determined by the board of education. The lottery revenue  
37 bonds shall be signed by the president of the board of  
38 education under the seal of the board of education, attested  
39 by the secretary of the board of education. Lottery revenue  
40 bonds may be sold in the manner as the board of education  
41 determines is for the best interests of the school district.

42 (d) The board of education may enter into: (1) Trust  
43 agreements with banks or trust companies, within or without  
44 the state; (2) trust agreements or the orders authorizing the

45 issuance of the bonds; (3) valid and legally binding  
46 covenants with the holders of the lottery revenue bonds as to  
47 the custody, safeguarding and disposition of the proceeds of  
48 the lottery revenue bonds, the moneys in the Lottery Revenue  
49 Fund, sinking funds, reserve funds or any other moneys or  
50 funds; (4) agreements as to the rank and priority, if any, or  
51 different issues of lottery revenue bonds by the board of  
52 education under the provisions of this section; (5) agreements  
53 as to the provisions of payment, term, security, default and  
54 remedy provisions as the board of education may consider  
55 necessary or desirable; and (6) agreements as to any other  
56 matters or provisions which are considered necessary and  
57 advisable by the board of education in the best interests of the  
58 school district and to enhance the marketability of such  
59 lottery revenue bonds.

60 (e) The lottery revenue bonds are negotiable instruments  
61 under the Uniform Commercial Code of this state and may  
62 not be considered to be obligations or debts of the state or of  
63 the board of education issuing the bonds and the credit or  
64 taxing power of the state or board of education may not be  
65 pledged therefor, but the lottery revenue bonds may be  
66 payable only from the revenue pledged therefor as provided  
67 in this section.

68 (f) A holder of lottery revenue bonds has a lien against  
69 the lottery revenues and the Lottery Revenue Fund for  
70 payment of the lottery revenue bond and the interest thereon  
71 and may bring suit to enforce the lien.

72 (g) A board of education may issue and secure additional  
73 bonds payable out of the lottery revenues or Lottery Revenue  
74 Fund which bonds may rank on a parity with, or be  
75 subordinate or superior to, other bonds issued by the board of  
76 education and payable from the Lottery Revenue Fund.

**§13-2H-7. Use of proceeds from sale of bonds.**



1           (a) The proceeds from the sale of any bonds issued under  
2 authority of this article may be applied only for the purpose  
3 for which the bonds were issued: *Provided*, That any accrued  
4 interest received in any sale shall be applied to the payment  
5 of the principal of or the interest on the bonds sold. If for  
6 any reason any portion of the proceeds are not needed for the  
7 purpose for which the bonds were issued, then the unneeded  
8 portion of the proceeds shall be applied to the purchase of  
9 bonds for cancellation or payment of the principal of or the  
10 interest on the bonds or held in reserve for the payment  
11 thereof.

12           (b) The costs of any public project shall be considered to  
13 include the following:

14           (1) Capital costs, including, but not limited to, the actual  
15 costs of the construction of public works or improvements,  
16 capital improvements and facilities, new buildings, structures  
17 and fixtures, the demolition, alteration, remodeling, repair or  
18 reconstruction of existing buildings, structures and fixtures,  
19 the removal or containment of, or the restoration of soil or  
20 groundwater affected by environmental pollution,  
21 environmental remediation, the acquisition of equipment and  
22 site clearing, grading and preparation;

23           (2) Financing costs, including, but not limited to, any  
24 interest paid to holders of evidences of indebtedness issued  
25 to pay for project costs, all costs of issuance and any  
26 redemption premiums, credit enhancement or other related  
27 costs;

28           (3) Real property acquisition costs;

29           (4) Professional service costs, including, but not limited  
30 to, those costs incurred for architectural planning,  
31 engineering and legal advice and services;

32 (5) Imputed administrative costs, including, but not  
33 limited to, reasonable charges for time spent by governmental  
34 body employees in connection with the implementation of a  
35 project;

36 (6) Relocation costs, including, but not limited to, those  
37 relocation payments made following condemnation and job  
38 training and retraining and costs for utility relocation; and

39 (7) Organizational costs, including, but not limited to, the  
40 costs of conducting environmental impact and other studies  
41 and the costs of informing the public with respect to the  
42 implementation of project plans.

#### **§13-2H-8. Redemption of bonds.**

1 The lottery revenue bonds issued pursuant to this article  
2 may contain a provision therein to the effect that they, or any  
3 of them, may be called for redemption at any time prior to  
4 maturity by the governmental body and at such redemption  
5 prices or premiums, which terms shall be stated in the bond.

#### **§13-2H-9. Refunding bonds.**

1 Any lottery revenue bonds issued hereunder and at any  
2 time outstanding may, at any time and from time to time, be  
3 refunded by a county, municipality or board of education by  
4 the issuance of its refunding bonds in such amount as the  
5 governmental body may determine necessary to refund the  
6 principal of the bonds so to be refunded, together with any  
7 unpaid interest thereon; to make any improvements or  
8 alterations in the public project; and any premiums and  
9 commissions necessary to be paid in connection therewith.  
10 Any refunding may be effected whether the bonds to be  
11 refunded have then matured or shall thereafter mature, either  
12 by sale of the refunding bonds and the application of the  
13 proceeds thereof for the redemption of the bonds to be

14 refunded thereby or by exchange of the refunding bonds for  
15 the bonds to be refunded thereby: *Provided*, That the holders  
16 of any bonds so to be refunded may not be compelled  
17 without their consent to surrender their bonds for payment or  
18 exchange prior to the date on which they are payable or, if  
19 they are called for redemption, prior to the date on which  
20 they are by their terms subject to redemption. Any refunding  
21 bonds issued under the authority of this article shall be  
22 payable from the lottery revenues, the Lottery Revenue Fund  
23 or from other moneys or the principal of and interest on or  
24 other investment yield from investments or proceeds of  
25 bonds or other applicable funds and moneys, including  
26 investments of proceeds of any refunding bonds, and are  
27 subject to the provisions contained in section five, six or  
28 seven of this article, as applicable.

**§13-2H-10. Joint establishment by two or more governmental bodies.**

1 Any two or more governmental bodies may jointly  
2 acquire by construction or purchase, or both, or finance one  
3 or more public projects or additions thereto by the issuance  
4 and delivery of lottery revenue bonds in which case such  
5 governmental bodies shall jointly exercise all the rights,  
6 authority, power and duties herein conferred upon a county  
7 commission, a municipality or a board of education when  
8 acting singly and they shall also be subject to the same  
9 limitations, restrictions and conditions as are herein imposed  
10 on a singly governmental body in connection with the  
11 acquisition or finance of a public project. Notwithstanding  
12 the signing and sealing requirements set forth in section four,  
13 five or six of this article, one of such governing bodies may  
14 sign and seal bonds issued pursuant to this article on both its  
15 own behalf and on behalf of all other participating governing  
16 bodies, and signature in the manner set forth in the said  
17 section four, five or six, as applicable, by one governing  
18 body shall be effect as to all other participating governing

19 bodies. The respective governing bodies, acting jointly, may  
20 also provide by agreement among themselves, any other  
21 terms and conditions of such joint participation.

**§13-2H-11. Exemption from taxation.**

1 The lottery revenue bonds issued pursuant to this article  
2 and the income therefrom are exempt from all taxation by the  
3 State of West Virginia, or by any county, school district,  
4 municipality or political subdivision thereof, except  
5 inheritance, estate and transfer taxes; and the real and  
6 personal property which a county commission, a municipality  
7 or board of education may acquire pursuant to the provisions  
8 of this article shall be exempt from taxation by the state, or  
9 any county, municipality or other levying body, as public  
10 property, so long as the same is owned by such county,  
11 municipality or board of education.

**§13-2H-12. Construction of article.**

1 This article may not be construed as a restriction or  
2 limitation upon any powers which a county, municipality or  
3 board of education might otherwise have under any laws of  
4 this state, but shall be construed as alternative or additional.  
5 This article may not be construed as requiring an election by  
6 the voters of a county, municipality or board of education  
7 prior to the issuance of bonds hereunder by a county,  
8 municipality or board of education and may not be construed  
9 as requiring any proceeding under any law or laws, other than  
10 that which is required by this article.

**CHAPTER 29. MISCELLANEOUS AND OFFICERS.**

**ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK  
TABLE GAMES ACT.**

**\*§29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community-Based Service Fund; State Debt Reduction Fund; distribution of funds.**

1           (a) (1) The special fund in the State Treasury known as  
2 the West Virginia Lottery Racetrack Table Games Fund is  
3 continued and all tax collected under this article shall be  
4 deposited with the State Treasurer and placed in the West  
5 Virginia Lottery Racetrack Table Games Fund. The fund  
6 shall be an interest-bearing account with all interest or other  
7 return earned on the money of the fund credited to and  
8 deposited in the fund.

9           (2) Notwithstanding any provision of this article to the  
10 contrary, all racetrack table games license fees received by  
11 the commission pursuant to section eight of this article shall  
12 be deposited into the Community-Based Service Fund which  
13 is continued in the State Treasury. Moneys of the fund shall  
14 be expended by the Bureau of Senior Services upon  
15 appropriation of the Legislature solely for the purpose of  
16 enabling the aged and disabled citizens of this state to  
17 maintain their residency in the community-based setting  
18 through the provision of home and community-based  
19 services.

20           (b) From the gross amounts deposited into the Racetrack  
21 Table Games Fund pursuant to subsection (a) of this section,  
22 the commission shall:

23           (1) Retain an amount for the administrative expenses of  
24 the commission as determined by the commission in  
25 accordance with subsection (e) of this section;

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\*CLERK'S NOTE: This section was also amended by S. B. 337 (Chapter 98) which passed prior to this act.

26           (2) Transfer two and one-half percent of adjusted gross  
27 receipts from all thoroughbred racetracks with West Virginia  
28 Lottery table games to the special funds established by each  
29 thoroughbred racetrack table games licensees for the payment  
30 of regular racetrack purses, the amount being divided on a  
31 pro rata basis between the special funds of each thoroughbred  
32 racetrack table games licensee and transfer two and one-half  
33 percent of adjusted gross receipts from all greyhound  
34 racetracks with West Virginia Lottery table games to the  
35 special funds established by each greyhound racetrack table  
36 games licensees for the payment of regular racetrack purses,  
37 the amount being divided equally between the special funds  
38 of each greyhound racetrack table games licensee;

39           (3) Transfer two percent of the adjusted gross receipts  
40 from all licensed racetracks to the West Virginia  
41 Thoroughbred Development Fund created under section  
42 thirteen-b, article twenty-three, chapter nineteen of this code  
43 and the West Virginia Greyhound Breeding Development  
44 Fund created under section ten, article twenty-three, chapter  
45 nineteen of this code. The total amount transferred under this  
46 subdivision shall be divided pro rata among the development  
47 funds for each racetrack table games licensee based on  
48 relative adjusted receipts from each racetrack. The amounts  
49 transferred to these funds may not be used for the benefit of  
50 any person or activity other than at or associated with a  
51 racetrack table games licensee;

52           (4) Transfer one percent of the adjusted gross receipts  
53 from each licensed racetrack to the county commissions of  
54 the counties where racetracks with West Virginia Lottery  
55 table games are located. County commissions may pledge  
56 this money to make payments on lottery revenue bonds  
57 issued pursuant to article two-h, chapter thirteen of this code.  
58 The one percent transferred under this subdivision shall be  
59 divided pro rata among the counties with a racetrack with  
60 West Virginia Lottery table games based on relative adjusted

61 gross receipts from each county's racetrack: *Provided*, That  
62 the county board of education of a growth county, as that  
63 term is defined in section three, article twenty, chapter seven  
64 of this code, which has enacted the Local Powers Act, and in  
65 which county a racetrack is located that has participated in  
66 the West Virginia Thoroughbred Development Fund since on  
67 or before January 1, 1991, shall receive the one percent of  
68 adjusted gross receipts as provided in this subdivision for the  
69 purpose of public projects, as defined in section two, article  
70 two-h, chapter thirteen of this code or to make payments on  
71 lottery revenue bonds issued to finance public projects;

72 (5) Transfer two percent of the adjusted gross receipts  
73 from each licensed racetrack to the governing bodies of  
74 municipalities within counties where racetracks with West  
75 Virginia Lottery table games are located. Municipalities may  
76 pledge the money to make payments on lottery revenue  
77 bonds issued pursuant to article two-h, chapter thirteen of this  
78 code. This money shall be allocated as follows:

79 (A) One half of the amounts transferred under this  
80 subdivision shall be allocated to the municipalities within  
81 each county having a racetrack table games licensee, based  
82 on relative adjusted gross receipts from West Virginia  
83 Lottery table games from those racetracks and the total  
84 amount allocated to the municipalities within a county shall  
85 be divided pro rata among the municipalities based on each  
86 municipality's population determined at the most recent  
87 United States decennial census of population: *Provided*,  
88 That: (i) For each allocation, when a municipality is  
89 physically located in two or more counties, only that portion  
90 of its population residing in the county where the authorized  
91 table games are located shall be considered; (ii) a single  
92 municipality in a county where West Virginia Lottery  
93 racetrack table games are played may not receive a total  
94 share under this paragraph that is in excess of seventy-five  
95 percent of the total distribution under this paragraph for the

96 county in which the municipality is located; and (iii) a  
97 municipality receiving moneys under this paragraph may not  
98 receive an amount which is less than that received by a  
99 municipality under provisions of subdivision (4), subsection  
100 (d) of this section; and

101 (B) One half of the amounts transferred under this  
102 subdivision shall be allocated pro rata to the municipalities  
103 within all the counties, having a racetrack table games  
104 licensee based on each municipality's population determined  
105 at the most recent United States decennial census of  
106 population: *Provided, That:* (i) A municipality which  
107 received funds above its pro rata share pursuant to subpart  
108 (iii), paragraph (A) of this subdivision may not receive an  
109 allocation under this paragraph; (ii) for each allocation, when  
110 a municipality is physically located in two or more counties,  
111 only that portion of its population residing in the county  
112 where the authorized table games are located shall be  
113 considered; and (iii) a single municipality in a county where  
114 West Virginia Lottery racetrack games are played may not  
115 receive a total share under this paragraph that is in excess of  
116 twenty-five percent of the total transfers under this  
117 paragraph: *Provided, however,* That the county board of  
118 education of a growth county, as that term is defined in  
119 section three, article twenty, chapter seven of this code,  
120 which has enacted the Local Powers Act, and in which  
121 county a racetrack is located that has participated in the West  
122 Virginia Thoroughbred Development Fund since on or before  
123 January 1, 1991, shall receive the two percent of adjusted  
124 gross receipts as provided in this subdivision for the purpose  
125 of public projects, as defined in section two, article two-h,  
126 chapter thirteen of this code, or to make payments on lottery  
127 revenue bonds issued to finance the public projects;

128 (6) Transfer one half of one percent of the adjusted gross  
129 receipts to the governing bodies of municipalities in which a  
130 racetrack table games licensee is located. The municipalities



131 shall each receive an equal share of the total amount  
132 allocated under this subdivision: *Provided*, That distribution  
133 under this subdivision may not be made to any municipality  
134 which did not have a licensed racetrack within its municipal  
135 boundaries as they existed on January 1, 2007: *Provided*,  
136 *however*, That if no racetrack table games licensee is located  
137 within a municipality, a transfer may not be made under this  
138 subdivision. The municipality may pledge this money to  
139 make payments on lottery revenue bonds issued pursuant to  
140 article two-h, chapter thirteen of this code; and

141 (7) Distribute the remaining amounts, hereinafter referred  
142 to as the net amounts in the Racetrack Table Games Funds,  
143 in accordance with the provisions of subsection (d) of this  
144 section.

