

ACTS  
OF THE  
LEGISLATURE  
OF  
WEST VIRGINIA



**Regular Session, 1989**  
**Extraordinary Session, 1989**

BJW Printers, Beckley, W. Va.



## FOREWORD

This volume contains the Acts of the First Regular Session of the 69th Legislature and the Extraordinary Session held January 25—February 1, 1989.

### First Regular Session, 1989

The First Regular Session of the 69th Legislature convened on January 11, 1989, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 8th day of November, 1988, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 8, 1989, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 8, 1989. The session was extended by Proclamation of the Governor, for the sole purpose of consideration of the Budget Bill, until April 12, 1989. The Legislature adjourned *sine die* on April 10, 1989.

Bills totaling 1,496 were introduced in the two houses during the session (868 House and 628 Senate). The Legislature passed 221 bills, 135 House and 86 Senate. Two bills (S. B. 388 and H. B. 2676) were found to be technically deficient and void after having been signed by the Governor. Four bills were vetoed by the Governor, 3 House and 1 Senate. Three bills became law without the Governor's signature, making a net total of 215 bills which became law.

There were 91 concurrent resolutions introduced during the session, 54 House and 37 Senate, of which 19 House and 7 Senate were adopted. Thirty-one House joint and 13 Senate joint resolutions were introduced, proposing amendments to the State Constitution. The Legislature adopted 1 Senate joint resolution and 2 House joint resolutions. The House had 24 house resolutions and the Senate had 39 senate resolutions, of which 10 House and 36 Senate were adopted.

The Senate failed to pass 51 House bills passed by the House, and 86 Senate bills failed passage by the House. Six Senate bills died in conference.

The House of Delegates impeached the State Treasurer and censured the State Auditor, replicating an almost identical procedure as was conducted in 1875.

### Extraordinary Session, 1989

The Proclamation calling the Legislature into Extraordinary Session at 12:30 P.M., January 25, 1989, contained five items for consideration.

The Legislature passed 4 bills, 2 House and 2 Senate, and adopted 1 concurrent resolution, providing for a joint assembly to hear the Governor's message.

The Legislature adjourned the Extraordinary Session *sine die* on February 1, 1989.

This was the first occasion of the Legislature having met in Extraordinary Session prior to the Regular Session after a new Legislature had been seated.

\*\*\*\*\*

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

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

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

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# MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1989

## OFFICERS

*Speaker*—Robert C. Chambers, Huntington  
*Speaker Pro Tem*—Marjorie H. Burke, Sand Fork  
*Clerk*—Donald L. Kopp, Clarksburg  
*Sergeant at Arms*—Oce W. Smith, Jr., Fairmont  
*Doorkeeper*—Dannie Wingo, Yukon

District	Name	Address
First.....	Patricia Bradley (D).....	Weirton
	Sam Love (D).....	Weirton
Second.....	Roy E. Givens (D).....	Wellsburg
	Bernard V. Kelly (D).....	Follansbee
Third.....	Andy Katz (D).....	Wheeling
	David B. McKinley (R).....	Wheeling
	Paul J. Otte (R).....	Wheeling
Fourth.....	Rodney T. Berry (D).....	Moundsville
	A. E. Tribett (D).....	McMechen
Fifth.....	Dave Pethtel (D).....	Hundred
Sixth.....	James E. Willison (R).....	Sistersville
Seventh.....	Otis A. Leggett (R).....	St. Marys
Eighth.....	Stephen C. Bird (D).....	Parkersburg
	Robert W. Burk, Jr. (R).....	Parkersburg
	A. V. Criss, III (R).....	Vienna
	J. Frank Deem (R).....	Vienna
	George E. Farley (D).....	Parkersburg
Ninth.....	Marjorie H. Burke (D).....	Sand Fork
	Randy Schoonover (D).....	Clay
Tenth.....	Bob Ashley (R).....	Spencer
Eleventh.....	Virginia Jolliffe Starcher (D).....	Ripley
Twelfth.....	Charley Damron (D).....	Leon
	Lydia D. Long (D).....	Pt. Pleasant
	Deborah F. Phillips (D).....	Scott Depot
	Patricia Holmes White (D).....	Poca
Thirteenth.....	Robert C. Chambers (D).....	Huntington
	Phyllis Given (D).....	Huntington
	Rick Houvouras (D).....	Huntington
	James Hanly Morgan (D).....	Huntington
	Evelyn E. Richards (R).....	Huntington
	Stephen T. Williams (D).....	Huntington
Fourteenth.....	Kenneth Adkins (D).....	Huntington
	Walter Rollins (D).....	Kenova
Fifteenth.....	Jim Reid (D).....	Williamson
	Mike Whitt (D).....	Meador
Sixteenth.....	W. E. Anderson (D).....	Logan
	Sammy D. Dalton (D).....	Harts
	Joe C. Ferrell (D).....	Logan
	*David E. Whitman (D).....	Logan
Seventeenth.....	Delores W. Cook (D).....	Ridgeview
Eighteenth.....	Ernest C. Moore (D).....	Thorpe
	Rick Murensky (D).....	Welch
Nineteenth.....	Richard Browning (D).....	Oceana
	W. Richard Staton (D).....	Mullens

\* Appointed to fill the vacancy created by the resignation of Robert L. McCormick.



# HOUSE OF DELEGATES

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Twentieth.....	Terry W. Basham (D).....	Rock
	**Tom Farmer (D).....	Princeton
	Richard D. Flanigan (D).....	Princeton
	Richard N. Kephart (D).....	Princeton
Twenty-first.....	Mary Pearl Compton (D).....	Union
Twenty-second.....	Robert S. Kiss (D).....	Prosperity
	Jack J. Roop (D).....	Beckley
	Arnold W. Ryan (D).....	Hinton
	Tom Susman (D).....	Sophia
	William R. Wooton (D).....	Beckley
Twenty-third.....	Ramona Gail Cerra (D).....	Charleston
	David Grubb (D).....	Charleston
	Barbara Burruss Hatfield (D).....	South Charleston
	James F. Humphreys (D).....	Charleston
	Danny Jones (R).....	Charleston
	Robert J. Louderback (D).....	Charleston
	Margaret Miller (R).....	South Charleston
	Phyllis J. Rutledge (D).....	Charleston
	Lyle Sattes (D).....	Charleston
	Rudy Seacrist (D).....	Charleston
	Henry Shores (R).....	Charleston
	Sharon Spencer (D).....	Charleston
Twenty-fourth.....	Paul M. Blake, Jr. (D).....	Fayetteville
	L. Dale Clonch (D).....	Fayetteville
	John W. Hatcher, Jr. (D).....	Fayetteville
Twenty-fifth.....	James J. Rowe (D).....	Lewisburg
	Bill Wallace (R).....	Clintonville
Twenty-sixth.....	C. Farrell Johnson (D).....	Summersville
	Eugene T. Wilson (D).....	Cowen
Twenty-seventh.....	Walt Helmick (D).....	Marlinton
	Joe Martin (D).....	Elkins
Twenty-eighth.....	Dale Riggs (R).....	Buckhannon
	Donald L. Stemple (R).....	Philippi
Twenty-ninth.....	Robert J. Conley (R).....	Weston
Thirtieth.....	Percy C. Ashcraft, II (D).....	Clarksburg
	Joseph M. Minard (D).....	Clarksburg
	Michael L. Queen (D).....	Clarksburg
	Barbara A. Warner (D).....	Bridgeport
Thirty-first.....	Nick Fantasia (D).....	Kingmont
	James L. Pitrolo, Jr. (D).....	Fairmont
	Roman W. Prezioso, Jr. (D).....	Fairmont
	Cody A. Starcher (D).....	Fairmont
Thirty-second.....	Michael A. Buchanan (D).....	Morgantown
	Stephen L. Cook (D).....	Morgantown
	Florence L. Merow (D).....	Morgantown
	Twila S. Metheny (D).....	Morgantown
Thirty-third.....	David E. Miller (D).....	Kingwood
	Fred C. Peddicord (D).....	Kingwood
Thirty-fourth.....	Marc L. Harman (R).....	Petersburg
	Robert A. Schadler (R).....	Keyser
Thirty-fifth.....	Harold K. Michael (D).....	Old Fields
Thirty-sixth.....	Jerry L. Mezzatesta (D).....	Romney
Thirty-seventh.....	Patrick H. Murphy (D).....	Martinsburg
Thirty-eighth.....	Larry V. Faircloth (R).....	Inwood
Thirty-ninth.....	John Overington (R).....	Martinsburg
Fortieth.....	Dale Manuel (D).....	Charles Town

\*\* Appointed to fill the vacancy created by the resignation of Howard L. Wellman.

(D) Democrats.....	80
(R) Republicans.....	20
Total.....	100

# MEMBERS OF THE SENATE

REGULAR SESSION, 1989

## OFFICERS

*President*—Larry A. Tucker, Summersville  
*President Pro Tem*—Tony Whitlow, Kellysville  
*Clerk*—Todd C. Willis, Logan  
*Sergeant at Arms*—Estil Bevins, Williamson  
*Doorkeeper*—Porter Cotton, Cabin Creek

District	Name	Address
First.....	Thais Blatnik (D).....	Wheeling
	*John G. Chernenko (D).....	Wellsburg
Second.....	*Thomas E. Loehr (D).....	New Martinsville
	Larry Wiedebusch (D).....	Glen Dale
Third.....	Donna J. Boley (R).....	St. Marys
	*Keith Burdette (D).....	Parkersburg
Fourth.....	*Oshel B. Craig (D).....	Hurricane
	Robert L. Dittmar (D).....	Ravenswood
Fifth.....	Homer Heck (D).....	Huntington
	*Ned Jones (D).....	Huntington
Sixth.....	*H. Truman Chafin (D).....	Williamson
	A. Keith Wagner (D).....	Iaeger
Seventh.....	*Lloyd G. Jackson II (D).....	Hamlin
	Earl Ray Tomblin (D).....	Chapmanville
Eighth.....	*John Boettner, Jr. (D).....	Charleston
	Mark Anthony Manchin (D).....	Charleston
Ninth.....	*Tracy W. Hylton (D).....	Beckley
	Juliet Walker-Rundle (D).....	Pineville
Tenth.....	*Frederick L. Parker (D).....	Greenville
	Tony E. Whitlow (D).....	Kellysville
Eleventh.....	*J. D. Brackenrich (D).....	Lewisburg
	Robert K. Holliday (D).....	Fayetteville
Twelfth.....	Jae Spears (D).....	Elkins
	*Larry A. Tucker (D).....	Summersville
Thirteenth.....	Bill Sharpe (D).....	Weston
	*M. Jay Wolfe (R).....	Clarksburg
Fourteenth.....	Joe Manchin, III (D).....	Fairmont
	*George Warner (R).....	Morgantown
Fifteenth.....	†Charles B. Felton, Jr. (D).....	Rowlesburg
	*C. N. Harman (R).....	Grafton
Sixteenth.....	Thomas J. Hawse, III (D).....	Moorefield
	*Sondra Moore Lucht (D).....	Martinsburg
Seventeenth.....	*Darrell E. Holmes (D).....	Charleston
	Charlotte Jean Pritt (D).....	Charleston

† Appointed May 21, 1987, to fill the vacancy created by the resignation of Gerald W. Ash.

\* Elected in 1986. All others elected in 1988.

(D) Democrats.....	30
(R) Republicans.....	4
<b>Total.....</b>	<b>34</b>

# COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 1989

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## STANDING

### Agriculture and Natural Resources

Buchanan (*Chairman of Agriculture*), Peddicord (*Vice Chairman of Agriculture*), Love (*Chairman of Natural Resources*), Whitt (*Vice Chairman of Natural Resources*), Ashcraft, Burke, Clonch, Compton, Hatfield, Martin, McCormick, Michael, Murphy, Pethtel, Pitrolo, Schoonover, Staton, Tribett, Warner, Wilson, Leggett, Overington, Riggs, Stemple and Willison.

### Banking and Insurance

Phillips (*Chairman of Banking*), Minard (*Vice Chairman of Banking*), Bradley (*Chairman of Insurance*), Berry (*Vice Chairman of Insurance*), Adkins, Cerra, Dalton, Fantasia, Flanigan, Grubb, Houvouras, Katz, Kephart, Metheny, Michael, Queen, Rutledge, Susman, White, Wooton, Ashley, Criss, McKinley, Riggs and Shores.

### Constitutional Revision

Given (*Chairman*), Wooton (*Vice Chairman*), Basham, Blake, Browning, D. Cook, Grubb, Humphreys, Kelly, Kiss, Long, Louderback, Manuel, Martin, Murensky, Phillips, Prezioso, Rowe, Sattes, V. Starcher, Faircloth, Overington, Richards, Stemple and Wallace.

### Education

Sattes (*Chairman*), Ashcraft (*Vice Chairman*), Basham, Bird, Blake, Cerra, Compton, D. Cook, Dalton, Fantasia, Long, Merow, Mezzatesta, D. Miller, Pethtel, Queen, Spencer, Susman, Wellman, Williams, Leggett, Otte, Overington, Richards and Willison.

### Finance

Farley (*Chairman*), Murphy (*Vice Chairman*), Adkins, Anderson, Browning, Burke, S. Cook, Hatfield, Helmick, Houvouras, Kiss, Minard, Phillips, Prezioso, Rutledge, Seacrist, V. Starcher, White, Whitt, Wooton, Burk, Conley, Faircloth, McKinley and Stemple.

### Government Organization

Givens (*Chairman*), Flanigan (*Vice Chairman*), Clonch, Johnson, Kelly, Kephart, Louderback, Love, McCormick, Metheney, Mezzatesta, Michael, Morgan, Peddicord, Rollins, Ryan, Schoonover, C. Starcher, Tribett, Wooton, Criss, Riggs, Schadler, Shores and Wallace.

### Health and Human Resources

Hatfield (*Chairman*), White (*Vice Chairman*), Berry, S. Cook, Browning, Fantasia, Flanigan, Katz, Louderback, Merow, Mezzatesta, D. Miller, Minard, Moore, Roop, Spencer, C. Starcher, Susman, Warner, Wilson, Ashley, Conley, Deem, Otte and Richards.

### Industry and Labor

Moore (*Chairman*), Spencer (*Vice Chairman*), Adkins, Anderson, Bird, Clonch, Compton, S. Cook, Ferrell, Given, Long, McCormick, Metheney, D. Miller, Pethtel, Ryan, Schoonover, Wellman, Whitt, Williams, Deem, McKinley, P. Miller, Overington and Schadler.

### Judiciary

Hatcher (*Chairman*), Humphreys (*Vice Chairman*), Berry, Bradley, Buchanan, Damron, Ferrell, Given, Grubb, Katz, Manuel, Martin, Moore, Pitrolo, Reid, Roop, Rowe, Staton, Warner, Wilson, Ashley, Deem, Harman, Jones and P. Miller.

### Political Subdivisions

Roop (*Chairman*), Mezzatesta (*Vice Chairman*), Bradley, Damron, Helmick, Houvouras, Humphreys, Johnson, Kelly, Kiss, Manuel, Merow, Morgan, Murphy, Reid, Ryan, Seacrist, V. Starcher, Staton, Tribett, Harman, Jones, P. Miller, Shores and Willison.

**Roads and Transportation**

Anderson (*Chairman*), Pitrolo (*Vice Chairman*), Ashcraft, Basham, Blake, Buchanan, Burke, Cerra, D. Cook, Dalton, Ferrell, Johnson, Love, Morgan, Peddicord, Reid, Seacrist, C. Starcher, Wellman, Williams, Conley, Criss, Leggett, Schadler and Wallace.

**Rules**

Chambers (*Chairman*), Ashcraft, Burke, Farley, Givens, Hatcher, Murensky, Sattes, Seacrist, Wooton, Burk and Otte.

**SPECIAL COMMITTEE****Corrections**

Pitrolo (*Chairman*), Berry, Helmick, Martin, Minard, Murphy and Jones.

**JOINT COMMITTEES****Enrolled Bills**

Kelly (*Chairman*), Ryan (*Vice Chairman*), Sattes, Ashley and Jones.

**Government and Finance**

Chambers (*CoChairman*), Farley, Hatcher, Murensky, Sattes, Burk and Harman.

**Joint Rules**

Chambers (*CoChairman*), Murensky and Burk.

**Legislative Rule-Making Review**

Humphreys (*Chairman*), Murphy, Roop, V. Starcher and Faircloth.

## COMMITTEES OF THE SENATE

Regular Session, 1989

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### STANDING

#### Agriculture

Parker (*Chairman*), Dittmar (*Vice Chairman*), Hawse, Holmes, Lucht, Rundle, Spears, Whitlow, Wiedebusch and Wolfe.

#### Banking and Insurance

J. Manchin (*Chairman*), Heck (*Vice Chairman*), Boettner, Craigo, Dittmar, Hawse, Jones, Loehr, Pritt, Rundle, Sharpe, Tomblin and Wolfe.

#### Confirmations

Whitlow (*Chairman*), Tomblin (*Vice Chairman*), Boettner, Burdette, Chafin, Jackson, Lucht, Parker and Harman.

#### Education

Lucht (*Chairman*), M. Manchin (*Vice Chairman*), Blatnik, Boettner, Brackenrich, Burdette, Felton, Hawse, Holliday, Jones, Parker, Wagner and Warner.

#### Energy, Industry and Mining

Sharpe (*Chairman*), Holmes (*Vice Chairman*), Brackenrich, Burdette, Chernenko, Felton, Hylton, Jackson, Loehr, J. Manchin, M. Manchin, Wagner and Harman.

#### Finance

Tomblin (*Chairman*), Sharpe (*Vice Chairman*), Boettner, Brackenrich, Burdette, Chernenko, Craigo, Hawse, Holmes, Jones, Loehr, Lucht, J. Manchin, M. Manchin, Parker, Spears, Wagner, Harman and Warner.

#### Government Organization

Spears (*Chairman*), Wiedebusch (*Vice Chairman*), Bracken-

rich, Burdette, Chernenko, Craigo, Felton, Jackson, Jones, Loehr, Lucht, J. Manchin, Tomblin and Boley.

### Health and Human Resources

Holliday (*Chairman*), Pritt (*Vice Chairman*), Blatnik, Chernenko, Craigo, Hawse, J. Manchin, Sharpe, Spears, Boley and Harman.

### Interstate Cooperation

Chafin (*Chairman*), Hylton (*Vice Chairman*), Dittmar, Heck, Holliday, Holmes, M. Manchin, Pritt and Warner.

### Judiciary

Jackson (*Chairman*), Chafin (*Vice Chairman*), Blatnik, Dittmar, Felton, Heck, Holliday, Hylton, Pritt, Rundle, Whitlow, Wiedebusch, Boley and Wolfe.