145 (c) Beginning with the fiscal year following the licensing  
146 of every licensed racetrack to offer West Virginia Lottery  
147 racetrack table games under this article, subsection (b) of this  
148 section shall be superseded and replaced by this subsection  
149 for distribution of the balances in the fund established by  
150 subsection (a) of this section. From the gross amounts  
151 deposited into the fund, the commission shall:

152 (1) Retain an amount for the administrative expenses of  
153 the commission as determined by the commission in  
154 accordance with subsection(e) of this section;

155 (2) Transfer two and one-half percent of adjusted gross  
156 receipts from all thoroughbred racetracks with West Virginia  
157 Lottery table games to the special funds established by each  
158 thoroughbred racetrack table games licensee for the payment  
159 of regular racetrack purses, the amount being divided on a  
160 pro rata basis between the special funds of each thoroughbred  
161 racetrack table games licensee and transfer two and one-half  
162 percent of adjusted gross receipts from all greyhound  
163 racetracks with West Virginia Lottery table games to the

164 special funds established by each greyhound racetrack table  
165 games licensee for the payment of regular racetrack purses,  
166 the amount being divided equally between the special funds  
167 of each greyhound racetrack table games licensee;

168 (3) Transfer two percent of the adjusted gross receipts  
169 from all licensed racetracks to the West Virginia  
170 Thoroughbred Development Fund created under section  
171 thirteen-b, article twenty-three, chapter nineteen of this code  
172 and the West Virginia Greyhound Breeding Development  
173 Fund created under section ten, article twenty-three, chapter  
174 nineteen of this code. The total amount transferred under this  
175 subdivision shall be divided pro rata among the development  
176 funds for each racetrack table games licensee based on  
177 relative adjusted receipts from each racetrack. The amounts  
178 transferred to these funds may not be used for the benefit of  
179 any person or activity other than at or associated with a  
180 racetrack table games licensee;

181 (4) Transfer two percent of the adjusted gross receipts  
182 from each licensed racetrack to the county commissions of  
183 the counties where racetracks with West Virginia Lottery  
184 table games are located. The money transferred under this  
185 subdivision shall be divided pro rata among the counties with  
186 a racetrack with West Virginia Lottery table games based on  
187 relative adjusted gross receipts from each county's racetrack:  
188 *Provided*, That the county board of education of a growth  
189 county, as that term is defined in section three, article twenty,  
190 chapter seven of this code, which has enacted the Local  
191 Powers Act, and in which a racetrack is located that has  
192 participated in the West Virginia Thoroughbred Development  
193 Fund since on or before January 1, 1991, shall receive one  
194 half of that county's share of adjusted gross receipts as  
195 provided in this subdivision for the purpose of capital  
196 improvements;

197 (5) Transfer three percent of the adjusted gross receipts  
198 from each licensed racetrack to the governing bodies of

199 municipalities within counties where racetracks with West  
200 Virginia Lottery table games are located, which shall be  
201 allocated as follows:

202 (A) One half of the money transferred by this subdivision  
203 shall be allocated to the municipalities within each county,  
204 other than a county described in paragraph (C) of this  
205 subdivision, having a racetrack table games licensee based on  
206 relative adjusted gross receipts from West Virginia Lottery  
207 table games from those racetracks and the total amount  
208 allocated to the municipalities within a county shall be  
209 divided pro rata among the municipalities based on each  
210 municipality's population determined at the most recent  
211 United States decennial census of population: *Provided,*  
212 That: (i) For each allocation, when a municipality is  
213 physically located in two or more counties, only that portion  
214 of its population residing in the county where the authorized  
215 table games are located shall be considered; (ii) a single  
216 municipality in a county where West Virginia Lottery  
217 racetrack table games are played may not receive a total  
218 share under this paragraph that is in excess of seventy-five  
219 percent of the total distribution under this paragraph for the  
220 county in which the municipality is located; and (iii) a  
221 municipality receiving moneys under this paragraph may not  
222 receive an amount which is less than that received by a  
223 municipality under provisions of subdivision (4), subsection  
224 (d) of this section.

225 (B) One half of the money transferred under this  
226 subdivision shall be allocated pro rata to the municipalities  
227 within all the counties, other than a county described in  
228 paragraph (C) of this subdivision, having a racetrack table  
229 games licensee based on each municipality's population  
230 determined at the most recent United States decennial census  
231 of population: *Provided,* That: (i) A municipality which  
232 received funds above its pro rata share pursuant to  
233 subparagraph (iii), paragraph (A) of this subdivision shall not

234 receive an allocation under this paragraph; (ii) for each  
235 allocation, when a municipality is physically located in two  
236 or more counties, only that portion of its population residing  
237 in the county where the authorized table games are located  
238 shall be considered; and (iii) a single municipality in a county  
239 where West Virginia Lottery racetrack games are played may  
240 not receive a total share under this paragraph that is in excess  
241 of twenty-five percent of the total transfers under this  
242 paragraph.

243 (C) Notwithstanding the provisions of paragraphs (A)  
244 and (B) of this subdivision, when a racetrack is located in a  
245 growth county, as that term is defined in section three, article  
246 twenty, chapter seven of this code, which has enacted the  
247 Local Powers Act, and in which county a racetrack is located  
248 that has participated in the West Virginia Thoroughbred  
249 Development Fund since on or before January 1, 1991, the  
250 county board of education shall receive two thirds of the  
251 share of adjusted gross receipts from West Virginia Lottery  
252 table games from the racetrack in the county as provided in  
253 this subdivision and the municipalities within the county  
254 shall share the remaining one third of the total amount  
255 allocated as provided in this paragraph. The municipal one-  
256 third share shall be divided pro rata among the municipalities  
257 based on each municipality's population determined at the  
258 most recent United States decennial census of population.  
259 All money transferred under this paragraph shall be used by  
260 the county board of education and by the municipalities for  
261 the purpose of capital improvements;

262 (6) Transfer one half of one percent of the adjusted gross  
263 receipts to the governing bodies of municipalities in which a  
264 racetrack table games licensee is located. The municipalities  
265 shall each receive an equal share of the total amount  
266 allocated under this subdivision: *Provided*, That distribution  
267 under this subdivision may not be made to any municipality  
268 that did not have a licensed racetrack within its municipal

269 boundaries as they existed on January 1, 2007: *Provided,*  
270 *however,* That if no racetrack table games licensee is located  
271 within a municipality, a transfer may not be made under this  
272 subdivision; and

273 (7) Distribute the remaining amounts, hereinafter referred  
274 to as the net amounts in the Racetrack Table Games Funds,  
275 in accordance with the provisions of subsection (d) of this  
276 section.

277 (d) From the net amounts in the Racetrack Table Games  
278 Fund, the commission shall:

279 (1) Transfer seventy-six percent to the State Debt  
280 Reduction Fund which is hereby continued in the State  
281 Treasury. Moneys of the fund shall be expended solely for  
282 the purpose of accelerating the reduction of existing  
283 unfunded liabilities and existing bond indebtedness of the  
284 state and shall be expended or transferred only upon  
285 appropriation of the Legislature;

286 (2) Transfer four percent, divided pro rata based on  
287 relative adjusted gross receipts from the individual licensed  
288 racetracks for and on behalf of all employees of each licensed  
289 racing association, into a special fund to be established by the  
290 Racing Commission to be used for payment into the pension  
291 plan for all employees of each licensed racing association;

292 (3) Transfer ten percent, to be divided and paid in equal  
293 shares, to each county commission in the state that is not  
294 eligible to receive a distribution under subdivision (4),  
295 subsection (b) of this section: *Provided,* That funds  
296 transferred to county commissions under this subdivision  
297 shall be used only to pay regional jail expenses and the costs  
298 of infrastructure improvements and other capital  
299 improvements: *Provided, however,* That up to fifty percent  
300 of these funds may be pledged to make payments on lottery

301 revenue bonds issued pursuant to article two-h, chapter  
302 thirteen of this code; and

303 (4) Transfer ten percent, to be divided and paid in equal  
304 shares, to the governing bodies of each municipality in the  
305 state that is not eligible to receive a distribution under  
306 subdivisions (5) and (6), subsection (b) of this section:  
307 *Provided*, That funds transferred to municipalities under this  
308 subdivision shall be used only to pay for debt reduction in  
309 municipal police and fire pension funds and the costs of  
310 infrastructure improvements and other capital improvements:  
311 *Provided, however*, That up to fifty percent of these funds  
312 may be pledged to make payments on lottery revenue bonds  
313 issued pursuant to article two-h, chapter thirteen of this code.

314 (e) All expenses of the commission incurred in the  
315 administration and enforcement of this article shall be paid  
316 from the Racetrack Table Games Fund, including  
317 reimbursement of state law-enforcement agencies for  
318 services performed at the request of the commission pursuant  
319 to this article. The commission's expenses associated with  
320 a particular racetrack with authorized table games under this  
321 article may not exceed three percent of the total annual  
322 adjusted gross receipts received from that licensee's  
323 operation of table games under this article, including, but not  
324 limited to, all license fees or other amounts attributable to the  
325 licensee's operation of table games under this article, except  
326 as provided in subdivision (2), subsection (a) of this section.  
327 However, for the fiscal year following the licensing of every  
328 licensed racetrack to offer West Virginia lottery racetrack  
329 table games under this article and for the fiscal year  
330 thereafter, the commission's expenses associated with a  
331 particular racetrack with authorized table games under this  
332 article may not exceed four percent of the total annual  
333 adjusted gross receipts received from that licensee's  
334 operation of table games under this article, including, but not  
335 limited to, all license fees or other amounts attributable to the

336 licensee's operation of table games under this article, except  
337 as provided in subdivision (2), subsection (a) of this section.  
338 These expenses shall either be allocated to the racetrack with  
339 West Virginia Lottery table games for which the expense is  
340 incurred, if practicable, or be treated as general expenses  
341 related to all racetrack table games facilities and be allocated  
342 pro rata among the racetrack table games facilities based on  
343 the ratio that annual adjusted gross receipts from operation of  
344 table games at each racetrack with West Virginia Lottery  
345 table games bears to total annual adjusted gross receipts from  
346 operation of table games at all racetracks with West Virginia  
347 Lottery table games during the fiscal year of the state. From  
348 this allowance, the commission shall transfer at least  
349 \$100,000 but not more than \$500,000 into the Compulsive  
350 Gambling Treatment Fund created in section nineteen, article  
351 twenty-two-a of this chapter.

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## CHAPTER 130

**(S. B. 604 - By Senators Bowman,  
White and Plymale)**

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[Passed March 10, 2010; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2010.]

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AN ACT to amend and reenact §27-5-11 of the Code of West Virginia, 1931, as amended, relating to extending the termination date of the modified mental hygiene procedures pilot project by two years.

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

That §27-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

### **§27-5-11. Modified procedures for temporary compliance orders for certain medication dependent persons with prior hospitalizations or convictions; to institute modified mental hygiene procedures; procedures; forms.**

1           (a) The Supreme Court of Appeals shall, in consultation  
2 with the Secretary of the Department of Health and Human  
3 Resources and local mental health services consumers and  
4 providers, implement in at least four and no more than six  
5 judicial circuits, beginning on July 1, 2006, modified mental  
6 hygiene procedures that are consistent with the requirements  
7 set forth in this section. The judicial circuits selected for  
8 implementing the modified procedures shall be circuits in  
9 which the Supreme Court of Appeals determines, after  
10 consultation with the Secretary of the Department of Health  
11 and Human Resources and local mental health consumers  
12 and service providers, that adequate resources will be  
13 available to implement the modified procedures. The  
14 Secretary of the Department of Health and Human  
15 Resources, after consultation with the Supreme Court of  
16 Appeals and local mental health services consumers and  
17 service providers, shall prescribe appropriate forms to  
18 implement the modified procedures and shall annually  
19 prepare a report on the use of the modified procedures and  
20 transmit the report to the Legislature on or before the last day  
21 of each calendar year. The Supreme Court of Appeals may,  
22 after consultation with the Secretary of the Department of  
23 Health and Human Resources and local mental health  
24 services consumers and providers during the pilot program  
25 period, further modify any specific modified procedures that



26 are implemented: *Provided*, That the modified procedures  
27 must be consistent with the requirements of this chapter and  
28 this section. If the Secretary of the Department of Health and  
29 Human Resources determines that the use of any modified  
30 procedure in one or more judicial circuits is placing an  
31 unacceptable additional burden upon state mental health  
32 resources, the Supreme Court of Appeals shall, in  
33 consultation with the secretary, modify the procedures used  
34 in such a fashion as will address the concerns of the  
35 secretary, consistent with the requirements of this chapter.  
36 The provisions of this section and the modified procedures  
37 thereby authorized shall cease to have any force and effect on  
38 June 30, 2012, unless extended by an act of the Legislature  
39 prior to that date.

40 (b)(1) The modified procedures shall authorize that a  
41 verified petition seeking a treatment compliance order may  
42 be filed by any person alleging:

43 (A) That an individual, on two or more occasions within  
44 a twenty-four month period prior to the filing of the petition,  
45 as a result of mental illness, has been hospitalized pursuant  
46 to the provisions of this chapter; or that the individual has  
47 been convicted of one or more crimes of violence against the  
48 person within a twenty-four month period prior to the filing  
49 of the petition and the individual's failure to take prescribed  
50 medication or follow another prescribed regimen to treat a  
51 mental illness was a significant aggravating or contributing  
52 factor in the circumstances surrounding the crime;

53 (B) That the individual's previous hospitalizations due to  
54 mental illness or the individual's crime of violence occurred  
55 after or as a result of the individual's failure to take  
56 medication or other treatment as prescribed by a physician to  
57 treat the individual's mental illness; and

58           (C) That the individual, in the absence of a court order  
59 requiring him or her to take medication or other treatment as  
60 prescribed, is unlikely to do so and that his or her failure to  
61 take medication or follow other regimen or treatment as  
62 prescribed is likely to lead to further instances in the  
63 reasonably near future in which the individual becomes likely  
64 to cause serious harm or commit a crime of violence against  
65 the person.