### Labor

Holmes (*Chairman*), Boettner (*Vice Chairman*), Blatnik, Chafin, Chernenko, Holliday, Hylton, Wagner, Wiedebusch and Boley.

### Military

Felton (*Chairman*), Rundle (*Vice Chairman*), Blatnik, Chafin, Chernenko, Dittmar, Heck, Spears and Boley.

### Natural Resources

Brackenrich (*Chairman*), Hawse (*Vice Chairman*), Boettner, Chafin, Craigo, Holmes, Hylton, Loehr, Parker, Spears, Whitlow, Wiedebusch, Harman and Warner.

### Rules

Tucker (*Chairman*), Burdette, Craigo, Jackson, Loehr, Lucht, Spears, Tomblin, Whitlow and Harman.

### Small Business

Jones (*Chairman*), Craigo (*Vice Chairman*), Blatnik, Holmes, Hylton, J. Manchin, M. Manchin, Pritt, Rundle, Tomblin, Warner and Wolfe.

**Transportation**

Craigo (*Chairman*), Wagner (*Vice Chairman*), Brackenrich, Heck, Parker, Sharpe, Tomblin, Wiedebusch and Wolfe.

**Ways and Means**

Loehr (*Chairman*), J. Manchin (*Vice Chairman*), Brackenrich, Burdette, Craigo, Jackson, Lucht, Sharpe, Tomblin and Harman.

**SELECT COMMITTEES****Corrections**

Holliday (*Chairman*), Blatnik, Craigo, Spears, Wiedebusch and Harman.

**Teachers Retirement**

Parker (*Chairman*), Burdette, Felton, Lucht and Warner.

**Workers' Compensation**

Sharpe (*Chairman*), Holmes and J. Manchin.

**JOINT COMMITTEES****Enrolled Bills**

Parker (*Chairman*), Blatnik (*Vice Chairman*), Chernenko, Dittmar, Heck and Wolfe.

**Government and Finance**

Tucker (*CoChairman*), Burdette, Craigo, Jackson, Sharpe, Tomblin and Harman.

**Legislative Rule-Making Review**

Loehr (*Chairman*), Holmes, Jackson, Tomblin, Harman and Warner.

**Rules**

Tucker (*CoChairman*), Burdette and Harman.



# LEGISLATURE OF WEST VIRGINIA

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# ACTS

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## FIRST REGULAR SESSION, 1989

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### CHAPTER 1

(Com. Sub. for S. B. 382—By Senator Chafin)

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[Passed March 30, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections six and seven, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to wrongful death damage award distribution and the removal of the requirement that the decedent's personal representative obtain consent to compromise such damages from persons entitled to a part of any award.

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

That sections six and seven, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

#### ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

§55-7-7. Compromise of claim for death by wrongful act.

**§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.**

1 (a) Every such action shall be brought by and in the  
2 name of the personal representative of such deceased  
3 person who has been duly appointed in this state, or in  
4 any other state, territory or district of the United States,  
5 or in any foreign country, and the amount recovered in  
6 every such action shall be recovered by said personal  
7 representative and be distributed in accordance here-  
8 with. If the personal representative was duly appointed  
9 in another state, territory or district of the United  
10 States, or in any foreign country, such personal repre-  
11 sentative shall, at the time of filing of the complaint,  
12 post bond with a corporate surety thereon authorized to  
13 do business in this state, in the sum of one hundred  
14 dollars, conditioned that such personal representative  
15 shall pay all costs adjudged against him and that he  
16 shall comply with the provisions of this section. The  
17 circuit court may increase or decrease the amount of  
18 said bond, for good cause.

19 (b) In every such action for wrongful death the jury,  
20 or in a case tried without a jury, the court, may award  
21 such damages as to it may seem fair and just, and, after  
22 making provision for those expenditures, if any,  
23 specified in subdivision (2), subsection (c) of this section,  
24 shall direct that the remaining net damages be distrib-  
25 uted in accordance with the decedent's will or, if there  
26 be no will, in accordance with the laws of descent and  
27 distribution as set forth in chapter forty-two of this code.

28 (c) (1) The verdict of the jury shall include, but may  
29 not be limited to, damages for the following:  
30 (A) Sorrow, mental anguish, and solace which may  
31 include society, companionship, comfort, guidance,  
32 kindly offices and advice of the decedent;  
33 (B) compensation for reasonably expected loss of (i)  
34 income of the decedent, and (ii) services, protection, care  
35 and assistance provided by the decedent; (C) expenses  
36 for the care, treatment and hospitalization of the

37 decedent incident to the injury resulting in death; and  
38 (D) reasonable funeral expenses.

39 (2) In its verdict the jury shall set forth separately the  
40 amount of damages, if any, awarded by it for reasonable  
41 funeral, hospital, medical and said other expenses  
42 incurred as a result of the wrongful act, neglect or  
43 default of the defendant or defendants which resulted  
44 in death, and any such amount recovered for such  
45 expenses shall be so expended by the personal  
46 representative.

47 (d) Every such action shall be commenced within two  
48 years after the death of such deceased person, subject  
49 to the provisions of section eighteen, article two, chapter  
50 fifty-five. The provisions of this section shall not apply  
51 to actions brought for the death of any person occurring  
52 prior to the first day of July, one thousand nine hundred  
53 eighty-two.

**§55-7-7. Compromise of claim for death by wrongful act.**

1 The personal representative of the deceased may  
2 compromise any claim to damages arising under section  
3 five of this article before or after action brought. What  
4 is received by the personal representative under the  
5 compromise shall be treated as if recovered by him in  
6 an action under the section last mentioned. When the  
7 judge acts in vacation, he shall return all the papers in  
8 the case, and orders made therein, to the clerk's office  
9 of such court. The clerk shall file the papers in his office  
10 as soon as received, and forthwith enter the order in the  
11 order book on the law side of the court. Such orders, and  
12 all the proceedings in vacation, shall have the same force  
13 and effect as if made or had in term. Upon approval of  
14 the compromise, the court shall apportion and distribute  
15 such damages, or the compromise agreed upon, after  
16 making provisions for those expenditures, if any,  
17 specified in subdivision (2), subsection (c), section six of  
18 this article, in the same manner as in the cases tried  
19 without a jury.

## CHAPTER 2

(S. B. 444—By Senator Chafin)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that a pending action based upon a personal injury does not abate or change in substance when the injured person dies as a result of such injury; and providing that another action may also be prosecuted for wrongful death.

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

That section eight, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 7. ACTIONS FOR INJURIES.

#### §55-7-8. Personal injury action where injuries result in death.

1 Where an action is brought by a person injured for  
 2 damage caused by the wrongful act, neglect or default  
 3 of any person or corporation, and the person injured dies  
 4 as a result thereof, the action shall not abate by reason  
 5 of his or her death but, his or her death being suggested,  
 6 it may be revived in the name of his or her personal  
 7 representative, and the complaint shall be amended so  
 8 as to conform to an action under sections five and six  
 9 of this article, and the case proceeded with as if the  
 10 action had been brought under said sections.  
 11 Additionally a separate and distinct cause of action may  
 12 be brought, and if brought, shall be joined in the same  
 13 proceeding for damages incurred between the time of  
 14 injury and death where not otherwise provided for in  
 15 said sections five and six. In either case there shall be  
 16 but one recovery for each element of damages: *Provided,*  
 17 That nothing in this section shall be construed in  
 18 derogation of the provisions of section twelve of this  
 19 article.

## CHAPTER 3

(Com. Sub. for H. B. 2030—By Delegates Love and R. Burk)

[Passed March 21, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen, relating to enacting the uniform enforcement of foreign judgments act; providing definitions; providing for procedures for filing of foreign judgment; providing for notice, execution and stay of proceedings; providing for determination of fees; and allowing alternative action.

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

That chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fourteen, to read as follows:

### ARTICLE 14. UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT.

- §55-14-1. Definitions.
- §55-14-2. Filing and status of foreign judgments.
- §55-14-3. Notice of filing.
- §55-14-4. Stay.
- §55-14-5. Fees.
- §55-14-6. Optional procedure.
- §55-14-7. Uniformity of interpretation.
- §55-14-8. Short title.

#### §55-14-1. Definitions.

- 1 In this article "foreign judgment" means any judg-
- 2 ment, decree or order of a court of the United States
- 3 or of any other court which is entitled to full faith and
- 4 credit in this state.

#### §55-14-2. Filing and status of foreign judgments.

- 1 A copy of any foreign judgment authenticated in
- 2 accordance with an act of Congress or the statutes of this
- 3 state may be filed in the office of the clerk of any circuit
- 4 court of this state. The clerk shall treat the foreign

5 judgment in the same manner as a judgment of any  
6 circuit court of this state. A judgment so filed has the  
7 same effect and is subject to the same procedures,  
8 defenses and proceedings for reopening, vacating or  
9 staying as a judgment of a circuit court of this state and  
10 may be enforced or satisfied in like manner.

**§55-14-3. Notice of filing.**

1 (a) At the time of the filing of the foreign judgment,  
2 the judgment creditor or his lawyer shall make and file  
3 with the clerk of the circuit court an affidavit setting  
4 forth the name and last known post-office address of the  
5 judgment debtor and the judgment creditor.

6 (b) Promptly upon the filing of the foreign judgment  
7 and the affidavit, the clerk shall mail notice of the filing  
8 of the foreign judgment to the judgment debtor at the  
9 address given and shall make a note of the mailing in  
10 the docket. The notice shall include the name and post-  
11 office address of the judgment creditor and the judg-  
12 ment creditor's lawyer, if any, in this state. In addition,  
13 the judgment creditor may mail a notice of the filing  
14 of the judgment to the judgment debtor and may file  
15 proof of mailing with the clerk. Lack of mailing notice  
16 of filing by the clerk shall not affect the enforcement  
17 proceedings if proof of mailing by the judgment creditor  
18 has been filed.

19 (c) No execution or other process for enforcement of  
20 a foreign judgment filed hereunder may issue until  
21 thirty days after the date the judgment is filed.

**§55-14-4. Stay.**

1 (a) If the judgment debtor shows the circuit court that  
2 an appeal from the foreign judgment is pending or will  
3 be taken, or that a stay of execution has been granted,  
4 the court shall stay enforcement of the foreign judgment  
5 until the appeal is concluded, the time for appeal expires  
6 or the stay of execution expires or is vacated, upon proof  
7 that the judgment debtor has furnished the security for  
8 the satisfaction of the judgment required by the state  
9 in which it was rendered.

10 (b) If the judgment debtor shows the circuit court any

11 ground upon which enforcement of a judgment of any  
12 court of this state would be stayed, the court shall stay  
13 enforcement of the foreign judgment for an appropriate  
14 period, upon requiring the same security for satisfaction  
15 of the judgment which is required in this state.

**§55-14-5. Fees.**

1 Fees for filing, docketing, transcription or other  
2 enforcement proceedings shall be as provided for in  
3 section eleven, article one, chapter fifty-nine of this code.

**§55-14-6. Optional procedure.**

1 The right of a judgment creditor to bring an action  
2 to enforce his judgment instead of proceeding under this  
3 article remains unimpaired.

**§55-14-7. Uniformity of interpretation.**

1 This article shall be so interpreted and construed as  
2 to effectuate its general purpose to make uniform the  
3 law of those states which enact it.

**§55-14-8. Short title.**

1 This article may be cited as the "Uniform Enforce-  
2 ment of Foreign Judgments Act."

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## CHAPTER 4

(Com. Sub. for H. B. 2710—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
by Request of the Executive)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article one, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three of said chapter by adding thereto two new sections, designated sections one-a and one-b, relating to requiring rules related to the conduct of students at public schools or public educational institutions to follow the administrative procedures act; permitting agencies to file amendments to existing rules

and emergency amendments on a section by section basis and to allow the tax department to provide copies of tax rules, charge a fee and deposit such fees into the tax commissioner's office account.

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

That article one, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article three of said chapter be amended by adding thereto two new sections, designated sections one-a and one-b, all to read as follows:

### CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

#### Article

1. Definitions and Application of Chapter.
3. Rule Making.

#### ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

##### §29A-1-3. Application of chapter; limitations.

1 (a) The provisions of this chapter do not apply in any  
 2 respect whatever to executive orders of the governor,  
 3 which orders to the extent otherwise lawful shall be  
 4 effective according to their terms: *Provided*, That the  
 5 executive orders shall be admitted to record in the state  
 6 register when and to the extent the governor deems  
 7 suitable and shall be included therein by the secretary  
 8 of state when tendered by the governor.

9 (b) Except as to requirements for filing in the state  
 10 register, and with the Legislature or its rule-making  
 11 review committee, provided in this chapter or other law,  
 12 the provisions of this chapter do not apply in any respect  
 13 whatever to the West Virginia board of probation and  
 14 parole, the public service commission, the board of  
 15 public works sitting as such and the West Virginia  
 16 board of regents: *Provided*, That rules of such agencies  
 17 shall be filed in the state register in the form prescribed  
 18 by this chapter and be effective no sooner than sixty  
 19 consecutive days after being so filed: *Provided, however*,  
 20 That the rules promulgated by the state colleges and  
 21 universities shall only be filed with the West Virginia  
 22 board of regents: *Provided further*, That such agencies



23 may promulgate emergency rules in conformity with  
24 section fifteen, article three of this chapter.

25 (c) The provisions of this chapter do not apply to rules  
26 relating to or contested cases involving the conduct of  
27 inmates or other persons admitted to public institutions,  
28 the open seasons and the bag, creel, size, age, weight and  
29 sex limits with respect to the wildlife in this state, the  
30 conduct of persons in military service or the receipt of  
31 public assistance. Such rules shall be filed in the state  
32 register in the form prescribed by this chapter and be  
33 effective upon filing.

34 (d) Nothing herein shall be construed to affect, limit  
35 or expand any express and specific exemption from this  
36 chapter contained in any other statute relating to a  
37 specific agency, but such exemptions shall be construed  
38 and applied in accordance with the provisions of this  
39 chapter to effectuate any limitations on such exemptions  
40 contained in any such other statute.

#### ARTICLE 3. RULE MAKING.

§29A-3-1a. Filing proposed amendments to an existing rule.

§29A-3-1b. Rules of the tax department.

#### §29A-3-1a. Filing proposed amendments to an existing rule.

1 (a) Rules promulgated to amend existing rules may be  
2 filed on a section by section basis without having to  
3 refile in the state register all of the other sections of an  
4 existing series numbered rule: *Provided*, That such  
5 filing shall list, by proper citation, those sections, not  
6 amended, which are directly affected by those sections  
7 amended: *Provided, however*, That amendments so filed  
8 shall be accompanied by a note of explanation as to the  
9 effect of such amendment and its relation to the existing  
10 rules.

11 (b) Rules promulgated to amend existing rules and  
12 filed as an emergency rule may be filed on a section by  
13 section basis without having to refile in the state  
14 register all of the other sections of an existing series  
15 numbered rule: *Provided*, That such filing shall list, by

16 proper citation, those sections not amended, which are  
17 directly affected by those sections amended.

**§29A-3-1b. Rules of the tax department.**

1 Notwithstanding the provisions of section eight,  
2 article two of this chapter, the tax commissioner may  
3 reproduce the same in his state tax bulletin and may,  
4 upon request, distribute copies of the proposed or  
5 emergency rule after such proposed or emergency rule  
6 has been filed in the state register and may charge a  
7 reasonable fee in an amount set to recover his cost of  
8 duplicating and mailing the same. The moneys so  
9 received shall be deposited in the treasury to the credit  
10 of the tax commissioner's account for printing, office  
11 supplies or postage.

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## CHAPTER 5

(H. B. 2024—By Delegate Love)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three-a, article one,  
chapter nineteen of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, relating  
to rural resource division continued.

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

That section three-a, article one, chapter nineteen of the code  
of West Virginia, one thousand nine hundred thirty-one, as  
amended, be amended and reenacted to read as follows:

**ARTICLE 1. DEPARTMENT OF AGRICULTURE.**

**§19-1-3a. Rural resource division continued and  
reestablished.**

1 After having conducted a performance and fiscal  
2 audit through its joint committee on government  
3 operations, pursuant to section nine, article ten, chapter  
4 four of this code, the Legislature hereby finds and  
5 declares that the rural resource division of the depart-  
6 ment of agriculture should be continued and reestab-

lished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the rural resource division of the department of agriculture shall continue to exist until the first day of July, one thousand nine hundred ninety-one.

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## CHAPTER 6

(Com. Sub. for S. B. 68—By Senators Parker, Chernenko,  
Brackenrich and Hawse)

[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to ginseng; and providing criminal penalties for the illegal possession of uncertified green ginseng out of season.

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

That article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-a, to read as follows:

### ARTICLE 1A. DIVISION OF FORESTRY.

#### §19-1A-3a. Providing criminal penalties for the illegal possession of uncertified ginseng.

1 (a) The division of forestry of the department of  
2 commerce, labor and environmental resources shall  
3 have jurisdiction to regulate the digging, possession and  
4 sale of native, wild or cultivated ginseng: *Provided*, That  
5 the digging season for wild, native or cultivated ginseng  
6 shall begin on the fifteenth day of August and end on  
7 the thirtieth day of November of each year unless  
8 otherwise authorized by the director. Ginseng dealers  
9 shall: (1) Obtain a ginseng dealer's permit from the  
10 director; (2) keep on forms provided by the director  
11 accurate records for all ginseng acquired showing the  
12 year harvested, the date acquired by the dealer, county

13 of origin, weight and whether wild or cultivated; and (3)  
14 have all records and all acquired ginseng inspected by  
15 the director at official ginseng inspection stations for the  
16 purpose of certifying the dealer's records and issuing a  
17 certificate documenting the inspection and the weight of  
18 the ginseng. All ginseng dug in West Virginia must be  
19 certified by the director before being transported or  
20 shipped out of the state. No person shall have in his  
21 possession uncertified green ginseng from the first day  
22 of April through the fourteenth day of August.

23 (b) A person convicted of possession of uncertified  
24 green ginseng from the first day of April through the  
25 fourteenth day of August shall be punished as follows:

26 (A) *First offense conviction.*—Upon a first offense  
27 conviction:

28 (i) When the value of the ginseng is two hundred  
29 dollars or less, the defendant is guilty of a misdemeanor  
30 and shall be fined not more than four hundred dollars.

31 (ii) When the value of the ginseng exceeds two  
32 hundred dollars, the defendant is guilty of a misdemea-  
33 nor and shall be fined not less than four hundred dollars,  
34 nor more than six hundred dollars, and such fine may  
35 not be suspended; or the defendant shall be imprisoned  
36 in the county jail not more than thirty days; or both  
37 fined and imprisoned.

38 (B) *Second offense conviction.*—Upon a second offense  
39 conviction:

40 (i) When the value of the ginseng is two hundred  
41 dollars or less, the defendant is guilty of a misdemeanor  
42 and shall be fined not less than two hundred dollars nor  
43 more than six hundred dollars, and such fine may not  
44 be suspended; or the defendant shall be imprisoned in  
45 the county jail not more than sixty days; or both fined  
46 and imprisoned.