66           (2) Upon the filing of a petition seeking a treatment  
67 compliance order and the petition's review by a circuit judge  
68 or mental hygiene commissioner, counsel shall be appointed  
69 for the individual if the individual does not already have  
70 counsel and a copy of the petition and all supporting  
71 evidence shall be furnished to the individual and their  
72 counsel. If the circuit judge or mental hygiene commissioner  
73 determines on the basis of the petition that it is necessary to  
74 protect the individual or to secure their examination, a  
75 detention order may be entered ordering that the individual  
76 be taken into custody and examined by a psychiatrist or  
77 licensed psychologist. A hearing on the allegations in the  
78 petition, which may be combined with a hearing on a  
79 probable cause petition conducted pursuant to the provisions  
80 of section two of this article or a final commitment hearing  
81 conducted pursuant to the provisions of section four of this  
82 article, shall be held before a circuit judge or mental hygiene  
83 commissioner. If the individual is taken into custody and  
84 remains in custody as a result of a detention order, the  
85 hearing shall be held within forty-eight hours of the time that  
86 the individual is taken into custody.

87           (3) If the allegations in the petition seeking a treatment  
88 compliance order are proved by the evidence adduced at the  
89 hearing, which must include expert testimony by a  
90 psychiatrist or licensed psychologist, the circuit judge or  
91 mental hygiene commissioner may enter a treatment

92 compliance order for a period not to exceed six months upon  
93 making the following findings:

94 (A) That the individual is eighteen years of age or older;

95 (B) That on two or more occasions within a twenty-four  
96 month period prior to the filing of the petition an individual,  
97 as a result of mental illness, has been hospitalized pursuant  
98 to the provisions of this chapter; or that on at least one  
99 occasion within a twenty-four month period prior to the filing  
100 of the petition has been convicted of a crime of violence  
101 against any person;

102 (C) That the individual's previous hospitalizations due to  
103 mental illness occurred as a result of the individual's failure  
104 to take prescribed medication or follow a regimen or course  
105 of treatment as prescribed by a physician or psychiatrist to  
106 treat the individual's mental illness; or that the individual has  
107 been convicted for crimes of violence against any person and  
108 the individual's failure to take medication or follow a  
109 prescribed regimen or course of treatment of the individual's  
110 mental illness was a significant aggravating or contributing  
111 factor in the commission of the crime;

112 (D) That a psychiatrist or licensed psychologist who has  
113 personally examined the individual within the preceding  
114 twenty-four months has issued a written opinion that the  
115 individual, without the aid of the medication or other  
116 prescribed treatment, is likely to cause serious harm to  
117 himself or herself or to others;

118 (E) That the individual, in the absence of a court order  
119 requiring him or her to take medication or other treatment as  
120 prescribed, is unlikely to do so and that his or her failure to  
121 take medication or other treatment as prescribed is likely to  
122 lead to further instances in the reasonably near future in

123 which the individual becomes likely to cause serious harm or  
124 commit a crime of violence against any person;

125 (F) That, where necessary, a responsible entity or  
126 individual is available to assist and monitor the individual's  
127 compliance with an order requiring the individual to take the  
128 medication or follow other prescribed regimen or course of  
129 treatment;

130 (G) That the individual can obtain and take the prescribed  
131 medication or follow other prescribed regimen or course of  
132 treatment without undue financial or other hardship; and

133 (H) That, if necessary, a medical provider is available to  
134 assess the individual within forty-eight hours of the entry of  
135 the treatment compliance order.

136 (4) The order may require an individual to take  
137 medication and treatment as prescribed and if appropriate to  
138 attend scheduled medication and treatment-related  
139 appointments: *Provided*, That a treatment compliance order  
140 shall be subject to termination or modification by a circuit  
141 judge or mental hygiene commissioner if a petition is filed  
142 seeking termination or modification of the order and it is  
143 shown in a hearing on the petition that there has been a  
144 material change in the circumstances that led to the entry of  
145 the original order that justifies the order's modification or  
146 termination: *Provided, however*, That a treatment compliance  
147 order may be extended by a circuit judge or mental hygiene  
148 commissioner for additional periods of time not to exceed six  
149 months, upon the filing of a petition seeking an extension and  
150 after a hearing on the petition or upon the agreement of the  
151 individual.

152 (5)(A) After the entry of a treatment compliance order in  
153 accordance with the provisions of subdivisions (3) and (4),

154 subsection (b) of this section, if a verified petition is filed  
155 alleging that an individual has not complied with the terms of  
156 a medication and treatment compliance order and if a circuit  
157 judge or mental hygiene commissioner determines from the  
158 petition and any supporting evidence that there is probable  
159 cause to believe that the allegations in the petition are true,  
160 counsel shall be appointed for the individual and a copy of  
161 the petition and all supporting evidence shall be furnished to  
162 the individual and his or her counsel. If the circuit judge or  
163 mental hygiene commissioner considers it necessary to  
164 protect the individual or to secure his or her examination, a  
165 detention order may be entered to require that the individual  
166 be examined by a psychiatrist or psychologist. A hearing on  
167 the allegations in the petition, which may be combined with  
168 a hearing on a probable cause petition conducted pursuant to  
169 section two of this article or a final commitment hearing  
170 conducted pursuant to section four of this article, shall be  
171 held before a circuit judge or mental hygiene commissioner.  
172 If the individual is taken and remains in custody as a result of  
173 a detention order, the hearing shall be held within forty-eight  
174 hours of the time that the individual is taken into custody.

175 (B) At a hearing on any petition filed pursuant to the  
176 provisions of paragraph (A), subdivision (5), subsection (b)  
177 of this section, the circuit judge or mental hygiene  
178 commissioner shall determine whether the individual has  
179 complied with the terms of the medication and treatment  
180 compliance order. If the individual has complied with the  
181 order, the petition shall be dismissed: *Provided*, That if the  
182 evidence presented to the circuit judge or mental hygiene  
183 commissioner shows that the individual has complied with  
184 the terms of the existing order, but the individual's prescribed  
185 medication, dosage or course of treatment needs to be  
186 modified, then the newly modified medication and treatment  
187 prescribed by a psychiatrist who personally examined the  
188 individual may be properly incorporated into a modified

189 order. If the order has not been complied with, the circuit  
190 judge or mental hygiene commissioner, after inquiring into  
191 the reasons for noncompliance and whether any aspects of  
192 the order should be modified, may continue the individual  
193 upon the terms of the original order and direct the individual  
194 to comply with the order or may modify the order in light of  
195 the evidence presented at the hearing. If the evidence shows  
196 that the individual at the time of the hearing is likely to cause  
197 serious harm to himself or herself, herself or others as a result  
198 of the individual's mental illness, the circuit judge or mental  
199 hygiene commissioner may convert the proceeding into a  
200 probable cause proceeding and enter a probable cause order  
201 directing the involuntary admission of the individual to a  
202 mental health facility for examination and treatment:  
203 *Provided, however,* That all applicable due process and  
204 hearing requirements of contained in sections two and three  
205 of this article have been fully satisfied.

206 (c)(1) The modified procedures may authorize that upon  
207 the certification of a qualified mental health professional, as  
208 described in subdivision (2) of this subsection, that there is  
209 probable cause to believe that an individual who has been  
210 hospitalized two or more times in the previous twenty-four  
211 months because of mental illness is likely to cause serious  
212 harm to himself or herself, herself or to others as a result of  
213 the mental illness if not immediately restrained and that the  
214 best interests of the individual would be served by immediate  
215 hospitalization, a circuit judge, mental hygiene commissioner  
216 or designated magistrate may enter a temporary probable  
217 cause order directing the involuntary hospitalization of the  
218 individual at a mental health facility for immediate  
219 examination and treatment.

220 (2) The modified procedures may authorize the chief  
221 judge of a judicial circuit, or circuit judge if there is no chief  
222 judge, to enter orders authorizing specific psychiatrists or

223 licensed psychologists, whose qualifications and training  
224 have been reviewed and approved by the Supreme Court of  
225 Appeals, to issue certifications that authorize and direct the  
226 involuntary admission of an individual subject to the  
227 provisions of this section on a temporary probable cause  
228 basis to a mental health facility for examination and  
229 treatment: *Provided*, That the authorized psychiatrist or  
230 licensed psychologist must conclude and certify based on  
231 personal observation prior to certification that the individual  
232 is mentally ill and, because of such mental illness, is  
233 imminently likely to cause serious harm to himself or herself  
234 or to others if not immediately restrained and promotion of  
235 the best interests of the individual requires immediate  
236 hospitalization. Immediately upon certification, the  
237 psychiatrist or licensed psychologist shall provide notice of  
238 the certification to a circuit judge, mental hygiene  
239 commissioner or designated magistrate in the county where  
240 the individual resides.

241 (3) No involuntary hospitalization pursuant to a  
242 temporary probable cause determination issued pursuant to  
243 the provisions of this section shall continue in effect for more  
244 than forty-eight hours without the filing of a petition for  
245 involuntary hospitalization and the occurrence of a probable  
246 cause hearing before a circuit judge, mental hygiene  
247 commissioner or designated magistrate. If at any time the  
248 chief medical officer of the mental health facility to which  
249 the individual is admitted determines that the individual is  
250 not likely to cause serious harm as a result of mental illness,  
251 the chief medical officer shall discharge the individual and  
252 immediately forward a copy of the individual's discharge to  
253 the circuit judge, mental hygiene commissioner or designated  
254 magistrate.

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## CHAPTER 131

**(Com. Sub. for H. B. 4525 - By Delegates  
Caputo, Miley, Hunt, Butcher,  
Craig, Boggs, Mahan, Kominar,  
Varner, Hamilton and White)**

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[Passed March 13, 2010; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2010.]

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AN ACT to amend and reenact §22A-1-21 of the Code of West Virginia, 1931, as amended; to amend and reenact §22A-2A-301, §22A-2A-304 and §22A-2A-310 of said code; to amend and reenact §22A-6-3, §22A-6-4, §22A-6-6 and §22A-6-7 of said code; to amend and reenact §22A-7-4 and §22A-7-6 of said code; and to amend and reenact §22A-11-2 and §22A-11-3 of said code, all relating to board's under the jurisdiction of the Office of Miners' Health, Safety and Training; removing boards from under the jurisdiction of the Office of Miners' Health, Safety and Training; changing board membership; changing voting procedures; permitting a clarifying resolution; requiring the Health and Safety Administrator to provide administrative assistance; permitting the Health and Safety Administrator to expend funds for certain purposes; adding to the boards' powers; changing voting procedure; clarifying voting procedures; clarifying reporting requirements; establishing reporting time lines; and permitting appropriations from general revenue.

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



That §22A-1-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §22A-2A-301, §22A-2A-304 and §22A-2A-310 of said code be amended and reenacted; that §22A-6-3, §22A-6-4, §22A-6-6 and §22A-6-7 of said code be amended and reenacted; that §22A-7-4 and §22A-7-6 of said code be amended and reenacted; and that §22A-11-2 and §22A-11-3 of said code be amended and reenacted, all to read as follows:

**Article**

1. **Office of Miner's Health, Safety and Training; Administration; Enforcement.**
- 2A. **Use of Diesel-Powered Equipment in Underground Coal Mines.**
6. **Board of Coal Mine Health and Safety.**
7. **Board of Miner Training, Education and Certification.**
11. **Mine Safety Technology.**

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY  
AND TRAINING; ADMINISTRATION;  
ENFORCEMENT.**

**§22A-1-21. Penalties.**

1           (a)(1) Any operator of a coal mine in which a violation  
2 occurs of any health or safety rule or who violates any other  
3 provisions of this chapter shall be assessed a civil penalty by the  
4 director under subdivision (3) of this subsection, which shall be  
5 not more than \$3,000, for each violation, unless the director  
6 determines that it is appropriate to impose a special assessment  
7 for said violation, pursuant to the provisions of subdivision (2),  
8 subsection (b) of this section. Each violation constitutes a  
9 separate offense. In determining the amount of the penalty, the  
10 director shall consider the operator's history of previous  
11 violations, whether the operator was negligent, the  
12 appropriateness of the penalty to the size of the business of the  
13 operator charged, the gravity of the violation and the  
14 demonstrated good faith of the operator charged in attempting  
15 to achieve rapid compliance after notification of a violation.

16           (2) Revisions to the assessment of civil penalties shall be  
17 proposed as legislative rules in accordance with the  
18 provisions of article three, chapter twenty-nine-a of this code.

19           (3) Any miner who knowingly violates any health or  
20 safety provision of this chapter or health or safety rule  
21 promulgated pursuant to this chapter is subject to a civil  
22 penalty assessed by the director under subdivision (4) of this  
23 subsection which shall not be more than \$250 for each  
24 occurrence of the violation.

25           (4) A civil penalty under subdivision (1) or (2) of  
26 subsection (a) of this section or subdivision (1) or (2) of  
27 subsection (b) of this section shall be assessed by the director  
28 only after the person charged with a violation under this  
29 chapter or rule promulgated pursuant to this chapter has been  
30 given an opportunity for a public hearing and the director has  
31 determined, by a decision incorporating the director's  
32 findings of fact in the decision, that a violation did occur and  
33 the amount of the penalty which is warranted and  
34 incorporating, when appropriate, an order in the decision  
35 requiring that the penalty be paid. Any hearing under this  
36 section shall be of record.

37           (5) If the person against whom a civil penalty is assessed  
38 fails to pay the penalty within the time prescribed in the  
39 order, the director may file a petition for enforcement of the  
40 order in any appropriate circuit court. The petition shall  
41 designate the person against whom the order is sought to be  
42 enforced as the respondent. A copy of the petition shall  
43 immediately be sent by certified mail, return receipt  
44 requested, to the respondent and to the representative of the  
45 miners at the affected mine or the operator, as the case may  
46 be. The director shall certify and file in the court the record  
47 upon which the order sought to be enforced was issued. The  
48 court has jurisdiction to enter a judgment enforcing,  
49 modifying and enforcing as modified, or setting aside, in  
50 whole or in part, the order and decision of the director or it  
51 may remand the proceedings to the director for any further  
52 action it may direct. The court shall consider and determine  
53 de novo all relevant issues, except issues of fact which were  
54 or could have been litigated in review proceedings before a

55 circuit court under section twenty of this article and, upon the  
56 request of the respondent, those issues of fact which are in  
57 dispute shall be submitted to a jury. On the basis of the  
58 jury's findings the court shall determine the amount of the  
59 penalty to be imposed. Subject to the direction and control  
60 of the Attorney General, attorneys appointed for the director  
61 may appear for and represent the director in any action to  
62 enforce an order assessing civil penalties under this  
63 subdivision.

64 (b) (1) Any operator who knowingly violates a health or  
65 safety provision of this chapter or health or safety rule  
66 promulgated pursuant to this chapter, or knowingly violates  
67 or fails or refuses to comply with any order issued under  
68 section fifteen of this article, or any order incorporated in a  
69 final decision issued under this article, except an order  
70 incorporated in a decision under subsection (a) of this section  
71 or subsection (b), section twenty-two of this article, shall be  
72 assessed a civil penalty by the director under subdivision (5),  
73 subsection (a) of this section of not more than \$5,000 and for  
74 a second or subsequent violation assessed a civil penalty of  
75 not more than \$10,000, unless the director determines that it  
76 is appropriate to impose a special assessment for said  
77 violation, pursuant to the provisions of subdivision (2) of this  
78 subsection.

79 (2) In lieu of imposing a civil penalty pursuant to the  
80 provisions of subsection (a) of this section or subdivision (1)  
81 of this subsection, the director may impose a special  
82 assessment if an operator violates a health or safety provision  
83 of this chapter or health or safety rule promulgated pursuant  
84 to this chapter and the violation is of serious nature and  
85 involves one or more of the following by the operator:

86 (A) Violations involving fatalities and serious injuries;

87 (B) Failure or refusal to comply with any order issued  
88 under section fifteen of this article;

89 (C) Operation of a mine in the face of a closure order;

90 (D) Violations involving an imminent danger;

91 (E) Violations involving an extraordinarily high degree  
92 of negligence or gravity or other unique aggravating  
93 circumstances; or

94 (F) A discrimination violation under section twenty-two  
95 of this article.

96 In situations in which the director determines that there  
97 are factors present which would make it appropriate to  
98 impose a special assessment, the director shall assess a civil  
99 penalty of at least \$5,000 and of not more than \$10,000.

100 (c) Whenever a corporate operator knowingly violates a  
101 health or safety provision of this chapter or health or safety  
102 rules promulgated pursuant to this chapter, or knowingly  
103 violates or fails or refuses to comply with any order issued  
104 under this law or any order incorporated in a final decision  
105 issued under this law, except an order incorporated in a  
106 decision issued under subsection (a) of this section or  
107 subsection (b), section twenty-two of this article, any director,  
108 officer or agent of the corporation who knowingly authorized,  
109 ordered or carried out the violation, failure or refusal is subject  
110 to the same civil penalties that may be imposed upon a person  
111 under subsections (a) and (b) of this section.

112 (d) Whoever knowingly makes any false statement,  
113 representation or certification in any application, record,  
114 report, plan or other document filed or required to be  
115 maintained pursuant to this law or any order or decision  
116 issued under this law is guilty of a misdemeanor and, upon  
117 conviction thereof, shall be fined not more than \$5,000 or  
118 imprisoned in the jail not more than six months, or both fined  
119 and imprisoned. The conviction of any person under this  
120 subsection shall result in the revocation of any certifications

121 held by the person under this chapter which certified or  
122 authorized the person to direct other persons in coal mining  
123 by operation of law and bars that person from being issued  
124 any license under this chapter, except a miner's certification,  
125 for a period of not less than one year or for a longer period as  
126 may be determined by the director.

127 (e) Whoever willfully distributes, sells, offers for sale,  
128 introduces or delivers in commerce any equipment for use in  
129 a coal mine, including, but not limited to, components and  
130 accessories of the equipment, who willfully misrepresents the  
131 equipment as complying with the provisions of this law, or  
132 with any specification or rule of the director applicable to the  
133 equipment, and which does not comply with the law,  
134 specification or rule, is guilty of a misdemeanor and, upon  
135 conviction thereof, is subject to the same fine and  
136 imprisonment that may be imposed upon a person under  
137 subsection (d) of this section.

138 (f) There is continued in the Treasury of the State of West  
139 Virginia a Special Health, Safety and Training Fund. All  
140 civil penalty assessments collected under this section shall be  
141 collected by the director and deposited with the Treasurer of  
142 the State of West Virginia to the credit of the Special Health,  
143 Safety and Training Fund. The fund shall be used by the  
144 director who is authorized to expend the moneys in the fund  
145 for the administration of this chapter.

## **ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.**

### **PART 3. WEST VIRGINIA DIESEL EQUIPMENT COMMISSION.**

§22A-2A-301. The West Virginia Diesel Equipment Commission.

§22A-2A-304. Nomination and appointment of members.

§22A-2A-310. Duties of commission following promulgation of initial rules.

#### **§22A-2A-301. The West Virginia Diesel Equipment Commission.**

1       The West Virginia Diesel Equipment Commission,  
2       consisting of six members, is continued, and commencing  
3       July 1, 2010, is a separate independent commission within  
4       the Department of Commerce.

**§22A-2A-304. Nomination and appointment of members.**

1       (a) Prior to the appointment of a person to the  
2       commission, the Governor shall request the nomination of a  
3       candidate for the appointment. If the position is to be filled  
4       by a person who can reasonably be expected to represent the  
5       viewpoint or interests of underground coal operators in this  
6       state, the Governor shall request the nomination from the  
7       major trade association representing underground coal  
8       operators in this state. If the position is to be filled by a  
9       person who can reasonably be expected to represent the  
10      viewpoint or interests of working miners in this state, the  
11      Governor shall request the nomination from the highest  
12      ranking officer of the major employee organization  
13      representing coal miners in this state. The Director of the  
14      Office of Miner's Health, Safety and Training or his or her  
15      designee and the Health Safety Administrator shall serve as  
16      a nonvoting ex officio member.

17      (b) The Governor shall appoint a member to serve for the  
18      term for which the person was nominated, and until his or her  
19      successor has been nominated and appointed: *Provided*, That  
20      if a successor is not appointed within one hundred twenty  
21      days after the expiration of a member's term, a vacancy is  
22      deemed to exist. The Governor may reject a nomination and  
23      decline to appoint a nominee only if the person does not have  
24      the qualifications, integrity and responsibility necessary to  
25      enable the person to perform his or her duties as a member of  
26      the commission.

27      (c) Appointments to fill vacancies on the commission  
28      shall be for the unexpired term of the member to be replaced.

**§22A-2A-310. Duties of commission following promulgation of initial rules.**

1       (a) After the promulgation of the initial rules, the  
2 commission shall have as its primary duties the  
3 implementation of this article and the evaluation and  
4 adoption of state of the art technology and methods, reflected  
5 in engines and engine components, emission control  
6 equipment and procedures, that when applied to diesel-  
7 powered underground mining machinery shall reasonably  
8 reduce or eliminate diesel exhaust emissions and enhance  
9 protections of the health and safety of miners. The  
10 technology and methods adopted by the commission shall  
11 have been demonstrated to be reliable. In making a decision  
12 to adopt new technology and methods, the commission shall  
13 consider the highest achievable measures of protection for  
14 miners' health and safety through available technology,  
15 engineering controls and performance requirements and shall  
16 further consider the cost, availability, adaptability and  
17 suitability of any available technology, engineering controls  
18 and performance requirements as they relate to the use of  
19 diesel equipment in underground coal mines. Any state of  
20 the art technology or methods adopted by the commission  
21 shall not reduce or compromise the level of health and safety  
22 protection of miners.

23       (b) Upon application of a coal mine operator, the  
24 commission shall consider site-specific requests for the use  
25 of diesel equipment in underground coal mines and for the  
26 use of alternative diesel-related health and safety  
27 technologies and methods. The commission's action on  
28 applications submitted under this subsection shall be on a  
29 mine-by-mine basis. Upon receipt of a site-specific  
30 application, the commission shall conduct an investigation,  
31 which investigation shall include consultation with the mine  
32 operator and the authorized representatives of the miners at  
33 the mine. Authorized representatives of the miners shall

34 include a Mine Health and Safety Committee elected by  
35 miners at the mine, a person or persons employed by an  
36 employee organization representing miners at the mine or a  
37 person or persons authorized as the representative or  
38 representatives of miners of the mine in accordance with  
39 MSHA regulations at 30 C.F.R. Pt. 40 (relating to  
40 representative of miners). Where there is no authorized  
41 representative of the miners, the commission shall consult  
42 with a reasonable number of miners at the mine. Upon  
43 completion of the investigation, the commission may approve  
44 the application for the site-specific request: *Provided*, That  
45 an application for a site-specific request under this subsection  
46 may be approved only upon a majority vote of all six  
47 members of the commission. All six members must be  
48 present when a vote is taken.

49 (1) Within one hundred eighty days of receipt of an  
50 application for use of alternative technologies or methods, the  
51 commission shall complete its investigation. The time period  
52 may be extended with the consent of the applicant.

53 (2) The commission shall have thirty days in which to  
54 render a final decision approving or rejecting the application.

55 (3) The commission members shall not approve an  
56 application made under this section if, at the conclusion of  
57 the investigation, the commission members have made a  
58 determination that the use of the alternative technology or  
59 method will reduce or compromise the level of health and  
60 safety protection of miners.

61 (4) The written approval of an application for the use of  
62 alternative technologies or methods shall include the results  
63 of the commission's investigation and describe the specific  
64 conditions of use for the alternative technology or method.

65 (5) The written decision to reject an application for the  
66 use of alternative technologies or methods shall include the



67 results of the commission's investigation and shall outline in  
68 detail the basis for the rejection.

69 (c) The commission shall establish conditions for the use  
70 of diesel-powered equipment in shaft and slope construction  
71 operations at coal mines.

72 (d) In performing its functions, the commission shall  
73 have access to the services of the Board of Coal Mine Health  
74 and Safety. The board shall provide administrative support  
75 and assistance pursuant to section six, article six of this  
76 chapter, to enable the commission to carry out its duties.

77 (e) Any action taken by the commission to either approve  
78 or reject the use of an alternative technology or method, or  
79 establish conditions under subsection (c) of this section, shall  
80 be final and binding and not subject to further review except  
81 where a decision by the commission may be deemed to be an  
82 abuse of discretion or contrary to law. If any party affected  
83 by a decision of the commission believes that the decision is  
84 an abuse of discretion or contrary to law, that party may file  
85 a petition for review with the circuit court of Kanawha  
86 County in accordance with the provisions of the  
87 administrative procedures act relating to judicial review of  
88 governmental determinations. The court, in finding that any  
89 decision made by the commission is an abuse of discretion or  
90 contrary to law, shall vacate and, if appropriate, remand the  
91 case.

92 (f) The powers and duties of the commission shall be  
93 limited to the matters regarding the use of diesel-powered  
94 equipment in underground coal mines.

95 (g) Appropriations for the funding of the commission and  
96 to effectuate the purposes of this article shall be made to a  
97 budget account hereby established for that purpose in the  
98 General Revenue Fund. Expenditures from this fund are  
99 provided for in section six, article six of this chapter.

100 (h) The commission may issue a clarifying resolution  
101 about the initial rules and other matters consistent with the  
102 powers and duties of the commission under this article. A  
103 unanimous vote is required for any clarifying resolution by  
104 the commission.

## **ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.**

§22A-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

§22A-6-4. Board powers and duties.

§22A-6-6. Health and Safety Administrator; qualifications; duties; employees; compensation.

§22A-6-7. Coal Mine Safety and Technical Review Committee; membership; method of nomination and appointment; meetings; quorum; powers and duties of the committee; powers and duties of the Board of Coal Mine Health and Safety.

### **§22A-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.**

1 (a) The Board of Coal Mine Health and Safety is  
2 continued, and commencing July 1, 2010, is a separate  
3 independent board within the Department of Commerce. The  
4 board consists of six voting members and one ex officio,  
5 nonvoting member who are residents of this state, and who  
6 are appointed as follows:

7 (1) The Governor shall appoint, by and with the advice  
8 and consent of the Senate, three members to represent the  
9 viewpoint of those operators in this state. When such  
10 members are to be appointed, the Governor shall request  
11 from the major trade association representing operators in  
12 this state a list of three nominees for each such position on  
13 the board. All such nominees shall be persons with special  
14 experience and competence in health and safety. There shall  
15 be submitted with such list a summary of the qualifications  
16 of each nominee. If the full lists of nominees are submitted  
17 in accordance with the provisions of this subdivision, the  
18 Governor shall make the appointments from the persons so  
19 nominated. For purposes of this subdivision, the major trade

20 association representing operators in this state is that  
21 association which represents operators accounting for over  
22 one half of the coal produced in mines in this state in the year  
23 prior to the year in which the appointment is to be made.

24 (2) The Governor shall appoint, by and with the advice and  
25 consent of the Senate, three members who can reasonably be  
26 expected to represent the viewpoint of the working miners of  
27 this state. When members are to be appointed, the Governor  
28 shall request from the major employee organization representing  
29 coal miners within this state a list of three nominees for each  
30 position on the board. The highest ranking official within the  
31 major employee organization representing coal miners within  
32 this state shall submit a list of three nominees for each such  
33 position on the board. The nominees shall have a background in  
34 health and safety. The Governor shall make the appointments  
35 from the requested list of nominees.

36 (3) All appointments made by the Governor under the  
37 provisions of subdivisions (1) and (2) of this subsection shall  
38 be with the advice and consent of the Senate; and

39 (4) The Director of the Office of Miner's Health, Safety  
40 and Training or his or her designee shall serve as an ex  
41 officio, nonvoting member.

42 (b) Members serving on the board on July 1, 2010, may  
43 continue to serve until the expiration of their terms. The term  
44 is three years. Members are eligible for reappointment.

45 (c) The Governor shall appoint, subject to the approval of  
46 a majority of the members of the board appointed under  
47 subdivisions (1) and (2), subsection (a) of this section, a  
48 Health and Safety Administrator in accordance with the  
49 provisions of section six of this article, who shall certify all  
50 official records of the board. The Health and Safety  
51 Administrator shall be a full-time officer of the Board of Coal  
52 Mine Health and Safety with the duties provided for in

53 section six of this article. The Health and Safety  
54 Administrator shall have such education and experience as  
55 the Governor deems necessary to properly investigate areas  
56 of concern to the board in the development of rules governing  
57 mine health and safety. The Governor shall appoint as  
58 Health and Safety Administrator a person who has an  
59 independent and impartial viewpoint on issues involving  
60 mine safety. The Health and Safety Administrator shall be a  
61 person who has not been during the two years immediately  
62 preceding appointment, and is not during his or her term, an  
63 officer, trustee, director, substantial shareholder, contractor,  
64 consultant or employee of any coal operator, or an employee  
65 or officer of an employee organization or a spouse of any  
66 such person. The Health and Safety Administrator shall have  
67 the expertise to draft proposed rules and shall prepare such  
68 rules as are required by this code and on such other areas as  
69 will improve coal mine health and safety.

70 (d) The board shall meet at least once during each  
71 calendar month, or more often as may be necessary, and at  
72 other times upon the call of the chair, or upon the request of  
73 any three members of the board. Under the direction of the  
74 board, the Health and Safety Administrator shall prepare an  
75 agenda for each board meeting giving priority to the  
76 promulgation of rules as may be required from time to time  
77 by this code, and as may be required to improve coal mine  
78 health and safety. The Health and Safety Administrator shall  
79 provide each member of the board with notice of the meeting  
80 and the agenda as far in advance of the meeting as practical,  
81 but in any event, at least five days prior thereto. No meeting  
82 of the board shall be conducted unless said notice and agenda  
83 are given to the board members at least five days in advance,  
84 as provided herein, except in cases of emergency, as declared  
85 by the director, in which event members shall be notified of  
86 the board meeting and the agenda: *Provided*, That upon  
87 agreement of a majority of the quorum present, any  
88 scheduled meeting may be ordered recessed to another day  
89 certain without further notice of additional agenda.