47 (ii) When the value of the ginseng exceeds two  
48 hundred dollars, the defendant shall be guilty of a  
49 misdemeanor and fined not less than six hundred  
50 dollars, nor more than one thousand dollars, and shall  
51 be imprisoned in the county jail for not less than sixty

52 days nor more than six months. At least thirty days shall  
53 be spent in confinement and not subject to probation.

54 (C) *Third offense conviction.*—Upon a third or subse-  
55 quent conviction, regardless of the value of the ginseng,  
56 the defendant shall be guilty of a felony and shall be  
57 fined not less than six hundred dollars nor more than  
58 six thousand dollars, and shall be imprisoned in the  
59 penitentiary not less than one year nor more than two  
60 years, or, be confined in the county jail not more than  
61 one year.

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## CHAPTER 7

(S. B. 567—By Senator Harman)

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[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article sixteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding serrated tussock weed to the definition of noxious weed seeds.

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

That section one, article sixteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 16. AGRICULTURAL AND FOREST SEEDS.

#### §19-16-1. Definitions.

1 When used in this article:

2 (a) "Commissioner" means the commissioner of agri-  
3 culture of the state of West Virginia or his duly  
4 authorized representatives;

5 (b) The term "person" shall include any individual,  
6 partnership, corporation, company, society or  
7 association;

8 (c) The term "agricultural seeds" shall include the  
9 seeds of grass, forage, cereal, tobacco and fiber crops

10 and any other kinds of seeds commonly recognized  
11 within this state as agricultural or field seeds and  
12 mixtures of such seeds. Forest seeds shall include all  
13 deciduous and coniferous trees and shrubs and  
14 ornamentals;

15 (d) The term "vegetable seeds" includes the seeds of  
16 those crops which are grown in gardens or on truck  
17 farms and are generally known and sold under the name  
18 of vegetable seeds in this state;

19 (e) The term "seed potato" shall refer to the Irish  
20 potato (*Solanum tuberosum*);

21 (f) The term "weed seeds" shall include the seeds of  
22 all plants generally recognized as weeds within this  
23 state;

24 (g) Noxious weed seeds shall be divided into two  
25 classes, "prohibited weed seeds" and "noxious weed  
26 seeds," as defined in subdivisions (1) and (2) of this  
27 subsection: *Provided*, That the commissioner of agricul-  
28 ture may, through promulgation of regulations, add to  
29 or subtract from the list of seeds included under either  
30 definition whenever he finds that such additions or  
31 subtractions are within the respective definitions;

32 (1) "Prohibited weed seeds" are the seeds of perennial  
33 weeds which reproduce by seed, or spread by under-  
34 ground roots or stems, and which when established are  
35 highly destructive and difficult to control in this state  
36 by ordinary cultural practice;

37 "Prohibited weed seeds" in this state are the seeds of  
38 dodder (*Cuscuta* spp.), quack grass (*Agropyron repens*),  
39 Johnson grass (*Sorghum halapense*), Canada thistle  
40 (*Carduus arvensis*), perennial sow thistle (*Sonchus*  
41 *arvensis*), serrated tussock (*Nassella trichotoma*);

42 (2) "Noxious weed seeds" are the seeds of such weeds  
43 as are very objectionable in fields, lawns or gardens of  
44 this state, but can be controlled by good cultural  
45 practice. "Noxious weed seeds" in this state are the seeds  
46 of wild onion (*Allium vineale*), hawk weed (*Hieracum*  
47 spp.), buckhorn (*Plantago lanceolata*), English charlock  
48 or wild mustard (*Brassica arvensis*), corn cockle

49 (Agrostemma gilthago), oxeye daisy (Chrysanthemum  
50 leucanthemum), Indian mustard (Brassica juncea), star  
51 thistle (Centurea solstitialis), wild carrot (Daucus  
52 carota), horse nettle (Solanum carolinas), field pepper  
53 grass (Lepidium compestre), wild morning glory  
54 (Ipomea purpurea), bindweed (Convolvulus arvensis);

55 (h) The term "labeling" includes all labels and other  
56 written, printed or graphic representation, in any form  
57 whatsoever, accompanying and pertaining to any seed  
58 whether in bulk or in containers, and includes invoices;

59 (i) The term "advertisement" means all representa-  
60 tion, other than those on the label, disseminated in any  
61 manner or by any means, relative to seed within the  
62 scope of this article.

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## CHAPTER 8

(H. B. 2026—By Delegate Love)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of state soil conservation committee.

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

That section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

#### §19-21A-4. State soil conservation committee.

1 (a) There is hereby established, to serve as an agency  
2 of the state and to perform the functions conferred upon  
3 it in this article, the state soil conservation committee.  
4 The committee shall consist of seven members. The  
5 following shall serve, ex officio, as members of the  
6 committee: The director of the state cooperative exten-

7 sion service; the director of the state agricultural  
8 experiment station; the director of the department of  
9 natural resources; and the state commissioner of  
10 agriculture, who shall be chairman of the committee.

11 The governor shall appoint as additional members of  
12 the committee three representative citizens. The term of  
13 members thus appointed shall be four years, except that  
14 of the first members so appointed, one shall be ap-  
15 pointed for a term of two years, one for a term of three  
16 years, and one for a term of four years. In the event of  
17 a vacancy, appointment shall be for the unexpired term.

18 The committee may invite the secretary of agriculture  
19 of the United States of America to appoint one person  
20 to serve with the committee as an advisory member.

21 The committee shall keep a record of its official  
22 actions, shall adopt a seal, which seal shall be judicially  
23 noticed, and may perform such acts, hold such public  
24 hearings and promulgate such rules and regulations as  
25 may be necessary for the execution of its functions under  
26 this article.

27 (b) The state soil conservation committee may employ  
28 an administrative officer and such technical experts and  
29 such other agents and employees, permanent and  
30 temporary, as it may require, and shall determine their  
31 qualifications, duties and compensation. The committee  
32 may call upon the attorney general of the state for such  
33 legal services as it may require. It shall have authority  
34 to delegate to its chairman, to one or more of its  
35 members, or to one or more agents or employees, such  
36 powers and duties as it may deem proper. The commit-  
37 tee is empowered to secure necessary and suitable office  
38 accommodations, and the necessary supplies and equip-  
39 ment. Upon request of the committee, for the purpose  
40 of carrying out any of its functions, the supervising  
41 officer of any state agency, or of any state institution of  
42 learning shall, insofar as may be possible, under  
43 available appropriations, and having due regard to the  
44 needs of the agency to which the request is directed,  
45 assign or detail to the committee, members of the staff  
46 or personnel of such agency or institution of learning,



47 and make such special reports, surveys or studies as the  
48 committee may request.

49 (c) A member of the committee shall hold office so  
50 long as he shall retain the office by virtue of which he  
51 shall be serving on the committee. A majority of the  
52 committee shall constitute a quorum, and the concur-  
53 rence of a majority in any matter within their duties  
54 shall be required for its determination. The chairman  
55 and members of the committee shall receive no compen-  
56 sation for their services on the committee, but shall be  
57 entitled to expenses, including traveling expenses,  
58 necessarily incurred in the discharge of their duties on  
59 the committee. The committee shall provide for the  
60 execution of surety bonds for all employees and officers  
61 who shall be entrusted with funds or property; shall  
62 provide for the keeping of a full and accurate public  
63 record of all proceedings and of all resolutions, regula-  
64 tions and orders issued or adopted; and shall provide for  
65 an annual audit of the accounts of receipts and  
66 disbursements.

67 (d) In addition to the duties and powers hereinafter  
68 conferred upon the state soil conservation committee, it  
69 shall have the following duties and powers:

70 (1) To offer such assistance as may be appropriate to  
71 the supervisors of soil conservation districts, organized  
72 as provided hereinafter, in the carrying out of any of  
73 their powers and programs;

74 (2) To keep the supervisors of each of the several  
75 districts, organized under the provisions of this article,  
76 informed of the activities and experience of all other  
77 districts organized hereunder, and to facilitate an  
78 interchange of advice and experience between such  
79 districts and cooperation between them;

80 (3) To coordinate the programs of the several soil  
81 conservation districts organized hereunder so far as this  
82 may be done by advice and consultation;

83 (4) To secure the cooperation and assistance of the  
84 United States and any of its agencies, and of agencies

85 of this state, in the work of such districts;

86 (5) To disseminate information throughout the state  
87 concerning the activities and programs of the soil  
88 conservation districts organized hereunder, and to  
89 encourage the formation of such districts in areas where  
90 their organization is desirable;

91 (6) To accept and receive donations, gifts, contribu-  
92 tions, grants and appropriations in money, services,  
93 materials or otherwise, from the United States or any  
94 of its agencies, from the state of West Virginia, or from  
95 other sources, and to use or expend such money,  
96 services, materials or other contributions in carrying out  
97 the policy and provisions of this article, including the  
98 right to allocate such money, services or materials in  
99 part to the various soil conservation districts created by  
100 this article in order to assist them in carrying on their  
101 operations;

102 (7) To obtain options upon and to acquire by purchase,  
103 exchange, lease, gift, grant, bequest, devise or other-  
104 wise, any property, real or personal, or rights or  
105 interests therein; to maintain, administer, operate and  
106 improve any properties acquired, to receive and retain  
107 income from such property and to expend such income  
108 as required for operation, maintenance, administration  
109 or improvement of such properties or in otherwise  
110 carrying out the purposes and provisions of this article;  
111 and to sell, lease or otherwise dispose of any of its  
112 property or interests therein in furtherance of the  
113 purposes and the provisions of this article. Money  
114 received from the sale of land acquired in the small  
115 watershed program shall be deposited in the special  
116 account of the state soil conservation committee and  
117 expended as herein provided.

118 After having conducted a performance and fiscal  
119 audit through its joint committee on government  
120 operations, pursuant to section nine, article ten, chapter  
121 four of this code, the Legislature hereby finds and  
122 declares that the state soil conservation committee  
123 should be continued and reestablished. Accordingly,  
124 notwithstanding the provisions of section four, article

125 ten, chapter four of this code, the state soil conservation  
 126 committee shall continue to exist until the first day of  
 127 July, one thousand nine hundred ninety-one.

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## CHAPTER 9

(H. B. 2587—By Delegates M. Burke and Minard)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine, ten, thirteen and thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pari-mutuel system of wagering; authorization of licensee to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors; providing for daily license tax; providing pari-mutuel pools tax; procedure for payment of tax; alternate tax; credits; disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races; and establishment of a special revenue account, necessary costs of administration and promotion of the West Virginia Thoroughbred Development Fund being appropriated from said special revenue account, excess after appropriation being remitted to the West Virginia Thoroughbred Development Fund.

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

That sections nine, ten, thirteen and thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

### CHAPTER 19. AGRICULTURE.

#### ARTICLE 23. HORSE AND DOG RACING.

- §19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.
- §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; stake races for dog tracks.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.

PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED;  
COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.

**§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.**

1 (a) The pari-mutuel system of wagering upon the  
2 results of any horse or dog race at any horse or dog race  
3 meeting conducted or held by any licensee is hereby  
4 authorized, if and only if such pari-mutuel wagering is  
5 conducted by such licensee within the confines of such  
6 licensee's horse racetrack or dog racetrack, and the  
7 provisions of section one, article ten, chapter sixty-one  
8 of this code, relating to gaming, shall not apply to the  
9 pari-mutuel system of wagering in manner and form as  
10 provided for in this article at any horse or dog race  
11 meeting within this state where horse or dog racing  
12 shall be permitted for any purse by any licensee. A  
13 licensee shall permit or conduct only the pari-mutuel  
14 system of wagering within the confines of such licensee's  
15 racetrack at which any horse or dog race meeting is  
16 conducted or held.

17 (b) A licensee is hereby expressly authorized to  
18 deduct a commission from the pari-mutuel pools, as  
19 follows:

20 (1) The commission deducted by any licensee from the  
21 pari-mutuel pools on thoroughbred horse racing, except  
22 from thoroughbred horse racing pari-mutuel pools  
23 involving what is known as multiple betting in which  
24 the winning pari-mutuel ticket or tickets are deter-  
25 mined by a combination of two or more winning horses,  
26 shall not exceed seventeen and one-fourth percent of the  
27 total of such pari-mutuel pools for the day. Out of such  
28 commission, as is mentioned in this subdivision, the  
29 licensee (i) shall pay the pari-mutuel pools tax provided  
30 for in subsection (b), section ten of this article, (ii) shall

31 make a deposit into a special fund to be established by  
32 the licensee and to be used for the payment of regular  
33 purses offered for thoroughbred racing by the licensee,  
34 which deposits out of pari-mutuel pools for each day  
35 during the months of January, February, March,  
36 October, November and December shall be seven and  
37 three hundred seventy-five one-thousandths percent of  
38 such pari-mutuel pools, and which, out of pari-mutuel  
39 pools for each day during all other months, shall be six  
40 and eight hundred seventy-five one-thousandths percent  
41 of such pari-mutuel pools, which shall take effect  
42 beginning fiscal year one thousand nine hundred ninety,  
43 (iii) shall, after allowance for the exclusion given by  
44 subsection (b), section ten of this article, make a deposit  
45 into a special fund to be established by the racing  
46 commission and to be used for the payment of breeders,  
47 awards and capital improvements as authorized by  
48 section thirteen-b of this article, which deposits out of  
49 pari-mutuel pools shall from the effective date of this  
50 section and for fiscal year one thousand nine hundred  
51 eighty-five, be four-tenths percent; for fiscal year one  
52 thousand nine hundred eighty-six, be seven-tenths  
53 percent; for fiscal year one thousand nine hundred  
54 eighty-seven, be one percent; for fiscal year one  
55 thousand nine hundred eighty-eight, be one and one-half  
56 percent; and for fiscal year one thousand nine hundred  
57 eighty-nine, and each year thereafter, be two percent of  
58 such pools, and (iv) shall pay one tenth of one percent  
59 of such pari-mutuel pools into the general fund of the  
60 county commission of the county in which the racetrack  
61 is located, except if within a municipality, then to such  
62 municipal general fund. The remainder of the commis-  
63 sion shall be retained by the licensee.

64 The commission deducted by any licensee from the  
65 pari-mutuel pools on thoroughbred horse racing involv-  
66 ing what is known as multiple betting in which the  
67 winning pari-mutuel ticket or tickets are determined by  
68 a combination of two winning horses shall not exceed  
69 nineteen percent and by a combination of three or more  
70 winning horses shall not exceed twenty-five percent of  
71 the total of such pari-mutuel pools for the day. Out of  
72 such commission, as is mentioned in this paragraph, the

73 licensee (i) shall pay the pari-mutuel pools tax provided  
74 for in subsection (b), section ten of this article, (ii) shall  
75 make a deposit into a special fund to be established by  
76 the licensee and to be used for the payment of regular  
77 purses offered for thoroughbred racing by the licensee,  
78 which deposits out of pari-mutuel pools for each day  
79 during the months of January, February, March,  
80 October, November and December for pools involving a  
81 combination of two winning horses shall be eight and  
82 twenty-five one-hundredths percent and out of pari-  
83 mutuel pools for each day during all other months shall  
84 be seven and seventy-five one-hundredths percent of  
85 such pari-mutuel pools; and involving a combination of  
86 three or more winning horses for the months of January,  
87 February, March, October, November and December  
88 the deposits out of such fund shall be eleven and twenty-  
89 five one-hundredths percent of such pari-mutuel pools;  
90 and which, out of pari-mutuel pools for each day during  
91 all other months, shall be ten and seventy-five one-  
92 hundredths percent of such pari-mutuel pools, (iii) shall,  
93 after allowance for the exclusion given by subsection (b),  
94 section ten of this article, make a deposit into a special  
95 fund to be established by the racing commission and to  
96 be used for the payment of breeders' awards and capital  
97 improvements as authorized by section thirteen-b of this  
98 article, which deposits out of pari-mutuel pools shall  
99 from the effective date of this section and for fiscal year  
100 one thousand nine hundred eighty-five, be four-tenths  
101 percent; for fiscal year one thousand nine hundred  
102 eighty-six, be seven-tenths percent; for fiscal year one  
103 thousand nine hundred eighty-seven, be one percent; for  
104 fiscal year one thousand nine hundred eighty-eight, be  
105 one and one-half percent; and for fiscal year one  
106 thousand nine hundred eighty-nine, and each year  
107 thereafter, be two percent of such pools, and (iv) shall  
108 pay one tenth of one percent of such pari-mutuel pools  
109 into the general fund of the county commission of the  
110 county in which the racetrack is located, except if within  
111 a municipality, then to such municipal general fund.  
112 The remainder of the commission shall be retained by  
113 the licensee.

114 The deposits into special fund established by the

115 racing commission to be used for payments of breeders'  
116 awards and other expenses authorized by section  
117 thirteen-b of this article shall be reduced by fifty  
118 percent in the event the average daily pari-mutuel pool  
119 for any calendar year is less than the average daily pari-  
120 mutuel pool for the calendar year ended the thirty-first  
121 day of December, one thousand nine hundred eighty-  
122 three, in amount equal to eleven percent of the average  
123 daily pari-mutuel pool for said calendar year ended the  
124 thirty-first day of December, one thousand nine hundred  
125 eighty-three. Of the amounts so reduced, fifty percent  
126 shall be paid into the special purse fund established in  
127 section nine-b of this article.

128 The commission deducted by the licensee under  
129 subdivision (1), subsection (b) of this section may be  
130 reduced only by mutual agreement between the licensee  
131 and a majority of the trainers and horse owners licensed  
132 by subsection (a), section two of this article or their  
133 designated representative. Such reduction in licensee  
134 commissions may be for a particular race, racing day  
135 or days or for a horse race meeting. Fifty percent of  
136 such reduction shall be retained by the licensee from the  
137 amounts required to be paid into the special fund  
138 established by the licensee under the provisions of  
139 subdivision (1), subsection (b) of this section. The racing  
140 commission shall promulgate such reasonable rules and  
141 regulations as are necessary to implement the foregoing  
142 provisions.

143 (2) The commission deducted by any licensee from the  
144 pari-mutuel pools on harness racing shall not exceed  
145 seventeen and one-half percent of the total of such pari-  
146 mutuel pools for the day. Out of such commission the  
147 licensee shall pay the pari-mutuel pools tax provided for  
148 in subsection (c), section ten of this article, and shall pay  
149 one tenth of one percent into the general fund of the  
150 county commission of the county in which the racetrack  
151 is located, except if within a municipality, then to such  
152 municipal general fund. The remainder of the commis-  
153 sion shall be retained by the licensee.