90           When proposed rules are to be finally adopted by the  
91 board, copies of such proposed rules shall be delivered to  
92 members not less than five days before the meeting at which  
93 such action is to be taken. If not so delivered, any final  
94 adoption or rejection of rules shall be considered on the  
95 second day of a meeting of the board held on two consecutive  
96 days, except that by the concurrence of at least four members  
97 of the board, the board may suspend this rule of procedure  
98 and proceed immediately to the consideration of final  
99 adoption or rejection of rules. When a member fails to appear  
100 at three consecutive meetings of the board or at one half of  
101 the meetings held during a one-year period, the Health and  
102 Safety Administrator shall notify the member and the  
103 Governor of such fact. Such member shall be removed by  
104 the Governor unless good cause for absences is shown.

105           (e) Whenever a vacancy on the board occurs,  
106 nominations and appointments shall be made in the manner  
107 prescribed in this section: *Provided*, That in the case of an  
108 appointment to fill a vacancy, nominations of three persons  
109 for each such vacancy shall be requested by and submitted to  
110 the Governor within thirty days after the vacancy occurs by  
111 the major trade association or major employee organization,  
112 if any, which nominated the person whose seat on the board  
113 is vacant. The vacancy shall be filled by the Governor within  
114 thirty days of his or her receipt of the list of nominations.

115           (f) A quorum of the board is four members which shall  
116 include at least two members representing the viewpoint of  
117 operators and at least two members representing the  
118 viewpoint of the working miners, and the board may act  
119 officially by a majority of those members who are present,  
120 except that no vote of the board may be taken unless all six  
121 voting members are present.

#### **§22A-6-4. Board powers and duties.**

1           (a) The board shall adopt as standard rules the “coal mine  
2 health and safety provisions of this chapter”. Such standard

3 rules and any other rules shall be adopted by the board  
4 without regard to the provisions of chapter twenty-nine-a of  
5 this code. The Board of Coal Mine Health and Safety shall  
6 devote its time toward promulgating rules in those areas  
7 specifically directed by this chapter and those necessary to  
8 prevent fatal accidents and injuries.

9 (b) The board shall review such standard rules and, when  
10 deemed appropriate to improve or enhance coal mine health  
11 and safety, revise the same or develop and promulgate new  
12 rules dealing with coal mine health and safety.

13 (c) The board shall develop, promulgate and revise, as  
14 may be appropriate, rules as are necessary and proper to  
15 effectuate the purposes of article two of this chapter and to  
16 prevent the circumvention and evasion thereof, all without  
17 regard to the provisions of chapter twenty-nine-a of this code:

18 (1) Upon consideration of the latest available scientific  
19 data in the field, the technical feasibility of standards, and  
20 experience gained under this and other safety statutes, such  
21 rules may expand protections afforded by this chapter  
22 notwithstanding specific language therein, and such rules  
23 may deal with subject areas not covered by this chapter to the  
24 end of affording the maximum possible protection to the  
25 health and safety of miners.

26 (2) No rules promulgated by the board shall reduce or  
27 compromise the level of safety or protection afforded miners  
28 below the level of safety or protection afforded by this  
29 chapter.

30 (3) Any miner or representative of any miner, or any coal  
31 operator has the power to petition the circuit court of  
32 Kanawha County for a determination as to whether any rule  
33 promulgated or revised reduces the protection afforded  
34 miners below that provided by this chapter, or is otherwise  
35 contrary to law: *Provided*, That any rule properly

36 promulgated by the board pursuant to the terms and  
37 conditions of this chapter creates a rebuttable presumption  
38 that said rule does not reduce the protection afforded miners  
39 below that provided by this chapter.

40 (4) The director shall cause proposed rules and a notice  
41 thereof to be posted as provided in section eighteen, article  
42 one of this chapter. The director shall deliver a copy of such  
43 proposed rules and accompanying notice to each operator  
44 affected. A copy of such proposed rules shall be provided to  
45 any individual by the director's request. The notice of  
46 proposed rules shall contain a summary in plain language  
47 explaining the effect of the proposed rules.

48 (5) The board shall afford interested persons a period of  
49 not less than thirty days after releasing proposed rules to  
50 submit written data or comments. The board may, upon the  
51 expiration of such period and after consideration of all  
52 relevant matters presented, promulgate such rules with such  
53 modifications as it may deem appropriate.

54 (6) On or before the last day of any period fixed for the  
55 submission of written data or comments under subdivision  
56 (5) of this section, any interested person may file with the  
57 board written objections to a proposed rule, stating the  
58 grounds therefor and requesting a public hearing on such  
59 objections. As soon as practicable after the period for filing  
60 such objections has expired, the board shall release a notice  
61 specifying the proposed rules to which objections have been  
62 filed and a hearing requested.

63 (7) Promptly after any such notice is released by the  
64 board under subdivision (6) of this section, the board shall  
65 issue notice of, and hold a public hearing for the purpose of  
66 receiving relevant evidence. Within sixty days after  
67 completion of the hearings, the board shall make findings of  
68 fact which shall be public, and may promulgate such rules

69 with such modifications as it deems appropriate. In the event  
70 the board determines that a proposed rule should not be  
71 promulgated or should be modified, it shall within a  
72 reasonable time publish the reasons for its determination.

73 (8) All rules promulgated by the board shall be published  
74 in the state register and continue in effect until modified or  
75 superseded in accordance with the provisions of this chapter.

76 (d) To carry out its duties and responsibilities, the board  
77 is authorized to employ such personnel, including legal  
78 counsel, experts and consultants, as it deems necessary. In  
79 addition, the board, within the appropriations provided for by  
80 the Legislature, may conduct or contract for research and  
81 studies and is entitled to the use of the services, facilities and  
82 personnel of any agency, institution, school, college or  
83 university of this state.

84 (e) The director shall within sixty days of a coal mining  
85 fatality or fatalities provide the board with all available  
86 reports regarding such fatality or fatalities.

87 The board shall review all reports and any recommended  
88 rules submitted by the director, receive any additional  
89 information, and may, on its own initiative, ascertain the  
90 cause or causes of such coal mining fatality or fatalities.  
91 Within ninety days of the receipt of the Federal Mine Safety  
92 and Health Administration's fatal accident report and the  
93 director's report and recommended rules, the board shall  
94 review and consider the presentation of said report and rules  
95 and, if a majority of all voting board members determines  
96 that additional rules can assist in the prevention of the  
97 specific type of fatality, the board shall either accept and  
98 promulgate the director's recommended rules, amend the  
99 director's recommended rules or draft new rules, as are  
100 necessary to prevent the recurrence of such fatality. If the  
101 board chooses to amend the director's recommended rules or



102 draft its own rules, a vote is required within one hundred  
103 twenty days as to whether to promulgate the amended rule or  
104 the rule drafted by the board: *Provided*, That the board may,  
105 by majority vote, find that exceptional circumstances exist  
106 and the deadline cannot be met: *Provided, however*, That  
107 under no circumstances shall such deadline be extended by  
108 more than a total of ninety days. A majority vote of the  
109 board is required to promulgate any such rule.

110 The board shall annually, not later than July 1, review the  
111 major causes of coal mining injuries during the previous  
112 calendar year, reviewing the causes in detail, and shall  
113 promulgate such rules as may be necessary to prevent the  
114 recurrence of such injuries.

115 Further, the board shall, on or before January 10, of each  
116 year, submit a report to the Governor, President of the Senate  
117 and Speaker of the House, which report shall include, but is  
118 not limited to:

119 (1) The number of fatalities during the previous calendar  
120 year, the apparent reason for each fatality as determined by  
121 the office of miners' health, safety and training and the  
122 action, if any, taken by the board to prevent such fatality;

123 (2) Any rules promulgated by the board during the last  
124 year;

125 (3) What rules the board intends to promulgate during the  
126 current calendar year;

127 (4) Any problem the board is having in its effort to  
128 promulgate rules to enhance health and safety in the mining  
129 industry;

130 (5) Recommendations, if any, for the enactment, repeal  
131 or amendment of any statute which would cause the  
132 enhancement of health and safety in the mining industry;

133 (6) Any other information the board deems appropriate;

134 (7) In addition to the report by the board, as herein  
135 contained, each individual member of said board has right to  
136 submit a separate report, setting forth any views contrary to  
137 the report of the board, and the separate report, if any, shall  
138 be appended to the report of the board and be considered a  
139 part thereof.

**§22A-6-6. Health and Safety Administrator; qualifications;  
duties; employees; compensation.**

1 (a) The Governor shall appoint the Health and Safety  
2 Administrator of the board for a term of employment of one  
3 year. The Health and Safety Administrator shall be entitled  
4 to have his or her contract of employment renewed on an  
5 annual basis except where such renewal is denied for cause:  
6 *Provided*, That the Governor has the power at any time to  
7 remove the Health and Safety Administrator for misfeasance,  
8 malfeasance or nonfeasance: *Provided, however*, That the  
9 board has the power to remove the Health and Safety  
10 Administrator without cause upon the concurrence of five  
11 members of the board.

12 (b) The Health and Safety Administrator shall work at the  
13 direction of the board, independently of the director of the  
14 office of miners' health, safety and training and has such  
15 authority and shall perform such duties as may be required or  
16 necessary to effectuate this article.

17 (c) In addition to the Health and Safety Administrator,  
18 there shall be such other employees hired by the Health and  
19 Safety Administrator as the board determines to be necessary.  
20 The health and safety administrator shall provide supervision  
21 and direction to the other employees of the board in the  
22 performance of their duties.

23           (d) The employees of the board shall be compensated at  
24 rates determined by the board. The salary of the Health and  
25 Safety Administrator shall be fixed by the Governor:  
26 *Provided*, That the salary of the Health and Safety  
27 Administrator shall not be reduced during his or her annual  
28 term of employment or upon the renewal of his or her  
29 contract for an additional term. Such salary shall be fixed for  
30 any renewed term at least ninety days before the commencement  
31 thereof.

32           (e) (1) Appropriations for the salaries of the Health and  
33 Safety Administrator and any other employees of the board  
34 and for necessary office and operating expenses shall be  
35 made to a budget account established for those purposes in  
36 the General Revenue Fund. Such account shall be separate  
37 from any accounts or appropriations for the Office of Miners'  
38 Health, Safety and Training.

39           (2) Expenditures from the funds established in section  
40 three hundred ten, article two-a; section seven, article six;  
41 section four, article seven; section three, article eleven of this  
42 chapter shall be by the Health and Safety Administrator for  
43 administrative and operating expenses, such operating  
44 expenses include mine health and safety, research, education  
45 and training programs as determined by the entities.

46           (f) The Health and Safety Administrator shall review all  
47 coal mining fatalities and major causes of injuries as  
48 mandated by section four of this article. An analysis of such  
49 fatalities and major causes of injuries shall be prepared for  
50 consideration by the board within ninety days of the  
51 occurrence of the accident.

52           (g) At the direction of the board, the administrator shall  
53 also conduct an annual study of occupational health issues  
54 relating to employment in and around coal mines of this state  
55 and submit a report to the board with findings and proposals

56 to address the issues raised in such study. The administrator  
57 is responsible for preparing the annual reports required by  
58 subsection (e), section four of this article and section nine of  
59 this article.

60 (h) The administrator shall provide administrative  
61 assistance to the West Virginia Diesel Commission, The  
62 State Coal Mine Safety and Technical Review Committee,  
63 Board of Coal Mine Health and Safety, Board of Miner  
64 Training, Education and Certification, and the Mine Safety  
65 Technology Task Force, and serve as the legislative liaison  
66 for budgetary issues. The Administrator shall serve as an ex  
67 officio, nonvoting member on the West Virginia Diesel  
68 Commission, The State Coal Mine Safety and Technical  
69 Review Committee, Board of Miner Training, Education and  
70 Certification, and the Mine Safety Technology Task Force.

71 (i) The administrator shall submit to each board or  
72 commission for its approval, the proposed budget of the  
73 board or commission before submitting it to the Secretary of  
74 Revenue.

**§22A-6-7. Coal Mine Safety and Technical Review Committee;  
membership; method of nomination and  
appointment; meetings; quorum; powers and  
duties of the committee; powers and duties of the  
Board of Coal Mine Health and Safety.**

1 (a) The State Coal Mine Safety and Technical Review  
2 Committee is continued, and commencing July 1, 2010, is a  
3 separate independent committee within the Department of  
4 Commerce. The purposes of this committee are to:

5 (1) Assist the Board of Coal Mine Health and Safety in  
6 the development of technical data relating to mine safety  
7 issues, including related mining technology;

8           (2) Provide suggestions and technical data to the board  
9           and propose rules with general mining industry application;

10           (3) Accept and consider petitions submitted by individual  
11           mine operators or miners seeking site-specific rule making  
12           pertaining to individual mines and make recommendations to  
13           the board concerning such rule making; and

14           (4) Provide a forum for the resolution of technical issues  
15           encountered by the board, safety education and coal  
16           advocacy programs.

17           (b) The committee shall consist of two members who  
18           shall be residents of this state, and who shall be appointed as  
19           hereinafter specified in this section:

20           (1) The Governor shall appoint one member to represent  
21           the viewpoint of the coal operators in this state from a list  
22           containing one or more nominees submitted by the major  
23           trade association representing coal operators in this state  
24           within thirty days of submission of such nominee or  
25           nominees.

26           (2) The Governor shall appoint one member to represent  
27           the viewpoint of the working miners of this state from a list  
28           containing one or more nominees submitted by the highest  
29           ranking official within the major employee organization  
30           representing coal mines within this state within thirty days of  
31           submission of the nominee or the nominees.

32           (3) The members appointed in accordance with the  
33           provisions of subdivisions (1) and (2) of this subsection shall  
34           be initially appointed to serve a term of three years. The  
35           members serving on the effective date of this article may  
36           continue to serve until their terms expire.

37           (4) The members appointed in accordance with the  
38           provisions of subdivisions (1) and (2) of this subsection may

39 be, but are not required to be, members of the Board of Coal  
40 Mine Health and Safety, and shall be compensated on a per  
41 diem basis in the same amount as provided in section ten of  
42 this article, plus all reasonable expenses.

43 (c) The committee shall meet at least once during each  
44 calendar month, or more often as may be necessary.

45 (d) A quorum of the committee shall require both  
46 members, and the committee may only act officially by a  
47 quorum.

48 (e) The committee may review any matter relative to  
49 mine safety and mining technology, and may pursue  
50 development and resolution of issues related thereto. The  
51 committee may make recommendations to the board for the  
52 promulgation of rules with general mining industry  
53 application. Upon receipt of a unanimous recommendation  
54 for rule making from the committee and only thereon, the  
55 board may adopt or reject such rule, without modification  
56 except as approved by the committee: *Provided*, That any  
57 adopted rule shall not reduce or compromise the level of  
58 safety or protection below the level of safety or protection  
59 afforded by applicable statutes and rules. When so  
60 promulgated, such rules shall be effective, notwithstanding  
61 the provisions of applicable statutes.