154 (3) The commission deducted by any licensee from the  
155 pari-mutuel pools on dog racing, except from dog racing

156 pari-mutuel pools involving what is known as multiple  
157 betting in which the winning pari-mutuel ticket or  
158 tickets are determined by a combination of two or more  
159 winning dogs, shall not exceed sixteen and thirty one-  
160 hundredths percent of the total of all pari-mutuel pools  
161 for the day. The commission deducted by any licensee  
162 from the pari-mutuel pools on dog racing involving what  
163 is known as multiple betting in which the winning pari-  
164 mutuel ticket or tickets are determined by a combina-  
165 tion of two winning dogs shall not exceed nineteen  
166 percent, by a combination of three winning dogs shall  
167 not exceed twenty percent, and by a combination of four  
168 or more winning dogs shall not exceed twenty-one  
169 percent of the total of such pari-mutuel pools for the day.  
170 The foregoing commissions shall be in effect for the  
171 fiscal years one thousand nine hundred ninety and one  
172 thousand nine hundred ninety-one. Thereafter, the  
173 commission shall be at the percentages in effect prior  
174 to the effective date of this article unless the Legislature,  
175 after review, determines otherwise. Out of such commis-  
176 sions, the licensee shall pay the pari-mutuel pools tax  
177 provided for in subsection (d), section ten of this article,  
178 and one tenth of one percent of such pari-mutuel pools  
179 into the general fund of the county commission of the  
180 county in which the racetrack is located. In addition, out  
181 of such commissions, if the racetrack is located within  
182 a municipality, then the licensee shall also pay three  
183 tenths of one percent of the pari-mutuel pools into the  
184 general fund of the municipality; or, if the racetrack is  
185 located outside of a municipality, then the licensee shall  
186 also pay three tenths of one percent of the pari-mutuel  
187 pools into the state road fund for use by the department  
188 of highways in accordance with the provisions of this  
189 subdivision (3). The remainder of the commission shall  
190 be retained by the licensee.

191 For the purposes of this section, "municipality" shall  
192 mean and include any Class I, Class II and Class III city  
193 and any Class IV town or village, incorporated as a  
194 municipal corporation under the laws of this state prior  
195 to the first day of January, one thousand nine hundred  
196 eighty-seven.



197 Each dog racing licensee, when required by the  
198 provisions of this subdivision (3) to pay a percentage of  
199 its commissions to the state road fund for use by the  
200 department of highways, shall transmit the required  
201 funds, in such manner and at such times as the racing  
202 commission shall by procedural rule direct, to the state  
203 treasurer for deposit in the state treasury to the credit  
204 of the department of highways state road fund. All  
205 funds collected and received in the state road fund  
206 pursuant to the provisions of this subdivision shall be  
207 used by the department of highways in accordance with  
208 the provisions of article seventeen-a, chapter seventeen  
209 of this code for the acquisition of right-of-way for, the  
210 construction of, the reconstruction of and the improve-  
211 ment or repair of any interstate or other highway,  
212 secondary road, bridge and toll road in the state. If on  
213 the first day of July, one thousand nine hundred eighty-  
214 nine, any area encompassing a dog racetrack has  
215 incorporated as a Class I, Class II or Class III city or  
216 as a Class IV town or village, whereas such city, town  
217 or village was not incorporated as such on the first day  
218 of January, one thousand nine hundred eighty-seven,  
219 then on and after the first day of July, one thousand nine  
220 hundred eighty-nine, any balances in the state road fund  
221 existing as a result of payments made under the  
222 provisions of this subdivision may be used by the state  
223 road fund for any purpose for which other moneys in  
224 such fund may lawfully be used, and in lieu of further  
225 payments to the state road fund, the licensee of a  
226 racetrack which is located in such municipality shall  
227 thereafter pay three tenths of one percent of the pari-  
228 mutuel pools into the general fund of such municipality.  
229 If no such incorporation occurs before the first day of  
230 July, one thousand nine hundred eighty-nine, then  
231 payments to the state road fund shall thereafter  
232 continue as provided for under the provisions of this  
233 subdivision.

234 A dog racing licensee, before deducting the commis-  
235 sions authorized by this subdivision (3), shall give  
236 written notification to the racing commission not less  
237 than thirty days prior to any change in the percentage  
238 rates for such commissions. The racing commission shall

239 prescribe blank forms for filing such notification. Such  
240 notification shall disclose the following: (1) The revised  
241 commissions to be deducted from the pari-mutuel pools  
242 each day on win, place and show betting and on  
243 different forms of multiple bettings; (2) the dates to be  
244 included in such revised betting; (3) such other informa-  
245 tion as may be required by the racing commission.

246 The licensee shall establish a special fund to be used  
247 only for capital improvements or long-term debt  
248 amortization or both: *Provided*, That any licensee,  
249 heretofore licensed for a period of eight years prior to  
250 the effective date of the amendment made to this section  
251 during the regular session of the Legislature held in the  
252 year one thousand nine hundred eighty-seven, shall  
253 establish such special fund to be used only for capital  
254 improvements or physical plant maintenance, or both,  
255 at such licensee's licensed facility or at such licensee's  
256 commonly owned racing facility located within this  
257 state. Deposits made into such funds shall be in an  
258 amount equal to twenty-five percent of the increased  
259 rate total over and above the applicable rate in effect  
260 as of the first day of January, one thousand nine  
261 hundred eighty-seven, of the pari-mutuel pools for the  
262 day. Any amount deposited into such funds must be  
263 expended or liability therefor incurred within a period  
264 of two years from the date of deposit. Any funds not so  
265 expended shall forthwith be transferred into the state  
266 general fund after expiration of the two-year period.

267 The licensee shall make a deposit into a special fund  
268 established by the licensee and used for payment of  
269 regular purses offered for dog racing, which deposits  
270 out of the licensee's commissions for each day shall be  
271 three and seventy-five one-hundredths percent  
272 (3.75%) of the pari-mutuel pools.

273 The licensee shall further establish a special fund to  
274 be used exclusively for marketing and promotion  
275 programs; such funds shall be in an amount equal to five  
276 percent over and above the applicable rates in effect as  
277 of the first day of January, one thousand nine hundred  
278 eighty-seven, of the total pari-mutuel pools for the day.

279 The racing commission shall prepare and transmit  
280 annually to the governor and the Legislature a report  
281 of the activities of the racing commission under this  
282 subdivision (3). The report shall include a statement of:  
283 The amount of commissions retained by licensees; the  
284 amount of taxes paid to the state; the amounts paid to  
285 municipalities, counties and the department of highways  
286 dog racing fund; the amounts deposited by licensees into  
287 special funds for capital improvements or long-term  
288 debt amortization, and a certified statement of the  
289 financial condition of any licensee depositing into such  
290 fund; the amounts paid by licensees into special funds  
291 and used for regular purses offered for dog racing; the  
292 amounts paid by licensees into special funds and used  
293 for marketing and promotion programs; and such other  
294 information as the racing commission may deem  
295 appropriate for review.

296 The racing commission shall report to the governor,  
297 president of the Senate, speaker of the House, and the  
298 Legislature, on or before the thirty-first day of De-  
299 cember, one thousand nine hundred ninety-three, on the  
300 effects of the amendments to this article by the acts of  
301 the Legislature, regular session, one thousand nine  
302 hundred eighty-seven, on dog racing licensees and pari-  
303 mutuel taxation for use by the Legislature in review of  
304 such amendments.

305 (c) In addition to any such commission, a licensee of  
306 horse race or dog race meetings shall also be entitled  
307 to retain the legitimate breakage, which shall be made  
308 and calculated to the dime, and from such breakage, the  
309 licensee of a horse race meeting (excluding dog race  
310 meetings), shall deposit daily fifty percent of the total  
311 of such breakage retained by the licensee into the special  
312 fund created pursuant to the provisions of subdivision  
313 (1), subsection (b) of this section for the payment of  
314 regular purses.

315 (d) The director of audit, and any other auditors  
316 employed by the racing commission who shall also be  
317 certified public accountants or experienced public  
318 accountants, shall have free access to the space or  
319 enclosure where the pari-mutuel system of wagering is

320 conducted or calculated at any horse or dog race  
321 meeting for the purpose of ascertaining whether or not  
322 the licensee is deducting and retaining only a commis-  
323 sion as provided in this section and is otherwise  
324 complying with the provisions of this section. They shall  
325 also, for the same purposes only, have full and free  
326 access to all records and papers pertaining to such pari-  
327 mutuel system of wagering, and shall report to the  
328 racing commission in writing, under oath, whether or  
329 not the licensee has deducted and retained any commis-  
330 sion in excess of that permitted under the provisions of  
331 this section or has otherwise failed to comply with the  
332 provisions of this section.

333 (e) No licensee shall permit or allow any individual  
334 under the age of eighteen years to wager at any horse  
335 or dog racetrack, knowing or having reason to believe  
336 that such individual is under the age of eighteen years.

337 (f) Notwithstanding the foregoing provisions of  
338 subdivision (1), subsection (b) of this section, to the  
339 contrary, a thoroughbred licensee qualifying for and  
340 paying the alternate reduced tax on pari-mutuel pools  
341 provided in section ten of this article shall distribute the  
342 commission authorized to be deducted by subdivision (1),  
343 subsection (b), section nine of this article as follows:  
344 (i) The licensee shall pay the alternate reduced tax  
345 provided in section ten of this article; (ii) shall pay one  
346 tenth of one percent of such pari-mutuel pools into the  
347 general fund of the county commission of the county in  
348 which the racetrack is located, except if within a  
349 municipality, then to such municipal general fund;  
350 (iii) one half of the remainder of the commission shall  
351 be paid into the special fund established by the licensee  
352 and to be used for the payment of regular purses offered  
353 for thoroughbred racing by the licensee; and (iv) the  
354 amount remaining after the payments required above  
355 shall be retained by the licensee.

356 (g) Each kennel which provides or races dogs owned  
357 or leased by others shall furnish to the commission a  
358 surety bond in an amount to be determined by the  
359 commission to secure the payment to the owners or  
360 lessees of such dogs the portion of any purse owed to

361 such owner or lessee.

**§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  
3 day upon which horse races are run a daily license tax  
4 of two hundred fifty dollars. Any racing association  
5 conducting harness racing at any horse racetrack in this  
6 state shall pay each day upon which horse races are run  
7 a daily license tax of one hundred fifty dollars. Any  
8 racing association conducting dog races shall pay each  
9 day upon which dog races are run a daily license tax  
10 of one hundred fifty dollars. In the event thoroughbred  
11 racing, harness racing, dog racing, or any combination  
12 of the foregoing are conducted on the same day at the  
13 same racetrack by the same racing association, only one  
14 daily license tax in the amount of two hundred fifty  
15 dollars shall be paid for that day. Any such daily license  
16 tax shall not apply to any local, county or state fair,  
17 horse show or agricultural or livestock exposition at  
18 which horse racing is conducted for not more than six  
19 days.

20 (b) Any racing association licensed by the racing  
21 commission to conduct thoroughbred racing and permit-  
22 ting and conducting pari-mutuel wagering under the  
23 provisions of this article shall, in addition to the  
24 aforementioned daily license tax, pay to the racing  
25 commission, from the commission deducted each day by  
26 such licensee from the pari-mutuel pools on tho-  
27 roughbred racing a tax calculated on the total daily  
28 contribution of all such pari-mutuel pools conducted or  
29 made at any and every thoroughbred race meeting of  
30 the licensee licensed under the provisions of this article,  
31 which tax, on the pari-mutuel pools conducted or made  
32 each day during the months of January, February,  
33 March, October, November and December shall from  
34 the effective date of this section and for fiscal year one  
35 thousand nine hundred eighty-five, be calculated at two  
36 and six-tenths percent; for fiscal year one thousand nine  
37 hundred eighty-six, be calculated at two and three-  
38 tenths percent; for fiscal year one thousand nine

39 hundred eighty-seven, be calculated at two percent of  
40 such pool; for fiscal year one thousand nine hundred  
41 eighty-eight, be calculated at one and one-half percent;  
42 for fiscal year one thousand nine hundred eighty-nine,  
43 be calculated at one percent of such pool; for fiscal year  
44 one thousand nine hundred ninety, seven-tenths of one  
45 percent, and for fiscal year one thousand nine hundred  
46 ninety-one and each fiscal year thereafter be calculated  
47 at four-tenths of one percent of such pool; and, on the  
48 pari-mutuel pools conducted or made each day during  
49 all other months, shall from the effective date of this  
50 section and for fiscal year one thousand nine hundred  
51 eighty-five, be calculated at three and six-tenths  
52 percent; for fiscal year one thousand nine hundred  
53 eighty-six, be calculated at three and three-tenths  
54 percent; for fiscal year one thousand nine hundred  
55 eighty-seven, be calculated at three percent of such pool;  
56 for fiscal year one thousand nine hundred eighty-eight,  
57 be calculated at two and one-half percent; for fiscal year  
58 one thousand nine hundred eighty-nine, be calculated at  
59 two percent of such pool; for fiscal year one thousand  
60 nine hundred ninety, be calculated at one and seven-  
61 tenths percent of such pool; and for fiscal year one  
62 thousand nine hundred ninety-one and each fiscal year  
63 thereafter, be calculated at one and four-tenths percent  
64 of such pool: *Provided*, That out of the amount realized  
65 from the three-tenths of one percent decrease in such tax  
66 effective for fiscal year one thousand nine hundred  
67 ninety-one and thereafter, which decrease correspond-  
68 ingly increases the amount of commission retained by  
69 the licensee, the licensee shall annually expend or  
70 dedicate (i) one-half of such realized amount for capital  
71 improvements in its barn area at the track, subject to  
72 the racing commission's prior approval of the plans for  
73 such improvements, and (ii) the remaining one-half of  
74 such realized amount for capital improvements as the  
75 licensee may determine appropriate at the track. The  
76 term capital improvement shall be as defined by the  
77 Internal Revenue Code: *Provided, however*, That any  
78 such racing association operating a horse racetrack in  
79 this state having an average daily pari-mutuel pool on  
80 horse racing of two hundred eighty thousand dollars or

81 less per day for the race meetings of the preceding  
82 calendar year shall, in lieu of payment of the pari-  
83 mutuel pool tax, calculated as hereinbefore in this  
84 subsection provided, be permitted to conduct pari-  
85 mutuel wagering at such horse racetrack on the basis  
86 of a daily pari-mutuel pool tax fixed as follows: On the  
87 daily pari-mutuel pool not exceeding three hundred  
88 thousand dollars the daily pari-mutuel pool tax shall be  
89 one thousand dollars plus the otherwise applicable  
90 percentage rate imposed by this subsection of the daily  
91 pari-mutuel pool, if any, in excess of three hundred  
92 thousand dollars: *Provided further*, That upon the  
93 effective date of the reduction of such daily pari-mutuel  
94 pool tax to one thousand dollars from the former two  
95 thousand dollars, the association or licensee shall daily  
96 deposit five hundred dollars into the special fund for  
97 regular purses established by subdivision one, subsec-  
98 tion (b), section nine of this article: *And provided*  
99 *further*, That if an association or licensee qualifying for  
100 the foregoing alternate tax conducts more than one  
101 racing performance, each consisting of up to ten races  
102 in a calendar day, such association or licensee shall pay  
103 both the daily license tax imposed in subsection (a) and  
104 the foregoing alternate tax for each such performance:  
105 *And provided further*, That a licensee qualifying for the  
106 foregoing alternate tax is excluded from participation  
107 in the fund established by section thirteen-b of this  
108 article.

109 (c) Any racing association licensed by the racing  
110 commission to conduct harness racing and permitting  
111 and conducting pari-mutuel wagering under the provi-  
112 sions of this article shall, in addition to the aforemen-  
113 tioned daily license tax, pay to the racing commission,  
114 from the commission deducted each day by the licensee  
115 from the pari-mutuel pools on harness racing, as a tax,  
116 three percent of the first one hundred thousand dollars  
117 wagered, or any part thereof; four percent of the next  
118 one hundred fifty thousand dollars; and five and three-  
119 fourths percent of all over that amount wagered each  
120 day in all such pari-mutuel pools conducted or made at  
121 any and every harness race meeting of the licensee  
122 licensed under the provisions of this article.

123 (d) Any racing association licensed by the racing  
124 commission to conduct dog racing and permitting and  
125 conducting pari-mutuel wagering under the provisions  
126 of this article shall, in addition to the aforementioned  
127 daily license tax, pay to the racing commission, from the  
128 commission deducted each day by such licensee from the  
129 pari-mutuel pools on dog racing, as a tax, four percent  
130 of the first fifty thousand dollars or any part thereof of  
131 such pari-mutuel pools, five percent of the next fifty  
132 thousand dollars of such pari-mutuel pools, six percent  
133 of the next one hundred thousand dollars of such pari-  
134 mutuel pools, seven percent of the next one hundred fifty  
135 thousand dollars of such pari-mutuel pools, and eight  
136 percent of all over three hundred fifty thousand dollars  
137 wagered each day: *Provided*, That the licensee shall  
138 deduct daily from the pari-mutuel tax an amount equal  
139 to one-tenth of one percent of the daily pari-mutuel pools  
140 in dog racing in fiscal year one thousand nine hundred  
141 ninety; fifteen hundredths of one percent in fiscal year one  
142 thousand nine hundred ninety-one; two-tenths of one  
143 percent in fiscal year one thousand nine hundred ninety-  
144 two; one quarter of one percent in fiscal year one  
145 thousand nine hundred ninety-three; and three-tenths of  
146 one percent in fiscal year one thousand nine hundred  
147 ninety-four and every fiscal year thereafter. The  
148 amounts so deducted shall be paid to the racing  
149 commission to be deposited by the racing commission in  
150 a banking institution of its choice in a special account  
151 to be known as "West Virginia Racing Commission-  
152 Special Account-West Virginia Greyhound Breeding  
153 Development Fund." Such moneys shall be expended by  
154 the racing commission exclusively for purses for stake  
155 races involving West Virginia whelped dogs, under  
156 rules and regulations promulgated by the racing  
157 commission.

158 (e) All daily license and pari-mutuel pools tax pay-  
159 ments required under the provisions of this section shall  
160 be made to the racing commission or its agent after the  
161 last race of each day of each horse or dog race meeting,  
162 and the pari-mutuel pools tax payments shall be made  
163 from all contributions to all pari-mutuel pools to each  
164 and every race of the day.



165 (f) Every association or licensee subject to the provi-  
166 sions of this article, including the changed provisions of  
167 sections nine and ten hereof, shall annually submit to the  
168 racing commission and the Legislature financial state-  
169 ments, including a balance sheet, income statement,  
170 statement of change in financial position and an audit  
171 of any electronic data system used for pari-mutuel  
172 tickets and betting, prepared in accordance with  
173 generally accepted auditing standards, as certified by  
174 an experienced public accountant or a certified public  
175 accountant.