62 (f) (1) Upon application of a coal mine operator, or on its  
63 own motion, the committee has the authority to accept  
64 requests for site-specific rule making on a mine-by-mine  
65 basis, and make unanimous recommendations to the board  
66 for site-specific rules thereon. The committee has authority  
67 to approve a request if it concludes that the request does not  
68 reduce or compromise the level of safety or protection  
69 afforded miners below the level of safety or protection  
70 afforded by any applicable statutes or rules. Upon receipt of  
71 a request for site-specific rule making, the committee may  
72 conduct an investigation of the conditions in the specific mine

73 in question, which investigation shall include consultation with  
74 the mine operator and authorized representatives of the miners.  
75 Such authorized representatives of the miners shall include any  
76 person designated by the employees at the mine, persons  
77 employed by an employee organization representing one or  
78 more miners at the mine, or a person designated as a  
79 representative by one or more persons at the mine.

80 (2) If the committee determines to recommend a request  
81 made pursuant to subdivision (1) of this subsection, the  
82 committee shall provide the results of its investigation to the  
83 Board of Coal Mine Health and Safety along with  
84 recommendations for the development of the site-specific  
85 rules applicable to the individual mine, which  
86 recommendations may include a written proposal containing  
87 draft rules.

88 (3) Within thirty days of receipt of the committee's  
89 recommendation, the board shall adopt or reject, without  
90 modification, except as approved by the committee, the  
91 committee's recommendation to promulgate site-specific  
92 rules applicable to an individual mine adopting such site-  
93 specific rules only if it determines that the application of the  
94 requested rule to such mine will not reduce or compromise  
95 the level of safety or protection afforded miners below that  
96 level of safety or protection afforded by any applicable  
97 statutes. When so promulgated, such rules shall be effective  
98 notwithstanding the provisions of applicable statutes.

99 (g) The board shall consider all rules proposed by the  
100 Coal Mine Safety and Technical Review Committee and  
101 adopt or reject, without modification, except as approved by  
102 the committee, such rules, dispensing with the preliminary  
103 procedures set forth in subdivisions (1) through (7),  
104 subsection (a), section five; and, in addition, with respect to  
105 site-specific rules also dispensing with the procedures set  
106 forth in subdivisions (4) through (8), subsection (c), section  
107 four of this article.

108 (h) In performing its functions, the committee has access  
109 to the services of the coal mine Health and Safety  
110 Administrator appointed under section six of this article. The  
111 director shall make clerical support and assistance available  
112 in order that the committee can carry out its duties. Upon the  
113 request of both members of the committee, the Health and  
114 Safety Administrator shall draft proposed rules and reports or  
115 make investigations.

116 (i) The powers and duties provided for in this section for  
117 the committee are not intended to replace or precondition the  
118 authority of the Board of Coal Mine Health and Safety to act  
119 in accordance with sections one through six and eight  
120 through ten of this article.

121 (j) Appropriations for the funding of the committee and  
122 to effectuate this section shall be made to a budget account  
123 hereby established for that purpose in the General Revenue  
124 Fund. Such account shall be separate from any accounts or  
125 appropriations for the office of miners' health, safety and  
126 training.

## **ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.**

§22A-7-4. Board of Miner Training, Education and Certification continued; membership;  
method of appointment; terms.

§22A-7-6. Duties of the director and office.

### **§22A-7-4. Board of Miner Training, Education and Certification continued; membership; method of appointment; terms.**

1 (a) The Board of Miner Training, Education and  
2 Certification is continued, and commencing July 1, 2010, is  
3 a separate independent board within the Department of  
4 Commerce. The board consists of six voting members and  
5 two ex officio, nonvoting members, who are selected in the  
6 following manner:



7           (1) One member shall be appointed by the Governor to  
8 represent the viewpoint of surface mine operators in this  
9 state. When such member is to be appointed, the Governor  
10 shall request from the major association representing surface  
11 coal operators in this state a list of three nominees to the  
12 board. The Governor shall select from said nominees one  
13 person to serve on the board. For purposes of this subsection,  
14 the major association representing the surface coal operators  
15 in this state is that association, if any, which represents  
16 surface mine operators accounting for over one half of the  
17 coal produced in surface mines in this state in the year prior  
18 to that year in which the appointment is made.

19           (2) Two members shall be appointed by the Governor to  
20 represent the interests of the underground operators of this  
21 state. When said members are to be appointed, the Governor  
22 shall request from the major association representing the  
23 underground coal operators in this state a list of six nominees  
24 to the board. The Governor shall select from said nominees  
25 two persons to serve on the board. For purposes of this  
26 subsection, the major association representing the underground  
27 operators in this state is that association, if any, which  
28 represents underground operators accounting for over one half  
29 of the coal produced in underground mines in this state in the  
30 year prior to that year in which the appointments are made.

31           (3) Three members shall be appointed by the Governor  
32 who can reasonably be expected to represent the interests of  
33 the working miners in this state. If the major employee  
34 organization representing coal miners in this state is divided  
35 into administrative districts, the employee organization of  
36 each district shall, upon request by the Governor, submit a  
37 list of three nominees for membership on the board. If such  
38 major employee organization is not so divided into  
39 administrative districts, such employee organization shall,  
40 upon request by the Governor, submit a list of twelve  
41 nominees for membership on the board. The Governor shall  
42 make such appointments from the persons so nominated:

43 *Provided*, That in the event nominations are made by  
44 administrative districts, not more than one member shall be  
45 appointed from the nominees of any one district unless there  
46 are less than three such districts in this state.

47 (4) The Director of the Office of Miner's Health, Safety  
48 and Training or his or her designee, and the Health and  
49 Safety Administrator of the Board of Coal Mine Health and  
50 Safety shall serve as ex officio, nonvoting members.

51 (5) All appointments made by the Governor under this  
52 section shall be with the advice and consent of the Senate:  
53 *Provided*, That persons so appointed while the Senate of this  
54 state is not in session are permitted to serve up to one year in  
55 an acting capacity, or until the next session of the Legislature,  
56 whichever is less.

57 (b) The board shall be appointed by the Governor.  
58 Members serving on the effective date of this article may  
59 continue on the board until their terms expire. Appointed  
60 members serve for a term of three years. The board shall  
61 meet at the call of the chair, at the call of the director, or upon  
62 the request of any two members of the board: *Provided*, That  
63 no meeting of the board for any purpose shall be conducted  
64 unless the board members are notified at least five days in  
65 advance of a proposed meeting. In cases of an emergency,  
66 members may be notified of a board meeting by the most  
67 appropriate means of communication available.

68 (c) Whenever a vacancy on the board occurs,  
69 appointments shall be made in the manner prescribed in this  
70 section: *Provided*, That in the case of an appointment to fill  
71 a vacancy nominations shall be submitted to the Governor  
72 within thirty days after the vacancy occurs. The vacancy  
73 shall be filled by the Governor within thirty days of receipt of  
74 the list of nominations.

75 (d) Each appointed member of the board shall be paid the  
76 same compensation, and each member of the board shall be  
77 paid the expense reimbursement, as is paid to members of the  
78 Legislature for their interim duties as recommended by the  
79 citizens legislative compensation commission and authorized  
80 by law for each day or portion thereof engaged in the  
81 discharge of official duties. Any such amounts shall be paid  
82 out of the State Treasury upon a requisition upon the State  
83 Auditor, properly certified by such members of the board.

84 (e) A quorum of the board is four members, with two  
85 representing the viewpoint of the operators and two  
86 representing the viewpoint of the labor organization. The  
87 board may act officially by a majority of those members who  
88 are present. No vote of the board may be taken unless all six  
89 voting members are present.

90 (f) In performing its functions, the board shall have  
91 access to the services of the Board of Coal Mine Health and  
92 Safety. The Board of Coal Mine Health and Safety shall  
93 provide administrative support and assistance, pursuant to  
94 section six, article six of this chapter, to enable the board to  
95 carry out its duties.

96 (g) Appropriations to the board to effectuate the purposes  
97 of this article shall be made to a budget account established  
98 for that purpose.

**§22A-7-6. Duties of the director and office.**

1 The director shall propose rules for legislative approval,  
2 pursuant to chapter twenty-nine-a of this code, that are  
3 necessary to establish a program to implement the provisions  
4 of this article. Such program shall include, but not be limited  
5 to, implementation of a program of instruction in each of the  
6 miner occupational specialties and the conduct of examinations  
7 to test each applicant's knowledge and understanding of the

8 training and instruction which he or she is required to have  
9 prior to the receipt of a certificate.

10 The director is authorized and directed to utilize state  
11 mine inspectors, mine safety instructors, the state mine  
12 foreman examiner, private and public institutions of  
13 education and such other persons as may be available in  
14 implementing the program of instruction and examinations.

15 The director may, at any time, make such  
16 recommendations to the board as he or she may deem  
17 appropriate.

18 The director shall supply any information upon request of  
19 the board as long as the information is not in violation of any  
20 other laws.

21 The director is authorized and directed to utilize such  
22 state and federal moneys and personnel as may be available  
23 to the office for educational and training purposes in the  
24 implementation of the provisions of this article.

## ARTICLE 11. MINE SAFETY TECHNOLOGY.

§22A-11-2. Mine Safety Technology Task Force continued; membership; method of nomination and appointment.

§22A-11-3. Task force powers and duties.

### **§22A-11-2. Mine Safety Technology Task Force continued; membership; method of nomination and appointment.**

1 (a) The Mine Safety Technology Task Force is continued,  
2 and commencing July 1, 2010, is a separate independent task  
3 force within the Department of Commerce.

4 (b) The task force shall consist of seven voting members  
5 and two ex officio, nonvoting members who are appointed as  
6 specified in this section:

7           (1) The Governor shall appoint, by and with the advice  
8 and consent of the Senate, three members to represent the  
9 viewpoint of operators in this state. When these members are  
10 to be appointed, the Governor shall request from the major  
11 trade association representing operators in this state a list of  
12 three nominees for each position on the task force. All  
13 nominees shall be persons with special experience and  
14 competence in coal mine health and safety. There shall be  
15 submitted with the list, a summary of the qualifications of  
16 each nominee. For purposes of this subdivision, the major  
17 trade association representing operators in this state is that  
18 association which represents operators accounting for over  
19 one half of the coal produced in mines in this state in the year  
20 prior to the year in which the appointment is to be made.

21           (2) The Governor shall appoint, by and with the advice  
22 and consent of the Senate, three members who can  
23 reasonably be expected to represent the viewpoint of the  
24 working miners of this state. When members are to be  
25 appointed, the Governor shall request from the major  
26 employee organization representing coal miners within this  
27 state a list of three nominees for each position on the task  
28 force. The highest ranking official within the major employee  
29 organization representing coal miners within this state shall  
30 submit a list of three nominees for each position on the board.  
31 The nominees shall have a background in coal mine health  
32 and safety.

33           (3) The Governor shall appoint, by and with the advice  
34 and consent of the Senate, one certified mine safety  
35 professional from the College of Engineering and Mineral  
36 Resources at West Virginia University;

37           (4) The Health and Safety Administrator, pursuant to  
38 section six, article six of this chapter, shall serve as a member  
39 of the task force as an ex officio, nonvoting member; and

40 (5) The Director of the Office of Miner's Health, Safety  
41 and Training or his or her designee, shall serve as a ex  
42 officio, nonvoting member.

43 (c) Each appointed member of the task force shall serve  
44 at the will and pleasure of the Governor.

45 (d) Whenever a vacancy on the task force occurs,  
46 nominations and appointments shall be made in the manner  
47 prescribed in this section: *Provided*, That in the case of an  
48 appointment to fill a vacancy, nominations of three persons  
49 for each vacancy shall be requested by and submitted to the  
50 Governor within thirty days after the vacancy occurs by the  
51 major trade association or major employee organization, if  
52 any, which nominated the person whose seat on the task force  
53 is vacant.

54 (e) Each member of the task force shall be paid the  
55 expense reimbursement, as is paid to members of the  
56 Legislature for their interim duties as recommended by the  
57 Citizens Legislative Compensation Commission and  
58 authorized by law for each day or portion thereof engaged in  
59 the discharge of official duties. In the event the expenses are  
60 paid by a third party, the member shall not be reimbursed by  
61 the state. The reimbursement shall be paid out of the State  
62 Treasury upon a requisition upon the State Auditor, properly  
63 certified by the Office of Miners' Health, Safety and  
64 Training. An employer shall not prohibit a member of the  
65 task force from exercising leave of absence from his or her  
66 place of employment in order to attend a meeting of the task  
67 force or a meeting of a subcommittee of the task force, or to  
68 prepare for a meeting of the task force, any contract of  
69 employment to the contrary notwithstanding.

### **§22A-11-3. Task force powers and duties.**

1 (a) The task force shall provide technical and other  
2 assistance to the office related to the implementation of the

3 new technological requirements set forth in the provisions of  
4 section fifty-five, article two, of this chapter, as amended and  
5 reenacted during the regular session of the Legislature in the  
6 year 2006, and requirements for other mine safety technologies.

7 (b) The task force, working in conjunction with the director,  
8 shall continue to study issues regarding the commercial  
9 availability, the functional and operational capability and the  
10 implementation, compliance and enforcement of the following  
11 protective equipment:

12 (1) Self-contained self-rescue devices, as provided in  
13 subsection (f), section fifty-five, article two of this chapter;

14 (2) Wireless emergency communication devices, as  
15 provided in subsection (g), section fifty-five, article two of  
16 this chapter;

17 (3) Wireless emergency tracking devices, as provided in  
18 subsection (h), section fifty-five, article two of this chapter; and

19 (4) Any other protective equipment required by this  
20 chapter or rules promulgated in accordance with the law that  
21 the director determines would benefit from the expertise of  
22 the task force.

23 (c) The task force shall on a continuous basis study,  
24 monitor and evaluate:

25 (1) The potential for enhancing coal mine health and  
26 safety through the application of existing technologies and  
27 techniques;

28 (2) Opportunities for improving the integration of  
29 technologies and procedures to increase the performance and  
30 survivability of coal mine health and safety systems;

31 (3) Emerging technological advances in coal mine health  
32 and safety; and

33           (4) Market forces impacting the development of new  
34 technologies, including issues regarding the costs of research  
35 and development, regulatory certification and incentives  
36 designed to stimulate the marketplace.

37           (d) On or before July 1 of each year, the task force shall  
38 submit a report to the Governor and the Board of Coal Mine  
39 Health and Safety that shall include, but not be limited to:

40           (1) A comprehensive overview of issues regarding the  
41 implementation of the new technological requirements set  
42 forth in the provisions of section fifty-five, article two of this  
43 chapter, or rules promulgated in accordance with the law;

44           (2) A summary of any emerging technological advances  
45 that would improve coal mine health and safety;

46           (3) Recommendations, if any, for the enactment, repeal  
47 or amendment of any statute which would enhance  
48 technological advancement in coal mine health and safety;  
49 and

50           (4) Any other information the task force considers  
51 appropriate.