**§19-23-13. Disposition of funds for payment of outstand-  
ing and unredeemed pari-mutuel tickets;  
publication of notice; irredeemable tickets;  
stake races for dog tracks.**

1 (a) All moneys held by any licensee for the payment  
2 of outstanding and unredeemed pari-mutuel tickets, if  
3 not claimed within ninety days after the close of the  
4 horse or dog race meeting in connection with which the  
5 tickets were issued, shall be turned over by the licensee  
6 to the racing commission within fifteen days after the  
7 expiration of such ninety-day period, and the licensee  
8 shall give such information as the racing commission  
9 may require concerning such outstanding and unre-  
10 deemed tickets. All such moneys shall be deposited by  
11 the racing commission in a banking institution of its  
12 choice in a special account to be known as "West  
13 Virginia Racing Commission Special Account—Unre-  
14 deemed Pari-Mutuel Tickets." Notice of the amount,  
15 date and place of such deposit shall be given by the  
16 racing commission, in writing, to the state treasurer.  
17 The racing commission shall then cause to be published  
18 a notice to the holders of such outstanding and unre-  
19 deemed pari-mutuel tickets, notifying them to present  
20 such tickets for payment at the principal office of the  
21 racing commission within ninety days from the date of  
22 the publication of such notice. Such notice shall be  
23 published within fifteen days following the receipt of  
24 said moneys by the commission from the licensee as a  
25 Class I legal advertisement in compliance with the  
26 provisions of article three, chapter fifty-nine of this code,

27 and the publication area for such publication shall be  
28 the county in which such horse or dog race meeting was  
29 held.

30 (b) Any such pari-mutuel tickets that shall not be  
31 presented for payment within ninety days from the date  
32 of the publication of the notice shall thereafter be  
33 irredeemable, and the moneys theretofore held for the  
34 redemption of such pari-mutuel tickets shall become the  
35 property of the racing commission, and shall be  
36 expended as follows:

37 (1) To the owner of the winning horse in any horse  
38 race at a horse race meeting held or conducted by any  
39 licensee provided that the owner of such horse is at the  
40 time of such horse race a bona fide resident of this state,  
41 a sum equal to ten percent of the purse won by such  
42 horse. The commission may require proof that the owner  
43 was, at the time of the race, a bona fide resident of this  
44 state. Upon proof by the owner that he filed a personal  
45 income tax return in this state for the previous two  
46 years and that he owned real or personal property in  
47 this state and paid taxes in this state on said property  
48 for the two previous years, he shall be presumed to be  
49 a bona fide resident of this state; and

50 (2) To the breeder (that is, the owner of the mare) of  
51 the winning horse in any horse race at a horse race  
52 meeting held or conducted by any licensee provided that  
53 the mare foaled in this state, a sum equal to ten percent  
54 of the purse won by such horse; and

55 (3) To the owner of the stallion which sired the  
56 winning horse in any horse race at a horse race meeting  
57 held or conducted by any licensee provided that the  
58 mare which foaled such winning horse was served by  
59 a stallion standing and registered in this state, a sum  
60 equal to ten percent of the purse won by such horse; and

61 (4) When the moneys in the special account, known as  
62 the "West Virginia Racing Commission Special Ac-  
63 count—Unredeemed Pari-Mutuel Tickets" will more  
64 than satisfy the requirements of subdivisions (1), (2) and  
65 (3), subsection (b) of this section, the West Virginia  
66 racing commission shall have the authority to expend

67 the excess moneys from unredeemed horse racing pari-  
68 mutuel tickets as purse money in any race conditioned  
69 exclusively for West Virginia bred or sired horses, and  
70 to expend the excess moneys from unredeemed dog  
71 racing pari-mutuel tickets in supplementing purses and  
72 establishing stake races and dog racing handicaps at the  
73 dog tracks: *Provided*, That beginning with the fiscal  
74 year one thousand nine hundred ninety, and subject to  
75 the availability of funds, the commission shall, after the  
76 requirements of subdivisions (1), (2) and (3), subsection  
77 (b) of this section have been satisfied, transfer annually  
78 three hundred thousand dollars of such excess moneys  
79 into a separate account to be used for promotional  
80 activities and purses for stake races for the West  
81 Virginia Thoroughbred Breeders Classic, which shall  
82 give equal consideration to all horses qualifying under  
83 the West Virginia breeders program for each stake race,  
84 based solely on the horses' sex, age and earnings.

85 Beginning with the fiscal year one thousand nine  
86 hundred eighty-nine, and in each fiscal year thereafter,  
87 the commission shall submit to the legislative auditor a  
88 quarterly report and accounting of the income, expen-  
89 ditures and unobligated balance in the special account  
90 created by this section known as the "West Virginia  
91 Racing Commission Special Account—Unredeemed  
92 Pari-Mutuel Tickets."

93 (c) Nothing contained in this article shall prohibit one  
94 person from qualifying for all or more than one of the  
95 aforesaid awards, or for awards under section thirteen-  
96 b of this article.

97 (d) The cost of publication of the notice provided for  
98 in this section shall be paid from the funds in the hands  
99 of the state treasurer collected from the pari-mutuel  
100 pools tax provided for in section ten of this article, when  
101 not otherwise provided in the budget; but no such costs  
102 shall be paid unless an itemized account thereof, under  
103 oath, be first filed with the state auditor.

**§19-23-13b. West Virginia thoroughbred development  
fund; distribution; restricted races; non-  
restricted purse supplements.**

1       The racing commission shall deposit moneys required  
2 to be withheld by an association or licensee in subsection  
3 (b), section nine of this article in a banking institution  
4 of its choice in a special account to be known as "West  
5 Virginia Racing Commission Special Account—West  
6 Virginia Thoroughbred Development Fund." Notice of  
7 the amount, date and place of such deposit shall be given  
8 by the racing commission, in writing, to the state  
9 treasurer. The purpose of the fund is to promote better  
10 breeding and racing of thoroughbred horses in the state  
11 through awards and purses for accredited breed-  
12 ers/raisers, sire owners and thoroughbred race horse  
13 owners. A further objective of the fund is to aid in the  
14 rejuvenation and development of the present horse  
15 tracks now operating in West Virginia for capital  
16 improvements, operations or increased purses between  
17 the first day of July, one thousand nine hundred eighty-  
18 four, and the thirty-first day of October, one thousand  
19 nine hundred ninety-two: *Provided*, That five percent of  
20 the deposits required to be withheld by an association  
21 or licensee in subsection (b), section nine of this article  
22 shall be placed in a special revenue account hereby  
23 created in the state treasury called the "administration  
24 and promotion account." The racing commission is  
25 authorized to expend the moneys deposited in the  
26 administration and promotion account at such times and  
27 in such amounts as the commission determines to be  
28 necessary for purposes of administering and promoting  
29 the thoroughbred development program: *Provided*,  
30 *however*, That during any fiscal year in which the  
31 commission anticipates spending any money from such  
32 account, the commission shall submit to the executive  
33 department during the budget preparation period prior  
34 to the Legislature convening before that fiscal year for  
35 inclusion in the executive budget document and budget  
36 bill, the recommended expenditures, as well as requests  
37 of appropriations for the purpose of administration and  
38 promotion of the program. The commission shall make  
39 an annual report to the Legislature on the status of the  
40 administration and promotion account, including the  
41 previous year's expenditures and projected expenditures  
42 for the next year.

43 The fund shall be established forthwith and operate  
44 on an annual basis.

45 (a) Funds will be expended for awards and purses in  
46 the following manner:

47 (i) Fifteen percent of the fund shall be available for  
48 distribution for events taking place between the first  
49 day of July, one thousand nine hundred eighty-four, and  
50 the thirty-first day of December, one thousand nine  
51 hundred eighty-five;

52 (ii) Fifty percent of the fund shall be available for  
53 distribution for events taking place between the first  
54 day of January, one thousand nine hundred eighty-six,  
55 and the thirty-first day of December, one thousand nine  
56 hundred eighty-six;

57 (iii) Seventy-five percent of the fund shall be available  
58 for distribution for events taking place between the first  
59 day of January, one thousand nine hundred eighty-  
60 seven, and the thirty-first day of December, one  
61 thousand nine hundred eighty-seven;

62 (iv) One hundred percent of the fund shall be avail-  
63 able thereafter.

64 (b) Awards and purses will be distributed as follows:

65 (i) The breeders/raisers of accredited thoroughbred  
66 horses that earn a purse at any West Virginia meet will  
67 receive a bonus award calculated at the end of the year  
68 as a percentage of the fund dedicated to the breed-  
69 ers/raisers, which shall be sixty percent of the fund  
70 available for distribution in any one year. The total  
71 amount available for the breeders/raisers' awards shall  
72 be distributed according to the ratio of purses earned  
73 by an accredited race horse to the total amount earned  
74 in such races by all accredited race horses for that year  
75 as a percentage of the fund dedicated to the breed-  
76 ers/raisers. However, no breeder/raiser may receive  
77 from the fund dedicated to breeders/raisers' awards an  
78 amount in excess of the earnings of the accredited horse  
79 at West Virginia meets. In addition, should a horse's  
80 breeder and raiser qualify for the same award on the  
81 same horse, they will each be awarded one half of the

82 proceeds. Of the funds available for distribution in any  
83 one year to breeders/raisers, neither the breeders as a  
84 group nor the raisers as a group, shall, until January  
85 first, one thousand nine hundred ninety-four, qualify for  
86 more than sixty and one-tenth percent of such funds.

87 (ii) The owner of a West Virginia sire of an accredited  
88 thoroughbred horse that earns a purse in any race at  
89 a West Virginia meet will receive a bonus award  
90 calculated at the end of the year as a percentage of the  
91 fund dedicated to sire owners, which shall be fifteen  
92 percent of the fund available for distribution in any one  
93 year. The total amount available for the sire owners'  
94 awards shall be distributed according to the ratio purses  
95 earned by the progeny of accredited West Virginia  
96 stallions in such races for a particular stallion to the  
97 total purses earned by the progeny of all accredited  
98 West Virginia stallions in such races. However, no sire  
99 owner may receive from the fund dedicated to sire  
100 owners an amount in excess of thirty percent of the  
101 accredited earnings for each sire.

102 (iii) The owner of an accredited thoroughbred horse  
103 that earns a purse in any race at a West Virginia meet  
104 will receive a restricted purse supplement award  
105 calculated at the end of the year, which shall be twenty-  
106 five percent of the fund available for distribution in any  
107 one year, based on the ratio of the earnings in such races  
108 of a particular race horse to the total amount earned by  
109 all accredited race horses in such races during that year  
110 as a percentage of the fund dedicated to purse supple-  
111 ments. However, the owners may not receive from the  
112 fund dedicated to purse supplements an amount in  
113 excess of forty percent of the total accredited earnings  
114 for each accredited race horse.

115 (iv) In no event shall purses earned at a meet held at  
116 a track which did not make a contribution to the  
117 thoroughbred development fund out of the daily pool on  
118 the day the meet was held qualify or count toward  
119 eligibility for an award under this section.

120 (v) Any balance in the breeders/raisers, sire owners  
121 and purse supplement funds after yearly distributions

122 shall revert back into the general account of the fund  
123 for distribution in the next year.

124 Distribution shall be made on the fifteenth of each  
125 February for the preceding year's achievements.

126 (c) The remainder, if any, of the fund that is not  
127 available for distribution in the above program in any  
128 one year is reserved for regular purses, marketing  
129 expenses and for capital improvements in the amounts  
130 and under the conditions provided hereinafter. Fifty  
131 percent of such remainder shall be reserved for  
132 payments into the regular purse fund established in  
133 subsection (b), section nine of this article. Up to five  
134 hundred thousand dollars per year shall be available for  
135 (1) capital improvements at the eligible licensed horse  
136 racing tracks in the state, and (2) marketing and  
137 advertising programs above and beyond two hundred  
138 fifty thousand dollars for the eligible licensed horse  
139 racing tracks in the state: *Provided*, That moneys shall  
140 be expended for capital improvements or marketing and  
141 advertising purposes as described above only in accord  
142 with a plan filed with and receiving the prior approval  
143 of the racing commission, and on a basis of fifty percent  
144 participation by the licensee and fifty percent partici-  
145 pation by moneys from fund, in the total cost of  
146 approved projects: *Provided, however*, That funds  
147 approved for one track may not be used at another track  
148 unless the first track ceases to operate or is viewed by  
149 the commission as unworthy of additional investment  
150 due to financial or ethical reasons.

151 (d) Each pari-mutuel thoroughbred horse track shall  
152 provide at least the following restricted races in  
153 accordance with the following time schedules:

154 (i) July first, one thousand nine hundred eighty-four,  
155 to December thirty-first, one thousand nine hundred  
156 eighty-four— one restricted race per eight racing days;

157 (ii) January first, one thousand nine hundred eighty-  
158 five, to December thirty-first, one thousand nine  
159 hundred eighty-five—one restricted race per seven  
160 racing days;

161 (iii) January first, one thousand nine hundred eighty-  
 162 six, to December thirty-first, one thousand nine hundred  
 163 eighty-six— one restricted race per six racing days;

164 (iv) January first, one thousand nine hundred eighty-  
 165 seven, to December thirty-first, one thousand nine  
 166 hundred eighty-seven—one restricted race per five  
 167 racing days;

168 (v) January first, one thousand nine hundred eighty-  
 169 eight, to December thirty-first, one thousand nine  
 170 hundred eighty-eight—one restricted race per four  
 171 racing days;

172 (vi) January first, one thousand nine hundred eighty-  
 173 nine, to December thirty-first, one thousand nine  
 174 hundred eighty-nine—one restricted race per three  
 175 racing days; and thereafter. Restricted races shall be  
 176 funded by each racing association from moneys placed  
 177 in the general purse fund. The purses shall be twenty  
 178 percent larger than the purses for similar type races at  
 179 each track. The racing schedules, purse amounts and  
 180 types of races are subject to the approval of the West  
 181 Virginia racing commission.

182 (e) No association or licensee qualifying for the  
 183 alternate tax provision of subsection (b), section ten of  
 184 this article shall be eligible for participation in any of  
 185 the provisions of this section.

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## CHAPTER 10

(Com. Sub. for H. B. 2180—By Mr. Speaker, Mr. Chambers,  
 and Delegate R. Burk)

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[Passed April 10, 1989; in effect from passage. Approved by the Governor.]

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AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution.

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



## Title

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

## TITLE I—GENERAL PROVISIONS.

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

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

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

2       “Governor” shall mean the governor of the state of  
 3       West Virginia.

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

6       “Spending unit” shall mean the department, agency or  
 7       institution to which an appropriation is made.

8       The “fiscal year one thousand nine hundred ninety”  
 9       shall mean the period from July first, one thousand nine  
 10      hundred eighty-nine, through June thirtieth, one  
 11      thousand nine hundred ninety.

12      “From collections” shall mean that part of the total  
 13      appropriation which must be collected by the spending  
 14      unit to be available for expenditure. If the authorized  
 15      amount of collections is not collected, the total appropri-  
 16      ation for the spending unit shall be reduced automat-  
 17      ically by the amount of the deficiency in the collections.  
 18      If the amount collected exceeds the amount designated  
 19      “from collections,” the excess shall be set aside in a  
 20      special surplus fund and may be expended for the  
 21      purpose of the spending unit as provided by article two,  
 22      chapter five-a of the code.

1       **Sec. 3. Classification of appropriations.**—An ap-  
 2       propriation for:

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

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

13       Unless otherwise specified, appropriations for per-  
14 sonal services shall include salaries of heads of spending  
15 units.

16       “Annual increment” shall mean funds appropriated  
17 for “eligible employees” and shall be disbursed only in  
18 accordance with article five, chapter five of the code.

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

22       “Employee benefits” shall mean social security  
23 matching, workers’ compensation, unemployment com-  
24 pensation, pension and retirement contributions, public  
25 employees insurance matching or any other benefit  
26 normally paid by the employer as a direct cost of  
27 employment. Should the appropriation be insufficient to  
28 cover such costs, the remainder of such cost shall be paid  
29 by each spending unit from its “personal services” line  
30 item or its “unclassified” line item. Each spending unit  
31 is hereby authorized and required to make such  
32 payments.

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

36       Each spending unit shall be responsible for all  
37 contributions, payments or other costs related to  
38 coverage and claims of its employees for unemployment  
39 compensation. Such expenditures shall be considered a  
40 current expense.

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

46 "Equipment" shall mean equipment items which have  
47 an appreciable and calculable period of usefulness in  
48 excess of one year.

49 "Repairs and alterations" shall mean routine mainte-  
50 nance and repairs to structures and minor improve-  
51 ments to property which do not increase the capital  
52 assets.

53 "Buildings" shall include new construction and major  
54 alteration of existing structures and the improvement of  
55 lands and shall include shelter, support, storage,  
56 protection or the improvement of a natural condition.

57 "Lands" shall mean the purchase of real property or  
58 interest in real property.

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

63 Appropriations classified in any of the above catego-  
64 ries shall be expended only for the purposes as defined  
65 above and only for the spending units herein designated:  
66 *Provided*, That the secretary of each department shall  
67 have the authority to transfer within the department  
68 those funds appropriated to the various agencies of the  
69 department: *Provided, however*, That no more than  
70 twenty-five percent of the funds appropriated to any one  
71 agency or board may be transferred to other agencies  
72 or boards within the department: *Provided, further*,  
73 That no funds may be transferred from a special  
74 revenue account, dedicated account, capital expenditure  
75 account or any other account or funds specifically  
76 exempted by the Legislature from transfer, except that  
77 the use of appropriations from the state road fund  
78 transferred to the office of the secretary of the depart-  
79 ment of transportation is not a use other than the

80 purpose for which such funds were dedicated and is  
 81 permitted: *And, provided, further,* That if the Legisla-  
 82 ture by subsequent enactment consolidates agencies,  
 83 boards or functions, the secretary may transfer the  
 84 funds formerly appropriated to such agency, board or  
 85 function in order to implement such consideration.

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

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

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

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§18. Total appropriations.

§19. General school fund.

1       **Section 1. Appropriations from general re-**  
 2 **venue.**—From the state fund, general revenue, there are  
 3 hereby appropriated conditionally upon the fulfillment  
 4 of the provisions set forth in article two, chapter five-  
 5 a of the code, the following amounts, as itemized, for  
 6 expenditure during the fiscal year one thousand nine  
 7 hundred ninety.

1       **Sec. 2. Appropriations of federal funds.**—In  
 2 accordance with article eleven, chapter four of the code,  
 3 from federal funds there are hereby appropriated  
 4 conditionally upon the fulfillment of the provisions set  
 5 forth in article two, chapter five-a of the code the  
 6 following amounts, as itemized, for expenditure during  
 7 the fiscal year one thousand nine hundred ninety.

## LEGISLATIVE

### 1—Senate

#### Acct. No. 1010

	Federal Funds Fiscal Year 1989-90	General Revenue Fund Fiscal Year 1989-90
1 Compensation of Members .. \$	—	\$ 277,000

2	Compensation and Per		
3	Diem of Officers and		
4	Employees.....	—	1,044,759
5	Expenses of Members .....	—	215,000
6	Repairs and Alterations ....	—	30,000
7	Current Expenses and		
8	Contingent Fund.....	—	510,000
9	Computer Supplies.....	—	15,000
10	Computer Systems .....	—	85,000
11	Printing Blue Book.....	—	190,000
12	Total .....	\$ —	\$ 2,366,759

13     The appropriations for the senate for the fiscal year  
 14 1988-89 are to remain in full force and effect and are  
 15 hereby reappropriated to June 30, 1990. Any balances  
 16 so reappropriated may be transferred and credited to  
 17 the 1989-90 accounts.

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

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

34     The clerk of the senate, with the written approval of  
 35 the president, or the president of the senate shall have  
 36 authority to employ such staff personnel during any  
 37 session of the Legislature as shall be needed in addition  
 38 to staff personnel authorized by the senate resolution  
 39 adopted during any such session. The clerk of the senate,  
 40 with the written approval of the president, or the  
 41 president of the senate shall have authority to employ

42 such staff personnel between sessions of the Legislature  
 43 as shall be needed, the compensation of all staff  
 44 personnel during and between sessions of the Legisla-  
 45 ture, notwithstanding any such senate resolution, to be  
 46 fixed by the president of the senate. The clerk is hereby  
 47 authorized to draw his requisitions upon the auditor for  
 48 the payment of all such staff personnel for such services,  
 49 payable out of the appropriation for Compensation and  
 50 Per Diem of Officers and Employees or Current  
 51 Expenses and Contingent Fund of the senate.

52 For duties imposed by law and the senate, the clerk  
 53 of the senate shall be paid a monthly salary as provided  
 54 in the senate resolution adopted February 1989 and  
 55 payable out of the amount appropriated for Compensa-  
 56 tion and Per Diem of Officers and Employees.

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

*2—House of Delegates*

Acct. No. 1020

1	Compensation of Members .. \$	—	\$	850,630
2	Compensation and			
3	Per Diem of Officers			
4	and Employees.....	—		575,938
5	Expenses of Members .....	—		630,750
6	Current Expenses and			
7	Contingent Fund .....	—		1,224,780
8	Total .....	\$	—	\$ 3,282,098

9 The appropriations for the house of delegates for the  
 10 fiscal year 1988-89 are to remain in full force and effect  
 11 and are hereby reappropriated to June 30, 1990. Any  
 12 balances so reappropriated may be transferred and  
 13 credited to the 1989-90 accounts.

14 Upon the written request of the clerk of the house of  
 15 delegates, the auditor shall transfer amounts between

16 items of that total appropriation in order to protect or  
17 increase the efficiency of the service.

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

30 The speaker of the house of delegates, upon approval  
31 of the house committee on rules, shall have authority to  
32 employ such staff personnel during and between  
33 sessions of the Legislature as shall be needed, in addition  
34 to personnel designated in the house resolution, and the  
35 compensation of all personnel shall be as fixed in such  
36 house resolution for the session, or fixed by the speaker,  
37 with the approval of the house committee on rules,  
38 during and between sessions of the legislature, notwith-  
39 standing such house resolution. The clerk of the house  
40 is hereby authorized to draw requisitions upon the  
41 auditor for such services, payable out of the appropri-  
42 ation for the Compensation and Per Diem of Officers  
43 and Employees or Current Expenses and Contingent  
44 Fund of the house of delegates.

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

*3—Joint Expenses*

Acct. No. 1030

(WV Code Chapter 4)

1	Joint Committee on			
2	Government and Finance	\$	—	\$ 4,454,223
3	Legislative Printing .....		—	790,000
4	Legislative Rule-Making			
5	Review Committee .....		—	126,500
6	National Conference of			
7	State Legislatures .....		—	—0—
8	Education Commission			
9	of the States .....		—	—0—
10	National Association of			
11	State Auditors,			
12	Comptrollers			
13	and Treasurers .....		—	—0—
14	Governmental Accounting			
15	Standards Board .....		—	—0—
16	Council of State			
17	Governments .....		—	—0—
18	Total .....	\$	—	\$ 5,370,723

19 The appropriation for Joint Expenses for the fiscal  
 20 year 1988-89 is to remain in full force and effect and  
 21 is hereby reappropriated to June 30, 1990. Any balances  
 22 so reappropriated may be transferred and credited to  
 23 the 1989-90 accounts.

24 Upon written request of the clerk of the senate, with  
 25 the approval of the president of the senate, and the clerk  
 26 of the house of delegates, with approval of the speaker  
 27 of the house of delegates, and a copy to the legislative  
 28 auditor, the auditor shall transfer amounts between  
 29 items of the total appropriation in order to protect or  
 30 increase the efficiency of the service.

**JUDICIAL***4—Supreme Court—General Judicial*

Acct. No. 1110

1	Personal Services .....	\$	—	\$ 19,074,003
2	Annual Increment .....		—	160,000

3	Other Expenses .....	—	2,850,000
4	Judges' Retirement		
5	System .....	—	1,174,400
6	Other Court Costs .....	—	2,200,000
7	Judicial Training		
8	Program .....	—	250,000
9	Mental Hygiene Fund .....	—	400,000
10	Social Security Matching ...	—	1,420,000
11	Public Employees		
12	Retirement Matching ....	—	1,650,000
13	Public Employees		
14	Health Insurance .....	—	1,520,000
15	Board of Risk and		
16	Insurance Management ..	—	—0—
17	Total .....	\$ —	\$ 30,698,403

18 Any unexpended balances remaining in this appropri-  
 19 ation at the close of the fiscal year 1988-89 are hereby  
 20 reappropriated for expenditure during the fiscal year  
 21 1989-90. Any balances so reappropriated may be  
 22 transferred and credited to the 1989-90 accounts.

23 The appropriation shall be administered by the  
 24 administrative director of the supreme court of appeals,  
 25 who shall draw his requisitions for warrants in payment  
 26 in the form of payrolls, making deductions therefrom as  
 27 required by law for taxes and other items.

28 The appropriation for Judges' Retirement System is  
 29 to be transferred to the judges' retirement fund, in  
 30 accordance with the law relating thereto, upon requis-  
 31 ition of the administrative director of the supreme court  
 32 of appeals.

### EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Acct. No. 1200

1	Salary of Governor .....	\$ —	\$ 72,000
2	Unclassified .....	—	1,280,696
3	Total .....	\$ —	\$ 1,352,696

## 6—Governor's Office—Custodial Fund

(WV Code Chapter 5)

Acct. No. 1230

1	Unclassified—Total .....	\$	—	\$	339,739
2	To be used for current general expenses, including				
3	compensation of employees, household maintenance, cost				
4	of official functions and additional household expenses				
5	occasioned by such official functions.				

7—Governor's Office—  
Civil Contingent Fund

(WV Code Chapter 5)

Acct. No. 1240

1	Humanities Foundation				
2	Grants.....	\$	—	\$	200,000
3	Unclassified— .....	\$	—		712,500
4	Total .....	\$	—	\$	912,500

5 Any unexpended balance remaining in the appropri-  
6 ation (account no. 1240-06) at the close of the fiscal year  
7 1988-89 is hereby reappropriated for expenditure  
8 during the fiscal year 1989-90.

9 From this appropriation there may be expended, at  
10 the discretion of the governor, an amount not to exceed  
11 \$1,000 as West Virginia's contribution to the Interstate  
12 Oil Compact Commission.

8—Governor's Office—  
Debt Service

(WV Code Chapter 5)

Acct. No. 1250

1	Pneumoconiosis Fund				
2	(Debt Service) .....	\$	—	\$	—0—
3	Loan Fund—(Debt Service) ..		—	\$	—0—
4	Total .....	\$	—	\$	—0—

## 9—Auditor's Office—General Administration

(WV Code Chapter 12)

Acct. No. 1500

1	Salary of Auditor .....	\$	—	\$	46,800
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2	Other Personal Services . . . . .	—		1,461,929
3	Annual Increment . . . . .	—		28,440
4	Employee Benefits . . . . .	—		406,112
5	Unclassified . . . . .	—		584,175
6	Total . . . . .	\$	—	\$ 2,527,456

*10—Treasurer's Office*

(WV Code Chapter 12)

## Acct. No. 1600

1	Salary of Treasurer . . . . .	\$	—	\$ 50,400
2	Other Personal Services . . . . .	—		496,510
3	Annual Increment . . . . .	—		7,128
4	Employee Benefits . . . . .	—		144,465
5	Unclassified . . . . .	—		202,130
6	Total . . . . .	\$	—	\$ 900,633

*11—Treasurer's Office—**School Building Sinking Fund*

(WV Code Chapter 12)

## Acct. No. 1650

1	Total . . . . .	\$	—	\$ 13,346,500
2	Any unexpended balance remaining in the appropriation for Treasurer's Office—School Building Sinking			
3	Fund (account no. 1650-06) at the close of the fiscal year			
4	1988-89 is hereby reappropriated for expenditure			
5	during the fiscal year 1989-90.			
6				

*12—Attorney General*

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

## Acct. No. 2400

1	Salary of Attorney			
2	General . . . . .	\$	—	\$ 50,400
3	Other Personal Services . . . . .	—		1,831,360
4	Annual Increment . . . . .	—		15,480
5	Employee Benefits . . . . .	—		423,351
6	Asbestos Litigation Fund . . . . .	—		360,000
7	Unclassified . . . . .	—		417,603
8	Total . . . . .	\$	—	\$ 3,098,194



9 Any unexpended balance remaining in the appropri-  
 10 ation for Publication of Reports and Opinions (account  
 11 no. 2400-05) at the close of the fiscal year 1988-89 is  
 12 hereby reappropriated for expenditure during the fiscal  
 13 year 1989-90.

14 When legal counsel or secretarial help is appointed by  
 15 the attorney general for any state spending unit, this  
 16 account shall be reimbursed from such unit's appropri-  
 17 ated account.

*13—Secretary of State*

(WV Code Chapters 3, 5 and 59)

Acct. No. 2500

1	Salary of Secretary			
2	of State .....	\$	—	\$ 43,200
3	Other Personal Services ....		—	441,526
4	Annual Increment .....		—	4,248
5	Employee Benefits .....		—	140,552
6	Unclassified .....		—	149,828
7	Special Election.....		—	1,184,994
8	Total .....	\$	—	\$ 1,964,348

*14—State Elections Commission*

(WV Code Chapter 3)

Acct. No. 2600

1	Unclassified—Total .....	\$	—	\$ 11,400
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*15—Department of Agriculture*

(WV Code Chapter 19)

Acct. No. 5100

1	Salary of			
2	Commissioner.....	\$	—	\$ 46,800
3	Other Personal			
4	Services .....		—	2,045,456
5	Annual Increment .....		—	46,476
6	Employee Benefits .....		—	597,519
7	Unclassified .....		1,699,588	669,032
8	Total .....	\$	1,699,588	\$ 3,405,283

9 Out of the above general revenue funds a sum may  
10 be used to match federal funds for the eradication and  
11 control of pest and plant disease.

16—*Farm Management Commission*

(WV Code Chapter 19)

Acct. No. 5110

1	Personal Services .....	\$	—	\$	592,940
2	Annual Increment .....		—		16,848
3	Employee Benefits .....		—		195,954
4	Unclassified .....		—		901,373
5	Total .....	\$	—	\$	1,707,115

17—*Department of Agriculture—  
Soil Conservation Committee*

(WV Code Chapter 19)

Acct. No. 5120

1	Personal Services .....	\$	—	\$	304,748
2	Annual Increment .....		—		4,400
3	Employee Benefits .....		—		83,288
4	Construction, Maintenance and Emergency Repairs ..		—		1,259,919
6	Unclassified .....		—		88,393
7	Total .....	\$	—	\$	1,740,748

18—*Department of Agriculture—  
Division of Rural Resources  
(Matching Fund)*

(WV Code Chapter 19)

Acct. No. 5130

1	Personal Services .....	\$	—	\$	449,585
2	Annual Increment .....		—		11,952
3	Employee Benefits .....		—		147,511
4	Unclassified .....		—		226,825
5	Total .....	\$	—	\$	835,873

6 Any part or all of this appropriation from the general  
7 revenue may be transferred to a special revenue fund  
8 for the purpose of matching federal funds for the above-  
9 named program.

19—*Department of Agriculture—  
Meat Inspection*

(WV Code Chapter 19)

Acct. No. 5140

1	Personal Services .....	\$	—	\$	249,600
2	Annual Increment .....		—		7,055
3	Employee Benefits .....		—		45,940
4	Unclassified .....		604,118		80,042
5	Total .....	\$	604,118	\$	382,637

6 Any part or all of this appropriation from the general  
7 revenue may be transferred to a special revenue fund  
8 for the purpose of matching federal funds for the above-  
9 named program.

20—*Department of Agriculture—  
Agricultural Awards*

(WV Code Chapter 19)

Acct. No. 5150

1	Agricultural Awards .....	\$	—	\$	66,500
2	Fairs and Festivals.....		—		186,627
3	Total .....	\$	—	\$	253,127

**DEPARTMENT OF ADMINISTRATION**

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

(WV Code Chapter 5F)

Acct. No. 2050

1	Unclassified—Total .....	\$	—	\$	187,500
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22—*Division of Finance  
and Administration*

(WV Code Chapter 5A)

Acct. No. 2100

1	Personal Services .....	\$	—	\$	1,923,766
2	Annual Increment .....		—		40,000

3	Employee Benefits .....	—	576,986
4	Unclassified .....	2,410,451	1,728,713
5	Fire Service Fee .....	—	39,000
6	National Governors'		
7	Association .....	—	57,400
8	Southern States		
9	Energy Board .....	—	23,938
10	Total .....	\$ 2,410,451	\$ 4,389,803

11 Any unexpended balance remaining in the appropri-  
 12 ation (1) Retrofit Elevator in Attorney General's Section  
 13 and (2) Retrofit Other Elevators in the Capitol Building  
 14 (account no. 2100-28) at the close of the fiscal year 1988-  
 15 89 is hereby reappropriated for expenditure during the  
 16 fiscal year 1989-90.

17 There is hereby established a revolving fund for  
 18 postage meter service requirements for all spending  
 19 units operating from the general revenue fund, from  
 20 special revenue funds or receiving reimbursement for  
 21 postage from the federal government.

22 Each spending unit shall be charged monthly for all  
 23 postage meter service and shall reimburse the revolving  
 24 fund monthly for all such amounts.

25 The division of highways shall reimburse account no.  
 26 8148-42 for all actual expenses incurred pursuant to the  
 27 provisions of section thirteen, article two-a, chapter  
 28 seventeen of the code.

*23—Board of Risk and  
 Insurance Management*

(WV Code Chapter 29)

Acct. No. 2250

1	Personal Services .....	\$ —	\$ 12,000
2	Employee Benefits .....	—	—0—
3	Unclassified .....	—	4,169,291
4	Total .....	\$ —	\$ 4,181,291

5 The Unclassified item of appropriation herein in-  
 6 cludes funding for the purpose of paying premiums, self-  
 7 insurance losses, loss adjustment expenses and loss

8 prevention engineering fees for property, casualty and  
 9 fidelity insurance for the various state agencies, except  
 10 those operating from special revenue funds, with such  
 11 special revenue fund agencies to be billed by the state  
 12 board of insurance and with such costs to be a proper  
 13 charge against such spending units.

14 These funds may be transferred to a special account  
 15 for the payment of premiums, self-insurance losses, loss  
 16 adjustment expenses and loss prevention engineering  
 17 fees and may be transferred to a special account for  
 18 disbursement for payment of premiums and insurance  
 19 losses.

*24—Commission on Uniform State Laws*

(WV Code Chapter 29)

Acct. No. 2450

1 Unclassified—Total ..... \$ — \$ 15,000  
 2 To pay expenses of members of the commission on  
 3 uniform state laws.

*25—Teachers' Retirement System*

(WV Code Chapter 18)

Acct. No. 2980

1 Unclassified—Total ..... \$ — \$ 11,849,969

*26—Division of Personnel of the  
 Civil Service System and the  
 Civil Service Commission*

(WV Code Chapter 29)

Acct. No. 5840

1	Personal Services .....	\$	—	\$	780,718
2	Annual Increment .....		—		15,012
3	Employee Benefits .....		—		224,895
4	Unclassified .....		—		166,676
5	Total .....	\$	—	\$	1,187,301

6 The director shall maintain accurate records reflect-  
 7 ing the cost of administering the provisions of this  
 8 appropriation. At the close of each quarter-year period,  
 9 the director shall summarize the cost and shall bill each  
 10 department, commission, board or agency which re-  
 11 ceives support from any funds other than the general  
 12 revenue fund for a prorata share of the administrative  
 13 cost based on the relationship between the quarterly  
 14 average number of employees in the service of such  
 15 department, commission, board or agency and the  
 16 quarterly average number of employees in the service  
 17 of all the departments, commissions, boards and  
 18 agencies of the state for the appropriate calendar  
 19 quarter.

20 This reimbursement is to be deposited in the general  
 21 revenue fund.

*27—Public Legal Services Council*

(WV Code Chapter 29)

Acct. No. 5900

1	Personal Services .....	\$	—	\$	234,585
2	Annual Increment .....		—		2,556
3	Employee Benefits .....		—		54,130
4	Unclassified .....		—		6,170,267
5	Total .....	\$	—	\$	6,461,538

6 Any unexpended balances remaining in the appropri-  
 7 ations for Appointed Counsel Fees (account no. 5900-11)  
 8 and Unclassified (account no. 5900-18) at the close of the  
 9 fiscal year 1988-89 are hereby reappropriated for  
 10 expenditure during the fiscal year 1989-90.

*28—Education and State Employees Grievance Board*

(WV Code Chapter 18)

Acct. No. 6015

1	Personal Services .....	\$	—	\$	337,417
2	Annual Increment .....		—		2,196
3	Employee Benefits .....		—		73,902

4	Unclassified .....	—	128,990
5	Total .....	\$ —	\$ 542,505

*29—Public Employees Retirement System*  
(WV Code Chapter 5)

Acct. No. 6140

1	Supplemental Benefits for		
2	Annuitants—Total .....	\$ —	\$ 2,030,000
3	The division of highways, division of motor vehicles,		
4	workers' compensation commissioner, public service		
5	commission and other departments or divisions operat-		
6	ing from special revenue funds and/or federal funds		
7	shall pay their proportionate share of the retirement		
8	costs for their respective divisions. When specific		
9	appropriations are not made, such payments may be		
10	made from the balances in the various special revenue		
11	funds in excess of specific appropriations.		