52           (e) In performing its duties, the task force shall, where  
53 possible, consult with, among others, mine engineering and  
54 mine safety experts, radiocommunication and telemetry  
55 experts and relevant state and federal regulatory personnel.

56           (f) Appropriations to the task force commission and to  
57 effectuate the purposes of this article shall be made to one or  
58 more budget accounts established for that purpose.



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## CHAPTER 132

**(Com. Sub. for S. B. 376 - By Senators  
Minard, Jenkins, McCabe and Plymale)**

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[Amended and again passed March 20, 2010, as a result of the  
objections of the Governor; in effect July 1, 2010.]  
[Approved by the Governor on April 2, 2010.]

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AN ACT to amend and reenact §31-18-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §31A-2-4c of said code; to amend and reenact §38-1-8a of said code; to amend and reenact §44-13-4a of said code; and to amend and reenact §59-1-10 of said code, all relating to gathering, compilation and publication of residential mortgage foreclosure data; expanding the powers and duties of the West Virginia Housing Development Fund to include the receipt, compilation and publication of mortgage foreclosure data and reports contained in reports of sale filed by trustees with county clerks; providing the West Virginia Housing Development Fund with the authority to require additional information to be filed with the reports of sale; transferring the jurisdiction, powers and duties relative to the receiving, compiling into an electronic data base and making the data available from the Commissioner of Banking to the West Virginia Housing Development Fund; providing that mortgage financial data and reports received by the Commissioner of Banking under the code provisions prior to the effective date be supplied to the West Virginia Housing Development Fund; providing that the portion of the fee paid for recording the trustee's report of sale that is paid by county clerks to the Division of Banking be paid to the West Virginia Housing Development Fund; and establishing an effective date of July 1, 2010.

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

That §31-18-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31A-2-4C of said code be amended and reenacted; that §38-1-8a of said code be amended and reenacted; that §44-13-4a of said code be amended and reenacted; and that §59-1-10 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 31. Corporations.
- 31A. Banks and Banking.
- 38. Liens.
- 44. Administration of Estates and Trusts.
- 59. Fees, Allowances and Costs; Newspaper; Legal Advertisements.

**CHAPTER 31. CORPORATIONS.**

**ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.**

**§31-18-6. Corporate powers.**

1       The housing development fund is hereby granted, has and  
2       may exercise all powers necessary or appropriate to carry out  
3       and effectuate its corporate purpose, including, but not  
4       limited to, the following:

5       (1) To make or participate in the making of federally  
6       insured construction loans to sponsors of land development,  
7       residential housing or nonresidential projects. Such loans  
8       shall be made only upon determination by the housing  
9       development fund that construction loans are not otherwise  
10      available, wholly or in part, from private lenders upon  
11      reasonably equivalent terms and conditions;

12      (2) To make temporary loans, with or without interest,  
13      but with such security for repayment as the housing  
14      development fund determines reasonably necessary and  
15      practicable, from the operating loan fund, if created,

16 established, organized and operated in accordance with the  
17 provisions of section nineteen of this article, to defray  
18 development costs to sponsors of land development,  
19 residential housing or nonresidential projects which are  
20 eligible or potentially eligible for federally insured  
21 construction loans, federally insured mortgages, federal  
22 mortgages or uninsured construction loans or uninsured  
23 mortgage loans;

24 (3) To make or participate in the making of long-term  
25 federally insured mortgage loans to sponsors of land  
26 development, residential housing or nonresidential projects.  
27 Such loans shall be made only upon determination by the  
28 housing development fund that long-term mortgage loans are  
29 not otherwise available, wholly or in part, from private  
30 lenders upon reasonably equivalent terms and conditions;

31 (4) To establish residential housing and nonresidential  
32 and land development projects for counties declared to be in  
33 a disaster area by the Federal Emergency Management  
34 Agency or other agency or instrumentality of the United  
35 States or this state;

36 (5) To accept appropriations, gifts, grants, bequests and  
37 devises and to utilize or dispose of the same to carry out its  
38 corporate purpose;

39 (6) To make and execute contracts, releases,  
40 compromises, compositions and other instruments necessary  
41 or convenient for the exercise of its powers, or to carry out its  
42 corporate purpose;

43 (7) To collect reasonable fees and charges in connection  
44 with making and servicing loans, notes, bonds, obligations,  
45 commitments and other evidences of indebtedness, and in  
46 connection with providing technical, consultative and project  
47 assistance services;

48           (8) To invest any funds not required for immediate  
49           disbursement in any of the following securities:

50           (i) Direct obligations of or obligations guaranteed by the  
51           United States of America or for the payment of the principal  
52           and interest on which the full faith and credit of the United  
53           States of America is pledged;

54           (ii) Bonds, debentures, notes or other evidences of  
55           indebtedness issued by any of the following agencies: Banks  
56           for cooperatives; federal intermediate credit banks; federal  
57           home loan bank system; export-import bank of the United  
58           States; federal land banks; Tennessee valley authority; United  
59           States postal service; inter-American development bank;  
60           international bank for reconstruction and development; small  
61           business administration; Washington metropolitan area  
62           transit authority; general services administration; federal  
63           financing bank; federal home loan mortgage corporation;  
64           student loan marketing association; farmer's home  
65           administration; the federal national mortgage association or  
66           the government national mortgage association; or any bond,  
67           debenture, note, participation certificate or other similar  
68           obligation to the extent such obligations are guaranteed by  
69           the government national mortgage association or federal  
70           national mortgage association or are issued by any other  
71           federal agency and backed by the full faith and credit of the  
72           United States of America;

73           (iii) Public housing bonds issued by public agencies or  
74           municipalities and fully secured as to the payment of both  
75           principal and interest by a pledge of annual contributions  
76           under an annual contributions contract or contracts with the  
77           United States of America; or temporary notes, preliminary  
78           loan notes, or project notes issued by public agencies or  
79           municipalities, in each case, fully secured as to the payment  
80           of both principal and interest by a requisition or payment  
81           agreement with the United States of America;

82 (iv) Certificates of deposit, time deposits, investment  
83 agreements, repurchase agreements or similar banking  
84 arrangements with a member bank or banks of the federal  
85 reserve system or a bank the deposits of which are insured by  
86 the federal deposit insurance corporation, or its successor, or  
87 a savings and loan association or savings bank the deposits of  
88 which are insured by the federal savings and loan insurance  
89 corporation, or its successor, or government bond dealers  
90 reporting to, trading with and recognized as primary dealers  
91 by a federal reserve bank: *Provided*, That such investments  
92 shall only be made to the extent insured by the federal  
93 deposit insurance corporation or the federal savings and loan  
94 insurance corporation or to the extent that the principal  
95 amount thereof shall be fully collateralized by obligations  
96 which are authorized investments for the housing  
97 development fund pursuant to this section;

98 (v) Direct obligations of or obligations guaranteed by the  
99 state of West Virginia;

100 (vi) Direct and general obligations of any other state,  
101 municipality or other political subdivision within the  
102 territorial United States: *Provided*, That at the time of their  
103 purchase, such obligations are rated in either of the two  
104 highest rating categories by a nationally recognized bond-  
105 rating agency;

106 (vii) Any bond, note, debenture or annuity issued by any  
107 corporation organized and operating within the United States:  
108 *Provided*, That such corporation shall have a minimum net  
109 worth of fifteen million dollars and its securities or its parent  
110 corporation's securities are listed on one or more of the  
111 national stock exchanges: *Provided, however*, That: (1) Such  
112 corporation has earned a profit in eight of the preceding ten  
113 fiscal years as reflected in its statements; and (2) such  
114 corporation has not defaulted in the payment of principal or  
115 interest on any of its outstanding funded indebtedness during

116 its preceding ten fiscal years; and (3) the bonds, notes or  
117 debentures of such corporation to be purchased are rated  
118 "AA" or the equivalent thereof or better than "AA" or the  
119 equivalent thereof by at least two or more nationally  
120 recognized rating services such as Standard and Poor's, Dunn  
121 & Bradstreet, Best's or Moody's;

122 (viii) If entered into solely for the purpose of reducing  
123 investment, interest rate, liquidity or other market risks in  
124 relation to obligations issued or to be issued or owned or to  
125 be owned by the housing development fund, options, futures  
126 contracts (including index futures but exclusive of  
127 commodities futures, options or other contracts), standby  
128 purchase agreements or similar hedging arrangements listed  
129 by a nationally recognized securities exchange or a  
130 corporation described in paragraph (vii) above;

131 (ix) Certificates, shares or other interests in mutual funds,  
132 unit trusts or other entities registered under section eight of  
133 the United States Investment Company Act of 1940, but only  
134 to the extent that the terms on which the underlying  
135 investments are to be made prevent any more than a minor  
136 portion of the pool which is being invested in to consist of  
137 obligations other than investments permitted pursuant to this  
138 section; and

139 (x) To the extent not inconsistent with the express  
140 provisions of this section, obligations of the West Virginia  
141 state board of investments or any other obligation authorized  
142 as an investment for the West Virginia state board of  
143 investments under article six, chapter twelve of this code or  
144 for a public housing authority under article fifteen, chapter  
145 sixteen of this code;

146 (9) To sue and be sued;

147 (10) To have a seal and alter the same at will;

148           (11) To make, and from time to time, amend and repeal  
149 bylaws and rules and regulations not inconsistent with the  
150 provisions of this article;

151           (12) To appoint such officers, employees and consultants  
152 as it deems advisable and to fix their compensation and  
153 prescribe their duties;

154           (13) To acquire, hold and dispose of real and personal  
155 property for its corporate purposes;

156           (14) To enter into agreements or other transactions with  
157 any federal or state agency, any person and any domestic or  
158 foreign partnership, corporation, association or organization;

159           (15) To acquire real property, or an interest therein, in its  
160 own name, by purchase or foreclosure, where such  
161 acquisition is necessary or appropriate to protect any loan in  
162 which the housing development fund has an interest and to  
163 sell, transfer and convey any such property to a buyer and, in  
164 the event of such sale, transfer or conveyance cannot be  
165 effected with reasonable promptness or at a reasonable price,  
166 to lease such property to a tenant;

167           (16) To purchase or sell, at public or private sale, any  
168 mortgage or other negotiable instrument or obligation  
169 securing a construction, rehabilitation, improvement, land  
170 development, mortgage or temporary loan;

171           (17) To procure insurance against any loss in connection  
172 with its property in such amounts, and from such insurers, as  
173 may be necessary or desirable;

174           (18) To consent, whenever it deems it necessary or  
175 desirable in the fulfillment of its corporate purpose, to the  
176 modification of the rate of interest, time of payment or any  
177 installment of principal or interest, or any other terms, of

178 mortgage loan, mortgage loan commitment, construction  
179 loan, rehabilitation loan, improvement loan, temporary loan,  
180 contract or agreement of any kind to which the housing  
181 development fund is a party;

182 (19) To make and publish rules and regulations  
183 respecting its federally insured mortgage lending, uninsured  
184 mortgage lending, construction lending, rehabilitation  
185 lending, improvement lending and lending to defray  
186 development costs and any such other rules and regulations  
187 as are necessary to effectuate its corporate purpose;

188 (20) To borrow money to carry out and effectuate its  
189 corporate purpose and to issue its bonds or notes as evidence  
190 of any such borrowing in such principal amounts and upon  
191 such terms as shall be necessary to provide sufficient funds  
192 for achieving its corporate purpose, except that no notes shall  
193 be issued to mature more than ten years from date of issuance  
194 and no bonds shall be issued to mature more than fifty years  
195 from date of issuance;

196 (21) To issue renewal notes, to issue bonds to pay notes  
197 and, whenever it deems refunding expedient, to refund any  
198 bonds by the issuance of new bonds, whether the bonds to be  
199 refunded have or have not matured except that no such  
200 renewal notes shall be issued to mature more than ten years  
201 from date of issuance of the notes renewed and no such  
202 refunding bonds shall be issued to mature more than fifty  
203 years from the date of issuance;

204 (22) To apply the proceeds from the sale of renewal notes  
205 or refunding bonds to the purchase, redemption or payment  
206 of the notes or bonds to be refunded;

207 (23) To make grants and provide technical services to  
208 assist in the purchase or other acquisition, planning,  
209 processing, design, construction, or rehabilitation,



210 improvement or operation of residential housing,  
211 nonresidential projects or land development: *Provided*, That  
212 no such grant or other financial assistance shall be provided  
213 except upon a finding by the housing development fund that  
214 such assistance and the manner in which it will be provided  
215 will preserve and promote residential housing in this state or  
216 the interests of this state in maintaining or increasing  
217 employment or the tax base;

218       (24) To provide project assistance services for residential  
219 housing, nonresidential projects and land development,  
220 including, but not limited to, management, training and social  
221 and other services;

222       (25) To promote research and development in scientific  
223 methods of constructing low cost land development,  
224 residential housing or nonresidential projects of high  
225 durability including grants, loans or equity contributions for  
226 research and development purposes: *Provided*, That no such  
227 grant or other financial assistance shall be provided except  
228 upon a finding by the housing development fund that such  
229 assistance and the manner in which it will be provided will  
230 preserve and promote residential housing in this state or the  
231 interests of this state in maintaining and increasing  
232 employment and the tax base;

233       (26) With the proceeds from the issuance of notes or  
234 bonds of the housing development fund, including, but not  
235 limited to, mortgage finance bonds, or with other funds  
236 available to the housing development fund for such purpose,  
237 to participate in the making of or to make loans to  
238 mortgagees approved by the housing development fund and  
239 take such collateral security therefor as is approved by the  
240 housing development fund and to invest in, purchase,  
241 acquire, sell or participate in the sale of, or take assignments  
242 of, notes and mortgages, evidencing loans for the  
243 construction, rehabilitation, improvement, purchase or

244 refinancing of land development, residential housing or  
245 nonresidential projects in this state: *Provided*, That the  
246 housing development fund shall obtain such written  
247 assurances as shall be satisfactory to it that the proceeds of  
248 such loans, investments or purchases will be used, as nearly  
249 as practicable, for the making of or investment in long-term  
250 federally insured mortgage loans or federally insured  
251 construction loans, uninsured mortgage loans or uninsured  
252 construction loans, for land development, residential housing  
253 or nonresidential projects or that other moneys in an amount  
254 approximately equal to such proceeds shall be committed and  
255 used for such purpose;

256       (27) To make or participate in the making of uninsured  
257 construction loans for land development, residential housing  
258 or nonresidential projects. Such loans shall be made only  
259 upon determination by the housing development fund that  
260 construction loans are not otherwise available, wholly or in  
261 part, from private lenders upon reasonably equivalent terms  
262 and conditions;