*30—Public Employees Insurance Agency*

(WV Code Chapter 5)

Acct. No. 6150

1	Unclassified—Total .....	\$ —	\$ —0—
2	The above appropriation and any special revenue		
3	received are intended to cover employers' contribution		
4	as defined in article sixteen, chapter five of the code.		
5	The division of highways, division of motor vehicles,		
6	workers' compensation commissioner, public service		
7	commission and other departments or divisions operat-		
8	ing from special revenue funds and/or federal funds		
9	shall pay their proportionate share of the public		
10	employees health insurance cost for their respective		
11	divisions. When specific appropriations are not made,		
12	such payments may be made from the balances in the		
13	various special revenue funds in excess of specific		
14	appropriations.		

*31—Ethics Commission*

(WV Code Chapter 6B)

Acct. No. 6155

1	Unclassified—Total .....	\$	—	\$	400,000
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**DEPARTMENT OF COMMERCE, LABOR  
AND ENVIRONMENTAL RESOURCES**

*32—Department of Commerce, Labor  
and Environmental Resources—  
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 1205

1	Unclassified—Total .....	\$	—	\$	187,500
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*33—Office of Community and  
Industrial Development*

(WV Code Chapter 5B)

Acct. No. 1210

1	Personal Services .....	\$	—	\$	1,954,784
2	Annual Increment .....		—		23,565
3	Employee Benefits .....		—		435,192
4	Unclassified .....		<u>12,774,444</u>		<u>3,165,107</u>
5	Total .....	\$	<u>12,774,444</u>	\$	5,578,648

1 Any unexpended balances remaining in the appropri-  
2 ations for Partnership Grants (account no. 1210-15) and  
3 Flood (account no. 1210-19) at the close of the fiscal year  
4 1988-89 are hereby reappropriated for expenditure  
5 during the fiscal year 1989-90.

*34—Office of Community and Industrial  
Development—Emergency Employment,  
Training and Education*

(WV Code Chapter 5)

Acct. No. 1220

1 Any unexpended balances remaining in the appropri-  
2 ations for Emergency Jobs Program—Public Service



3 Jobs (account no. 1220-05) at the close of the fiscal year  
 4 1988-89 is hereby reappropriated for expenditure  
 5 during the fiscal year 1989-90.

*35—Resource Recovery—  
 Solid Waste Disposal Authority*

(WV Code Chapter 16)

Acct. No. 4020

1	Personal Services .....	\$	—	\$	71,124
2	Annual Increment .....		—		1,008
3	Employee Benefits .....		—		16,955
4	Unclassified .....		—		26,449
5	Total .....	\$	—	\$	115,536

*36—Division of Labor*

(WV Code Chapters 21 and 47)

Acct. No. 4500

1	Personal Services .....	\$	—	\$	845,028
2	Annual Increment .....		—		10,008
3	Employee Benefits .....		—		282,235
4	Unclassified .....		298,836		158,857
5	Total .....	\$	298,836	\$	1,296,128

*37—Division of Commerce*

(WV Code Chapter 5B)

Acct. No. 4625

1	Personal Services .....	\$	—	\$	6,773,716
2	Annual Increment .....		—		201,404
3	Employee Benefits .....		—		2,366,094
4	Unclassified .....		400,000		—0—
5	Total .....	\$	400,000	\$	9,341,214

6 Any unexpended balances remaining in the appropri-  
 7 ations for Cacapon State Park (account no. 4625-65) and  
 8 Capital Outlay (account no. 4625-10) at the close of the  
 9 fiscal year 1988-89 are hereby reappropriated for  
 10 expenditure during the fiscal year 1989-90.

11 Any revenue derived from mineral extraction at any

12 state park shall be deposited in a special revenue  
 13 account of the division of commerce, first for bond debt  
 14 payment purposes and with any remainder to be for  
 15 park operation and improvement purposes.

16 The Blennerhassett Historical State Park, account  
 17 number 5660, funding is now included in lines 1, 2, 3,  
 18 4, and 5.

*38—Board of Coal Mine  
 Health and Safety*

(WV Code Chapter 22)

Acct. No. 4720

1	Personal Services .....	\$	—	\$	45,992
2	Annual Increment		—		288
3	Employee Benefits .....		—		8,460
4	Unclassified .....		—		8,595
5	Total .....	\$	—	\$	63,335

*39—Interstate Commission on  
 Potomac River Basin*

(WV Code Chapter 29)

Acct. No. 4730

1	West Virginia's				
2	Contribution				
3	to the Interstate				
4	Commission on				
5	Potomac River Basin—				
6	Total .....	\$	—	\$	25,620

*40—Ohio River Valley Water  
 Sanitation Commission*

(WV Code Chapter 29)

Acct. No. 4740

1	West Virginia's				
2	Contribution to the				
3	Ohio River Valley				
4	Water Sanitation				
5	Commission—				
6	Total .....	\$	—	\$	85,725

*41—Coal Mine Safety and  
Technical Review Committee*

(WV Code Chapter 22)

Acct. No. 4750

1	Personal Services .....	\$	—	\$	7,680
2	Employee Benefits .....		—		1,312
3	Unclassified .....		—		63,307
4	Total .....	\$	—	\$	72,299

*42—Air Pollution  
Control Commission*

(WV Code Chapter 16)

Acct. No. 4760

1	Personal Services .....	\$	—	\$	571,709
2	Annual Increment .....		—		6,684
3	Employee Benefits .....		—		156,519
4	Unclassified .....		1,242,415		196,090
5	Total .....	\$	1,242,415	\$	931,002

*43—Division of Energy*

(WV Code Chapter 22)

Acct. No. 4775

1	Personal Services .....	\$	—	\$	4,458,780
2	Annual Increment .....		—		78,000
3	Employee Benefits .....		—		1,192,714
4	Unclassified .....		97,573,930		1,112,477
5	Total .....	\$	97,573,930	\$	6,841,971

*44—Division of Forestry*

(WV Code Chapter 19)

Acct. No. 5160

1	Personal Services .....	\$	—	\$	1,993,795
2	Annual Increment .....		—		42,768
3	Employee Benefits .....		—		363,933
4	Unclassified .....		320,610		526,759
5	Total .....	\$	320,610	\$	2,927,255

6 Out of the above general revenue funds, a sum may  
7 be used to match federal funds for cooperative studies  
8 or other funds for similar purposes.

*45—Geological and Economic Survey*

(WV Code Chapter 29)

Acct. No. 5200

1	Personal Services .....	\$	—	\$	1,186,339
2	Annual Increment .....		—		19,404
3	Employee Benefits .....		—		316,589
4	Unclassified .....		627,000		163,559
5	Total .....	\$	627,000	\$	1,685,891

6 The Unclassified appropriation includes funding to  
7 secure federal and other contracts and may be trans-  
8 ferred to a special revenue account for the purpose of  
9 providing advance funding for such contracts.

10 Any unexpended balance remaining in the appropri-  
11 ation To Secure Federal and Other Contracts (account  
12 no. 5200-07) at the close of the fiscal year 1988-89 is  
13 hereby reappropriated for expenditure during the fiscal  
14 year 1989-90.

*46—Water Resources Board*

(WV Code Chapter 20)

Acct. No. 5640

1	Personal Services .....	\$	—	\$	62,012
2	Annual Increment .....		—		792
3	Employee Benefits .....		—		13,023
4	Unclassified .....		—		49,039
5	Total .....	\$	—	\$	124,866

*47—Division of Natural Resources*

(WV Code Chapter 20)

Acct. No. 5650

1	Personal Services .....	\$	—	\$	2,834,016
2	Annual Increment .....		—		67,968
3	Employee Benefits .....		—		799,276
4	Black Fly Control				
5	Spraying Project .....		—		230,000

6	Unclassified .....	10,616,851		777,788
7	Total .....	\$10,616,851	\$	4,709,048

*48—Blennerhassett Historical  
Park Commission*

(WV Code Chapter 29)

Acct. No. 5660

1	Personal Services .....	\$	—	\$	—0—
2	Annual Increment .....		—		—0—
3	Employee Benefits .....		—		—0—
4	Unclassified .....		—		—0—
5	Total .....	\$	—	\$	—0—

6 Any unexpended balances remaining in the appropri-  
7 ations for Blennerhassett Island (account no. 5660-07)  
8 and in the item in this account designated Unclassified  
9 at the close of the fiscal year 1988-89 is hereby  
10 reappropriated for expenditure during the fiscal year  
11 1989-90.

*49—Water Development Authority*

(WV Code Chapter 20)

Acct. No. 5670

1	Unclassified—Total .....	\$18,919,200	\$	—0—
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2 Any unexpended balances remaining in the appropri-  
3 ations for Phase III Hardship Grants (account no. 5670-  
4 08), Hardship Grants (account no. 5670-10), Loan and  
5 Grant Program (account no. 5670-17) and Capital  
6 Outlay-Sewer (account no. 5670-20) at the close of the  
7 fiscal year 1988-89 are hereby reappropriated for  
8 expenditure during the fiscal year 1989-90.

## DEPARTMENT OF EDUCATION

*50—State Department of Education*

(WV Code Chapters 18 and 18A)

Acct. No. 2860

1	Personal Services .....	\$	—	\$	2,654,931
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2	Annual Increment .....	—	42,781
3	Employee Benefits .....	—	923,538
4	Unclassified .....	3,163,800	7,531,400
5	Education of		
6	Institutionalized		
7	Juveniles .....	—	1,213,042
8	Total .....	\$ 3,163,800	\$ 12,365,692

9 The above appropriation includes the state board of  
10 education and their executive office.

*51—State Department of Education—  
School Lunch Program*

(WV Code Chapters 18 and 18A)

Acct. No. 2870

1	Personal Services .....	\$ —	\$ 156,684
2	Annual Increment .....	—	3,708
3	Employee Benefits .....	—	59,954
4	Unclassified .....	51,029,681	1,722,724
5	Total .....	\$51,029,681	\$ 1,943,070

*52—State Board of Education—  
Vocational Division*

(WV Code Chapters 18 and 18A)

Acct. No. 2890

1	Personal Services .....	\$ —	\$ 665,100
2	Annual Increment .....	—	10,000
3	Employee Benefits .....	—	183,738
4	Unclassified .....	10,344,779	11,776,876
5	Albert Yanni		
6	Vocational Program .....	—	325,000
7	Total .....	\$10,344,779	\$ 12,960,714

*53—State Department of Education—  
State Aid to Schools*

(WV Code Chapters 18 and 18A)

Acct. No. 2950

1	Unclassified .....	\$ —	\$ —0—
2	Professional Educators .....	—	481,692,211

3	Salary Equity .....	—	11,274,055
4	Service Personnel .....	—	174,086,119
5	Fixed Charges .....	—	240,400,000
6	Transportation .....	—	23,734,641
7	Administration .....	—	6,179,454
8	Other Current Expenses ....	—	83,796,821
9	Improve Instructional		
10	Programs .....	—	45,952,893
11	Rural Loss Assistance .....	—	305,976
12	Basic Foundation		
13	Allowances .....	—	1,067,422,170
14	Less Local Share .....	—	(143,314,077)
15	Total Basic State Aid .....	—	924,108,093
16	Increased Enrollment .....	—	400,000
17	Incentive for Administration	—	9,876
18	Total .....	\$ —	\$924,517,969

*54—State Department of Education—  
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Acct. No. 2960

1	Unclassified—Total .....	\$24,133,000	\$ —0—
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*55—West Virginia Schools for the  
Deaf and the Blind*

(WV Code Chapters 18 and 18A)

Acct. No. 3330

1	Personal Services .....	\$ —	\$ 3,914,782
2	Annual Increment .....	—	5,040
3	Employee Benefits .....	—	940,167
4	Unclassified .....	—	1,304,807
5	Total .....	\$ —	\$ 6,164,796

*56—State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Acct. No. 3360

1	Personal Services .....	\$ —	\$ 131,996
2	Annual Increment .....	—	2,989
3	Employee Benefits .....	—	24,727

4	Unclassified .....	—	68,175
5	Total .....	\$ —	\$ 227,887

*57—State Board of Rehabilitation—  
Division of Rehabilitation Services*

(WV Code Chapter 18)

Acct. No. 4405

1	Personal Services .....	\$ —	\$ 4,413,458
2	Annual Increment .....	—	276,480
3	Employee Benefits .....	—	2,189,455
4	Unclassified .....	26,911,000	3,851,979
5	Certification of the		
6	Rehabilitation Center .....	—	500,000
7	Total .....	\$26,911,000	\$ 11,231,372

**DEPARTMENT OF EDUCATION  
AND THE ARTS**

*58—Department of Education and the Arts—  
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 2755

1	Underwood-Smith		
2	Scholarship Program .....	\$ —	\$ 400,000
3	Market Pay Adjustment .....	—	225,000
4	Unclassified .....	\$ —	187,500
5	Total .....	\$ —	\$ 812,500

*59—Board of Directors of  
State College System*

Control Account

(WV Code Chapter 18B)

Acct. No. 2785

1	Unclassified—Total .....		\$ 66,694,541
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*60—Board of Regents (Control)*

(WV Code Chapter 18)

Acct. No. 2790

1	Unclassified—Total .....	\$ —	\$ —0—
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*61—Board of Trustees of the  
University System of West Virginia*

(Board of Regents)

Control Account

(WV Code Chapter 18B)

Acct. No. 2795

1 Unclassified—Total ..... \$123,201,844

*62—Board of Trustees of the University System  
of West Virginia Board of Directors of the  
State College System*

(Board of Regents)

Consolidated Staff Account

(WV Code Chapter 18B)

Acct. No. 2800

1	Personal Services .....	\$	—	\$	—0—
2	Annual Increment .....		—		—0—
3	Employee Benefits .....		—		—0—
4	Unclassified .....		—		—0—
5	Unclassified (Central Office)		—		1,204,682
6	Higher Education Grant				
7	Program .....		—		3,595,000
8	Contract Tuition Program...		—		681,000
9	Eminent Scholars Program		—		150,000
10	Total .....	\$	—	\$	5,630,682

11 Any unexpended balance remaining in the appropri-  
12 ation for Asbestos Litigation (account no. 2800-21) at the  
13 close of the fiscal year 1988-89 is hereby reappropriated  
14 for expenditure during the fiscal year 1989-90.

*63—School of Osteopathic Medicine*

(WV Code Chapter 18)

Acct. No. 2810

1 Unclassified—Total ..... \$ — \$ —0—

*64—Marshall University—Medical School*

(WV Code Chapter 18)

Acct. No. 2840

1	Unclassified—Total . . . . .	\$	—	\$	—0—
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*65—West Virginia University—  
Schools of Health Sciences*

(WV Code Chapter 18)

Acct. No. 2850

1	Unclassified—Total . . . . .	\$	—	\$	—0—
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2	May be transferred to West Virginia University—				
3	medical school fund upon requisition of the governor.				

*66—Board of Trustees of the  
University System of West Virginia*

(Board of Regents)

Medical Schools and Health Science Center Account

(WV Code Chapter 18B)

Acct. No. 2855

1	Unclassified—Total . . . . .	\$	—	\$	46,977,475
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*67—Educational Broadcasting Authority*

(WV Code Chapter 10)

Acct. No. 2910

1	Personal Services . . . . .	\$	—	\$	84,867
2	Annual Increment . . . . .		—		648
3	Employee Benefits . . . . .		—		649,948
4	Unclassified . . . . .		1,423,800		4,886,010
5	Total . . . . .	\$	1,423,800	\$	5,621,473

6	The Unclassified appropriation includes funding for				
7	the construction and operation of regional ETV and				
8	radio stations. These funds may be transferred to special				
9	revenue accounts for matching college, university, city,				
10	county, federal and/or other generated revenue.				

*68—Library Commission*

(WV Code Chapter 10)

Acct. No. 3500

1	Personal Services .....	\$	—	\$	944,951
2	Annual Increment .....		—		22,536
3	Employee Benefits .....		—		257,861
4	Unclassified .....		1,137,593		6,570,574
5	Total .....	\$	1,137,593	\$	7,795,922

*69—Division of Culture and History*

(WV Code Chapter 29)

Acct. No. 3510

1	Personal Services .....	\$	—	\$	1,107,990
2	Annual Increment .....		—		13,806
3	Project 2021 .....		—		325,000
4	Employee Benefits .....		—		379,177
5	Unclassified .....		1,946,250		2,452,003
6	Total .....	\$	1,946,250	\$	4,277,976

7 The Unclassified appropriation includes funding for  
 8 the Arts Fund, Department Programming Funds,  
 9 Grants, Fairs and Festivals and Washington Carver  
 10 Camp and shall be expended only upon authorization of  
 11 the division of culture and history and in accordance  
 12 with the provisions of chapter five-a and article three,  
 13 chapter twelve of the code.

14 All federal moneys received as reimbursement to the  
 15 division of culture and history for moneys expended  
 16 from the general revenue fund for the Arts Fund and  
 17 Historical Preservation are hereby reappropriated for  
 18 the purposes as originally made, including personal  
 19 services, current expenses and equipment.

**DEPARTMENT OF HEALTH  
 AND HUMAN RESOURCES**

*70—Department of Health and Human  
 Resources—Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 3990

1	Unclassified—Total .....	\$	—	\$	187,500
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71—*Division of Health—  
Central Office*

(WV Code Chapter 16)

Acct. No. 4000

1	Personal Services .....	\$	—	\$	5,130,530
2	Minden-Shaffer Study .....		—		25,000
3	Annual Increment .....		—		100,000
4	Corporate Nonprofit				
5	Community Health				
6	Centers—F.M.H.A.				
7	Mortgage Finance .....		—		105,913
8	Employee Benefits .....		—		1,648,770
9	Unclassified .....		—		4,511,924
10	Total .....	\$	—	\$	11,522,137

11 Any unexpended balances remaining in the appropri-  
12 ations for Placement Programs for the Developmentally  
13 Disabled (account no. 4000-13). Agent Orange (account  
14 no. 4000-17) and Reimbursement to Community Mental  
15 Health and Mental Retardation Centers (account no.  
16 4201-18) at the close of the fiscal year 1988-89 are  
17 hereby reappropriated for expenditure during the fiscal  
18 year 1989-90.

72—*Division of Veterans' Affairs—  
Veterans' Home*

(WV Code Chapter 9A)

Acct. No. 4010

1	Personal Services .....	\$	—	\$	787,169
2	Annual Increment .....		—		18,504
3	Employee Benefits .....		—		260,479
4	Unclassified .....		422,400		—0—
5	Total .....	\$	422,400	\$	1,066,152

6 Any unexpended balances remaining in the appropri-  
7 ations for Repairs and Alterations (account no. 4010-02)  
8 and Equipment (account no. 4010-03) at the close of the  
9 fiscal year 1988-89 are hereby reappropriated for  
10 expenditure during the fiscal year 1989-90.