263       (28) To make or participate in the making of long-term  
264 uninsured mortgage loans for land development, residential  
265 housing or nonresidential projects. Such loans shall be made  
266 only upon determination by the housing development fund  
267 that long-term mortgage loans are not otherwise available,  
268 wholly or in part, from private lenders upon reasonably  
269 equivalent terms and conditions;

270       (29) To obtain options to acquire real property, or any  
271 interest therein, in its own name, by purchase, or lease or  
272 otherwise, which is found by the housing development fund  
273 to be suitable, or potentially suitable, as a site, or as part of a  
274 site, for land development or the construction of residential  
275 housing or nonresidential projects; to hold such real property  
276 or to acquire by purchase or otherwise and to transfer by sale  
277 or otherwise any ownership or equity interests in any other

278 legal entity which holds such real property; to finance the  
279 performance of land development, residential housing or  
280 nonresidential projects on or in connection with any such real  
281 property or to perform land development, residential housing  
282 or nonresidential projects on or in connection with any such  
283 real property; to own, operate and sponsor or participate in  
284 the sponsorship of land development, residential housing or  
285 nonresidential projects; or to sell, transfer and convey, lease  
286 or otherwise dispose of such real property, or lots, tracts or  
287 parcels of such real property, for such prices, upon such  
288 terms, conditions and limitations, and at such time or times  
289 as the housing development fund shall determine;

290 (30) To make loans, with or without interest, but with  
291 such security for repayment as the housing development fund  
292 determines reasonably necessary and practicable from the  
293 land development fund, if created, established, organized and  
294 operated in accordance with the provisions of section twenty-  
295 a of this article, to sponsors of land development, to defray  
296 development costs and other costs of land development;

297 (31) To exercise all of the rights, powers and authorities  
298 of a public housing authority as set forth and provided in  
299 article fifteen, chapter sixteen of this code, in any area or  
300 areas of the state which the housing development fund shall  
301 determine by resolution to be necessary or appropriate;

302 (32) To provide assistance to urban renewal projects in  
303 accordance with the provisions of section twenty-eight,  
304 article eighteen, chapter sixteen of this code and in so doing  
305 to exercise all of the rights, powers and authorities granted in  
306 this article or in said article, in and for any communities of  
307 the state which the housing development fund shall determine  
308 by resolution to be necessary or appropriate;

309 (33) To make or participate in the making of loans for the  
310 purpose of rehabilitating or improving existing residential

311 and temporary housing or nonresidential projects, or to  
312 owners of existing residential or temporary housing for  
313 occupancy by eligible persons and families for the purpose of  
314 rehabilitating or improving such residential or temporary  
315 housing or nonresidential projects and, in connection  
316 therewith, to refinance existing loans involving the same  
317 property. Such loans shall be made only upon determination  
318 by the housing development fund that rehabilitation or  
319 improvement loans are not otherwise available, wholly or in  
320 part, from private lenders upon reasonably equivalent terms  
321 and conditions;

322 (34) Whenever the housing development fund deems it  
323 necessary in order to exercise any of its powers set forth in  
324 subdivision (29) of this section, and upon being unable to  
325 agree with the owner or owners of real property or interest  
326 therein sought to be acquired by the fund upon a price for  
327 acquisition of private property not being used or operated by  
328 the owner in the production of agricultural products, to  
329 exercise the powers of eminent domain in the acquisition of  
330 such real property or interest therein in the manner provided  
331 under chapter fifty-four of this code, and the purposes set  
332 forth in said subdivision are hereby declared to be public  
333 purposes for which private property may be taken. For the  
334 purposes of this section, the determination of "use or  
335 operation by the owner in the production of agricultural  
336 products" means that the principal use of such real estate is  
337 for the production of food and fiber by agricultural  
338 production other than forestry, and the fund shall not initiate  
339 or exercise any powers of eminent domain without first  
340 receiving an opinion in writing from both the governor and  
341 the commissioner of agriculture of this state that at the time  
342 the fund had first attempted to acquire such real estate or  
343 interest therein, such real estate or interest therein was not in  
344 fact being used or operated by the owner in the production of  
345 agricultural products;

346           (35) To acquire, by purchase or otherwise, and to hold,  
347 transfer, sell, assign, pool or syndicate, or participate in the  
348 syndication of, any loans, notes, mortgages, securities or debt  
349 instruments collateralized by mortgages or interests in  
350 mortgages or other instruments evidencing loans or equity  
351 interests in or for the construction, rehabilitation,  
352 improvement, renovation, purchase or refinancing of land  
353 development, residential housing and nonresidential projects  
354 in this state; and

355           (36) To form one or more nonprofit corporations, whose  
356 board of directors shall be the same as the board of directors  
357 of the housing development fund, which shall be authorized  
358 and empowered to carry out any or all of the corporate  
359 powers or purposes of the housing development fund,  
360 including, without limitation, acquiring limited or general  
361 partnership interests and other forms of equity ownership.

362           (37) To receive and compile data into an electronic  
363 database and make available the raw mortgage foreclosure  
364 data that is required to be reported to county clerks by  
365 trustees pursuant to the provisions of section eight-a, article  
366 one, chapter thirty-eight of this code, including all data that  
367 has been received by the banking commissioner pursuant to  
368 subsection (a) of section four-c, article two, chapter thirty-  
369 one-a of this code, as of the effective date of the effective  
370 date of the amendments made to said section during the  
371 regular session of the 2010 legislature. This information  
372 shall be periodically forwarded by county clerks to the  
373 housing development fund, in accordance with the provisions  
374 of section four-a, article thirteen, chapter forty-four of this  
375 code.

## **CHAPTER 31A. BANKS AND BANKING**

### **ARTICLE 2. DIVISION OF BANKING.**

**§31A-2-4c. County Clerk to file reports of trustees regarding sales of residential real property pursuant to deeds of trust and forward to the banking commissioner; transfer of powers and duties relating to reports of trustees to the West Virginia Housing Development Fund.**

1           (a) In addition to the jurisdiction, powers, and duties set  
2 out in section four of this article, the banking commissioner  
3 is vested with the jurisdiction, powers and duties to receive  
4 and compile the data into an electronic database and make  
5 available the raw data that is required to be reported by  
6 trustees to county clerks pursuant to section eight-a, article  
7 one, chapter thirty-eight of the Code of West Virginia. The  
8 commissioner has the power to promulgate rules in  
9 accordance with this section and the provisions of article  
10 three, chapter twenty-nine-a of this code in order to carry out  
11 the requirements of this section. The commissioner is  
12 authorized to expend funds for this purpose.

13           (b) On and after July 1, 2010, the jurisdiction, powers and  
14 duties vested in the banking commissioner in subsection (a)  
15 of this section are hereby transferred and imposed upon the  
16 West Virginia Housing Development Fund established in  
17 article eighteen, chapter thirty-one of this code and all data  
18 that has been received and compiled by the banking  
19 commissioner pursuant to subsection (a) of this section shall  
20 be transferred to the West Virginia Housing Development  
21 Fund.

**CHAPTER 38. LIENS**

**ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.**

**§38-1-8a. Reports by Trustee to County Clerk; additional information to be filed with report of sale.**

1           (a) This section applies to deeds of trust if the property  
2 conveyed therein includes real property that is occupied, or  
3 is intended to be occupied as a residence by the grantor at  
4 time the deed of trust is executed and delivered.

5           (b) Beginning July 1, 2009, when a report of the sale of  
6 the property sold pursuant to a deed of trust is placed of  
7 record by the trustee with the clerk of the county commission  
8 as provided in section eight of this article, the trustee shall  
9 include the following information on a disclosure form  
10 submitted with and made a part of the report of sale:

11           (1) Name or names of the grantor of the deed of trust;

12           (2) Street address, city, state and zip code of real property  
13 subject to the trust;

14           (3) Original trustee name;

15           (4) Substitute trustee name, if any, and date of  
16 appointment;

17           (5) The address, telephone number and electronic contact  
18 information for the trustee making the sale;

19           (6) Date, time and place advertised for sale;

20           (7) Name of original secured lender;

21           (8) Current holder of deed of trust, and the current  
22 holder's address;

23           (9) Original principal amount of the secured debt;

24           (10) Original interest rate;

25 (11) Whether the loan was adjustable and if so current  
26 rate;

27 (12) Total secured indebtedness at time of sale;

28 (13) The number of months the loan is delinquent at time  
29 of notice of sale; and

30 (14) The date, time and place of sale;

31 (15) The name of the purchaser;

32 (16) The appraised value at the time of loan, if available;

33 (17) The net amount applied to the secured loan;

34 (18) The date the report of sale is recorded; and

35 (19) Any other information the West Virginia Housing  
36 Development Fund may require.

37 (c) The West Virginia Housing Development Fund  
38 established in article eighteen, chapter thirty-one of this code  
39 shall publish a form setting out the information required by  
40 subsection (b) and instructions as to how this information is  
41 to be filed with the report of sale.

42 (d) Notwithstanding any other provision of this code,  
43 nothing in this section shall be deemed to create a  
44 responsibility by the West Virginia Housing Development  
45 Fund to provide any report other than a compilation into an  
46 electronic data base of the data that is required to be  
47 submitted pursuant to subsection (b) of this section and the  
48 compiled raw data submitted from each county clerk. The  
49 West Virginia Housing Development Fund is not required to  
50 verify and is not responsible for the veracity of the accuracy  
51 of the data submitted.



52 (e) Failure to comply with this the provisions of this  
53 section shall not affect the validity of the sale or the title to  
54 the property sold by the trustee.

## **CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.**

### **ARTICLE 13. POWERS AND DUTIES OF CLERKS OF COUNTY COURTS IN COUNTIES HAVING SEPARATE TRIBUNAL FOR POLICE AND FISCAL PURPOSES.**

#### **§44-13-4a. Reporting of foreclosure statistics.**

1 Beginning with the third quarter of 2010, the clerk of  
2 each county commission shall file quarterly with the West  
3 Virginia Housing Development Fund established in article  
4 eighteen, chapter thirty-one of this code the disclosure forms  
5 of deed of trust foreclosure sales that were recorded in that  
6 county for the preceding calendar year quarter. Up until that  
7 time, through the second quarter of 2010, such quarterly  
8 reports shall be filed with the Division of Banking. The  
9 reports shall be filed within fifteen days of the last day of  
10 September, December, March and June of each year. The  
11 reports shall be filed in electronic format, where possible.

## **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 1/2" x 14".

4           The clerk of the county commission shall charge and  
5 collect the following fees:

6           (a) When a writing is admitted to record, for receiving  
7 proof of acknowledgment thereof, entering an order in  
8 connection therewith, endorsing clerk's certificate of  
9 recordation thereon and indexing in a proper index, where the  
10 writing is a:

11           (1) Deed of conveyance (with or without a plat), trust  
12 deed, fixture filing or security agreement concerning real  
13 estate lease, \$15.

14           (2) Trustee's report of sale for any property for which  
15 additional information and filing requirements are required  
16 by section eight-a, article one, chapter thirty-eight of this  
17 code, \$40: *Provided*, That \$20 of each recording fee received  
18 pursuant to this subdivision shall be deposited into the  
19 county's General Revenue Fund and \$20 of each of the  
20 aforesaid recording fees shall be paid quarterly by the clerk  
21 of the county commission to the West Virginia Housing  
22 Development Fund established in article eighteen, chapter  
23 thirty-one of this code.

24           (3) Financing, continuation, termination or other  
25 statement or writing permitted to be filed under chapter forty-  
26 six of this code, \$10.

27           (4) Plat or map (with no deed of conveyance), \$10.

28           (5) Service discharge record, no charge.

29           (6) Any document or writing other than those referenced  
30 in subdivisions (1), (2), (3), (4) and (5) of this subsection,  
31 \$10.

32           (7) If any document or writing contains more than five  
33 pages, for each additional page, \$1.

34 For any of the documents admitted to record pursuant to  
35 this subsection, if the clerk of the county commission has the  
36 technology available to receive these documents in electronic  
37 form or other media, the clerk shall set a reasonable fee to  
38 record these writings not to exceed the cost for filing paper  
39 documents.

40 (8) Of the fees collected pursuant to subdivision (1),  
41 subsection (a) of this section, \$10 shall be deposited in the  
42 county general fund in accordance with section twenty-eight  
43 of this article and \$1 shall be deposited in the county general  
44 fund and dedicated to the operation of the county clerk's  
45 office. Four dollars of the fees collected pursuant to  
46 subdivision (1), subsection (a) of this section and \$5 of the  
47 fees collected pursuant to subdivision (6), subsection (a) of  
48 this section shall be paid by the county clerk into the state  
49 Treasury and deposited in equal amounts for deposit into the  
50 Farmland Protection Fund created in article twelve, chapter  
51 eight-a of this code for the benefit of the West Virginia  
52 Agricultural Land Protection Authority and into the Outdoor  
53 Heritage Conservation Fund created in article two-g, chapter  
54 five-b of this code: *Provided*, That the funds deposited in the  
55 state Treasury pursuant to this subdivision may only be used  
56 for costs, excluding personnel costs, associated with purpose  
57 of land conservation, as defined in subsection (f), section  
58 seven, article two-g, chapter five-b of this code.

59 (b) For administering any oath other than oaths by  
60 officers and employees of the state, political subdivisions of  
61 the state or a public or quasi-public entity of the state or a  
62 political subdivision of the state, taken in his or her official  
63 capacity, \$5.

64 (c) For issuance of marriage license and other duties  
65 pertaining to the marriage license (including preparation of the  
66 application, administering the oath, registering and recording  
67 the license, mailing acknowledgment of minister's return to one

68 of the licensees and notification to a licensee after sixty days of  
69 the nonreceipt of the minister's return), \$35.

70 (1) One dollar of the marriage license fee received  
71 pursuant to this subsection shall be paid by the county clerk  
72 into the state Treasury as a state registration fee in the same  
73 manner that license taxes are paid into the Treasury under  
74 article twelve, chapter eleven of this code;

75 (2) Fifteen dollars of the marriage license fee received  
76 pursuant to this subsection shall be paid by the county clerk  
77 into the state Treasury for the Family Protection Shelter  
78 Support Act in the same manner that license taxes are paid  
79 into the Treasury under article twelve, chapter eleven of this  
80 code;

81 (3) Ten dollars of the marriage license fee received  
82 pursuant to this subsection shall be deposited in the  
83 Courthouse Facilities Improvement Fund created by section  
84 six, article twenty-six, chapter twenty-nine of this code.

85 (d) (1) For a copy of any writing or document, if it is not  
86 otherwise provided for, \$1.50.

87 (2) If the copy of the writing or document contains more  
88 than two pages, for each additional page, \$1.

89 (3) For annexing the seal of the commission or clerk to  
90 any paper, \$1.

91 (4) For a certified copy of a birth certificate, death  
92 certificate or marriage license, \$5.

93 (e) For copies of any record in electronic form or a  
94 medium other than paper, a reasonable fee set by the clerk of  
95 the county commission not to exceed the costs associated  
96 with document search and duplication.