*73—Division of Veterans' Affairs*

(WV Code Chapter 9A)

Acct. No. 4040

1	Personal Services .....	\$	—	\$	625,114
2	Annual Increment .....		—		13,104
3	Employee Benefits .....		—		206,958
4	Unclassified .....		—		92,029
5	Total .....	\$	—	\$	937,205

*74—Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

1	Personal Services .....	\$	—	\$	10,142,098
2	Annual Increment .....		—		478,400
3	Employee Benefits .....		—		3,042,782
4	Medical Services .....		—		99,148,917
5	Unclassified .....		460,944,761		52,108,489
6	Total .....	\$	460,944,761	\$	164,920,686

7 Medical services line item includes funding for Title  
8 XIX Waiver.

*75—Commission on Aging*

(WV Code Chapter 29)

Acct. No. 4060

1	State Office Function				
2	Personal Services .....	\$	—	\$	114,222
3	Annual Increment .....		—		2,268
4	Employee Benefits .....		—		33,971
5	Unclassified .....		11,085,000		7,500
6	Area Agencies on Aging				
7	Administration .....		—		706,032
8	Substate Ombudsman .....		—		262,908
9	Local Programs				
10	Service Delivery Costs ....		—		2,227,243
11	Attorney General .....		—		14,000
12	Silver Haired Legislature ...		—		20,000

13	Golden Mountaineer .....	—	22,500
14	Total .....	\$11,085,000	\$ 3,410,644

15 Any unexpended balance remaining in the appropri-  
 16 ation for Senior Citizen Centers—Land Acquisition,  
 17 Construction Repairs and Alterations (account no. 4060-  
 18 10) at the close of the fiscal year 1988-89 is hereby  
 19 reappropriated for expenditure during the fiscal year  
 20 1989-90.

*76—Developmental Disabilities Planning Council*

Acct. No. 4080

1	Unclassified—Total .....	\$ 686,610	\$ —
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*77—Consolidated Medical Service Fund*

Acct. No. 4190

1	Foster Grandparents		
2	Stipends/Travel .....	\$ —	\$ 62,000
3	Institutional Facilities		
4	Operations .....	\$ —	\$ 47,068,946
5	Employee Benefits .....	—	15,034,308
6	Poision Control		
7	Hotline .....	—	250,000
8	ICF/MR Match .....	—	5,800,000
9	Special Olympics .....	—	28,000
10	State Aid to		
11	Local Agencies .....	—	6,700,000
12	Maternal and Child		
13	Health Clinic,		
14	Clinicians & Medical		
15	Contracts and Fees .....	—	2,600,000
16	Continuum of Care .....	—	850,000
17	Primary Care		
18	Contracts to Community		
19	Health Centers .....	—	2,705,000
20	Epidemiology Research .....	—	250,000
21	Grants to Counties		
22	and EMS Entities .....	—	1,725,000
23	Behavioral Health		
24	Program .....	—	28,027,000
25	Unclassified .....	24,182,962	—0—
26	Total .....	\$24,182,962	\$ 111,100,254

27 Any unexpended balance remaining in the appropri-  
 28 ation for Placement Programs for the Developmentally  
 29 Disabled (account no. 4190-16) at the close of the fiscal  
 30 year 1988-89 is hereby reappropriated for expenditure  
 31 during the fiscal year 1989-90.

32 The director of health, prior to the beginning of the  
 33 fiscal year, shall file with the legislative auditor an  
 34 expenditure schedule for each formerly separate  
 35 spending unit which has been consolidated into the  
 36 above account and which receives a portion of the above  
 37 appropriation. He shall also, within fifteen days after  
 38 the close of the six-month period of said fiscal year, file  
 39 with the legislative auditor an itemized report of  
 40 expenditures made during the preceding six-month  
 41 period.

42 Includes funds for state match ICF-MR Group Homes.

43 Additional funds have been appropriated in account  
 44 no. 8500 for operation of the medical facilities.

45 No funds from this account, or any other health  
 46 department account shall be used to pay for the Court  
 47 Monitor salaries or expenses.

*78—Human Rights Commission*

(WV Code Chapter 5)

Acct. No. 5980

1	Personal Services .....	\$	—	\$	378,376
2	Annual Increment .....		—		6,389
3	Employee Benefits .....		—		111,023
4	Unclassified .....		102,190		181,219
5	Total .....	\$	102,190	\$	677,007

*79—Women's Commission*

(WV Code Chapter 29)

Acct. No. 6000

1	Personal Services .....	\$	—	\$	50,893
2	Annual Increment .....		—		432

3	Employee Benefits .....	—		8,956
4	Unclassified .....	—		10,424
5	Total .....	\$	—	\$ 70,705

### DEPARTMENT OF PUBLIC SAFETY

*80—Department of Public Safety—  
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 1255

1	Unclassified—Total .....	\$	—	\$ 187,500
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*81—Office of Emergency Services and Advisory Council—  
Division of Emergency Services*

(WV Code Chapter 15)

Acct. No. 1300

1	Personal Services .....	\$	—	\$ 203,214
2	Annual Increment .....		—	5,868
3	Employee Benefits .....		—	57,722
4	Unclassified .....		805,527	11,172
5	Integrated Flood			
6	Observance Warning			
7	System—Equipment .....		273,000	—
8	Total .....	\$	1,078,527	\$ 277,976

*82—Board of Probation and Parole*

(WV Code Chapter 62)

Acct. No. 3650

1	Salaries of Members			
2	of Board of Probation			
3	and Parole .....	\$	—	\$ 81,000
4	Other Personal Services .....		—	54,152
5	Annual Increment .....		—	1,188
6	Employee Benefits .....		—	28,930
7	Unclassified .....		—	21,123
8	Total .....	\$	—	\$ 186,393



*83—Division of Corrections—  
Central Office*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3680

1	Personal Services .....	\$	—	\$ 380,869
2	Annual Increment .....		—	6,408
3	Employee Benefits .....		—	99,765
4	Unclassified .....		—	164,290
5	Total .....	\$	—	\$ 651,332

*84—Division of Corrections—  
Correctional Units*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3770

1	Personal Services .....	\$	—	\$ 12,125,856
2	Annual Increment .....		—	182,818
3	Employee Benefits .....		—	3,726,355
4	Unclassified .....		—	8,017,158
5	Total .....	\$	—	\$ 24,052,187

6 Any unexpended balances remaining in the appropri-  
7 ations for Capital Outlay (account no. 3770-04) and  
8 Pruntytown Facility—Unclassified (account no. 3770-07)  
9 at the close of the fiscal year 1988-89 are hereby  
10 reappropriated for expenditure during the fiscal year  
11 1989-90.

12 The commissioner of corrections, prior to the begin-  
13 ning of the fiscal year, shall file with the legislative  
14 auditor an expenditure schedule for each formerly  
15 separate spending unit which has been consolidated into  
16 the above account and which receives a portion of the  
17 above appropriation. He shall also, within fifteen days  
18 after the close of each six-month period of said fiscal  
19 year, file with the legislative auditor an itemized report  
20 of expenditures made during the preceeding six-month  
21 period. Such report shall include the total of expendi-  
22 tures made for personal services, annual increment,  
23 current expenses (inmate medical expenses and other),  
24 repairs and alterations and equipment.

*85—Division of Public Safety*

(WV Code Chapter 15)

Acct. No. 5700

1	Personal Services .....	\$	—	\$	15,797,532
2	Annual Increment .....		—		91,944
3	Employee Benefits .....		—		3,928,188
4	Unclassified .....		372,025		7,080,230
5	Total .....	\$	372,025	\$	26,897,894

*86—Adjutant General—State Militia*

(WV Code Chapter 15)

Acct. No. 5800

1	Personal Services .....	\$	—	\$	256,723
2	Annual Increment .....		—		5,652
3	Employee Benefits .....		—		430,779
4	Unclassified .....		2,952,101		3,413,666
5	Total .....	\$	2,952,101	\$	4,106,820

*87—Fire Commission*

(WV Code Chapter 29)

Acct. No. 6170

1	Personal Services .....	\$	—	\$	544,552
2	Annual Increment .....		—		11,196
3	Employee Benefits .....		—		165,242
4	Unclassified .....		—		155,350
5	Total .....	\$	—	\$	876,340

**DEPARTMENT OF TAX AND REVENUE***88—Department of Tax and Revenue**Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 1680

1	Unclassified—Total .....	\$	—	\$	187,500
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*89—Municipal Bond Commission*

(WV Code Chapter 13)

Acct. No. 1700

1	Personal Services .....	\$	—	\$	74,570
2	Annual Increment .....		—		1,044
3	Employee Benefits .....		—		20,702
4	Unclassified .....		—		18,697
5	Total .....	\$	—	\$	115,013

*90—Tax Division*

(WV Code Chapter 11)

Acct. No. 1800

1	Personal Services .....	\$	—	\$	8,838,180
2	Annual Increment .....		—		145,000
3	Employee Benefits .....		—		2,472,404
4	Unclassified .....		—		4,212,756
5	Total .....	\$	—	\$	15,668,340

6 Any unexpended balance remaining in the appropri-  
 7 ation for Other Expenses (account no. 1800-07) at the  
 8 close of the fiscal year 1988-89 is hereby reappropriated  
 9 for expenditure during the fiscal year 1989-90.

*91—Division of Professional and**Occupational Licenses—**State Athletic Commission*

(WV Code Chapter 29)

Acct. No. 4790

1	Unclassified—Total .....	\$	—	\$	5,225
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*92—Office of Nonintoxicating  
Beer Commissioner*

(WV Code Chapter 11)

Acct. No. 4900

1	Personal Services .....	\$	—	\$	313,581
2	Annual Increment .....		—		4,250
3	Employee Benefits .....		—		79,439
4	Unclassified .....		—		86,773
5	Total .....	\$	—	\$	484,043

*93—Racing Commission*

(WV Code Chapter 19)

Acct. No. 4950

1	Personal Services .....	\$	—	\$	1,027,293
2	Annual Increment .....		—		8,000
3	Employee Benefits .....		—		256,517
4	Unclassified .....		—		90,000
5	Total .....	\$	—	\$	1,381,810

**DEPARTMENT OF TRANSPORTATION***94—Department of Transportation—  
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 4825

1	Civil Air Patrol .....	\$	—	\$	85,000
2	Unclassified— .....		—		187,500
3	Total .....	\$	—	\$	272,500

4 Any unexpended balance remaining in the appropri-  
 5 ation for Aeronautics Commission—Airport Matching  
 6 (account no. 1210-23) at the close of the fiscal year 1988-  
 7 89 is hereby reappropriated for expenditure during the  
 8 fiscal year 1989-90.

*95—Railroad Maintenance Authority*

(WV Code Chapter 29)

Acct. No. 5690

1	Personal Services .....	\$	—	\$	424,258
2	Annual Increment .....		—		5,364
3	Unclassified .....		450,000		386,561
4	Total .....	\$	450,000	\$	816,183

1 Total Title II, Section 1—

2 General Revenue .....

— \$ 1,740,210,436

3 **Sec. 3. Appropriations from other funds.**—From  
 4 the funds designated there are hereby appropriated  
 5 conditionally upon the fulfillment of the provisions set  
 6 forth in article two, chapter five-a of the code, the

7 following amounts, as itemized, for expenditure during  
 8 the fiscal year one thousand nine hundred ninety.

9 **Sec. 4. Appropriations of federal funds.**—In accor-  
 10 dance with article eleven, chapter four of the code, from  
 11 federal funds there are hereby appropriated condition-  
 12 ally upon the fulfillment of the provisions set forth in  
 13 article two, chapter five-a of the code the following  
 14 amounts, as itemized, for expenditure during the fiscal  
 15 year one thousand nine hundred ninety.

**EXECUTIVE**

*96—Treasurer’s Office—  
 Abandoned and Unclaimed Property*

(WV Code Chapters 12 and 36)

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

	<b>Federal Funds Fiscal Year 1989-90</b>	<b>Other Funds Fiscal Year 1989-90</b>
1 Personal Services .....	\$ —	\$ 122,259
2 Annual Increment .....	—	468
3 Employee Benefits .....	—	21,525
4 Unclassified .....	—	34,238
5 Total .....	\$ —	\$ 178,490

*97—Auditor’s Office—  
 Land Department Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total .....	\$ —	\$ 11,400
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2 The total amount of this appropriation shall be paid  
 3 from the special revenue fund out of fees and collections  
 4 as provided by law.

98—*Department of Agriculture*

(WV Code Chapter 19)

Acct. No. 8180

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	209,201
2	Employee Benefits .....		—		37,614
3	Unclassified .....		—		487,663
4	Total .....	\$	—	\$	734,478

5 The total amount of this appropriation shall be paid  
6 from a special revenue fund out of collections made by  
7 the department of agriculture as provided by law.

99—*General John McCausland Memorial Farm*

(WV Code Chapter 19)

Acct. No. 8194

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total .....	\$	—	\$	75,921
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2 Funds for the above appropriation shall be expended  
3 in accordance with article twenty-six, chapter nineteen  
4 of the code.

**DEPARTMENT OF ADMINISTRATION**100—*Division of Finance and Administration—  
Revolving Fund*

(WV Code Chapter 5A)

Acct. No. 8140

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	700,509
2	Annual Increment .....		—		15,768
3	Employee Benefits .....		—		138,743
4	Unclassified .....		—		633,560
5	Total .....	\$	—	\$	1,488,580

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund as provided by article two,  
8 chapter five-a of the code.

9 The above appropriation includes salaries and operat-  
10 ing expenses.

11 There is hereby appropriated from this fund, in  
12 addition to the above appropriation, the necessary  
13 amount for the purchase of supplies for resale.

*101—Division of Finance and Administration—  
Information System Services Division Fund*

(WV Code Chapter 5A)

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	2,969,343
2	Annual Increment .....		—		49,644
3	Employee Benefits .....		—		528,323
4	Unclassified .....		—		968,840
5	Total .....	\$	—	\$	4,516,150

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

10 There is hereby appropriated from this fund, in  
11 addition to the above appropriation, the necessary  
12 amount for the procurement of data processing equip-  
13 ment, telecommunications expenses and supplies for  
14 resale.

**DEPARTMENT OF COMMERCE, LABOR  
AND ENVIRONMENTAL RESOURCES**

*102—Division of Natural Resources*

(WV Code Chapter 20)

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	4,356,331
2	Annual Increment .....		—		93,960
3	Employee Benefits .....		—		1,306,922
4	Unclassified .....		—		2,303,769

5	Land Purchase and		
6	Buildings .....	756,800	859,650
7	Total .....	\$ 756,800	\$ 8,920,632

8 Any unexpended balance remaining in the appropri-  
 9 ation for Land Purchase and Buildings (account no.  
 10 8300-09) at the close of the fiscal year 1988-89 is hereby  
 11 reappropriated for expenditure during the fiscal year  
 12 1989-90. Any unexpended balance remaining in the  
 13 appropriation for Land Purchase and Building (account  
 14 no. 8300-09) and Land Purchase and Building (account  
 15 no. 8300-23) is reflected in the approved FY-88 Expen-  
 16 diture Schedule and the June 1989 Financial Statement  
 17 of the Division of Natural Resources and available for  
 18 capital improvement and land purchase purposes is  
 19 hereby reappropriated for expenditure in the Fiscal  
 20 Year 1989-90, all in accordance with Section Thirty-  
 21 Four, Article Two, Chapter Twenty of the Code.

22 The total amount of this appropriation shall be paid  
 23 from a special revenue fund out of fees collected by the  
 24 division of natural resources. Expenditures shall be  
 25 limited to the amounts appropriated except for federal  
 26 funds received and special funds collected.

*103—Division of Banking*

(WV Code Chapter 31A)

Acct. No. 8395

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 722,737
2	Annual Increment .....	—	5,580
3	Employee Benefits .....	—	127,350
4	Unclassified .....	—	435,969
5	Total .....	\$ —	\$ 1,291,636

*104—Geological and Economic Survey*

(WV Code Chapter 29)

Acct. No. 8589

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total .....	\$ —	\$ 142,629
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2 The above appropriation shall be used in accordance  
 3 with section four, article two, chapter twenty-nine of the  
 4 code.

### DEPARTMENT OF EDUCATION

*105—State Department of Education—  
 Veterans' Education*

(WV Code Chapter 18)

Acct. No. 7979

#### TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total . . . . . \$ 101,336 \$ —

2 Expenditures from this appropriation shall not exceed  
 3 the amount to be reimbursed by the federal government.

4 Federal funds in excess of the amounts hereby approp-  
 5 riated may be made available by budget amendment  
 6 upon request of the state superintendent of schools and  
 7 the approval of the governor for any emergency which  
 8 might arise in the operation of this division during the  
 9 fiscal year.

### DEPARTMENT OF EDUCATION AND THE ARTS

*106—Board of Regents—  
 Special Capital Improvement Fund*

(WV Code Chapter 18)

Acct. No. 8830

#### TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service—Total . . . . . \$ — \$ 476,000

2 The total amount of this appropriation shall be paid  
 3 from the special capital improvement fund created in  
 4 section four, article twenty-four, chapter eighteen of the  
 5 code.

*107—Board of Regents—  
 State System Registration Fee—  
 Special Capital Improvement Fund  
 (Capital Improvement and Bond Retirement Fund)*

(WV Code Chapter 18)

Acct. No. 8835

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service .....	\$	—	\$	6,130,000
2	Capital Building Repairs				
3	& Alterations .....		—		4,500,000
4	(Supplements Operating				
5	Budgets of Colleges				
6	and Universities)				
7	Miscellaneous Projects .....		—		1,300,000
8	Total .....	\$	—	\$	11,930,000

9 Any unexpended balances remaining in prior years'  
10 and 1988-89 appropriations are hereby reappropriated  
11 for expenditure during the fiscal year 1989-90.

12 The total amount of this appropriation shall be paid  
13 from the special capital improvement fund created by  
14 section four, article twenty-four, chapter eighteen of the  
15 code. Projects are to be paid on a cash basis and made  
16 available from date of passage.

*108—Board of Regents—  
State System Registration Fee—  
Revenue Bond Construction Fund*

(WV Code Chapter 18)

Acct. No. 8845

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Capital Outlay .....	\$	—	\$	—0—
2	Marshall University				
3	Science Building				
4	Renovation .....		—		2,000,000
5	Fairmont State College				
6	Academic Building.....		—		6,500,000
7	West Virginia				
8	University Facilities				
9	Renovation .....		—		6,500,000
10	West Virginia				
11	Institute of Technology				
12	Science Hall				
13	Renovation .....		—		2,000,000

14	West Virginia		
15	Northern Community		
16	College Building		
17	Renovation .....	—	1,000,000
18	Bluefield State		
19	College Dickason		
20	Hall Renovation .....	—	500,000
21	West Liberty		
22	State College Shaw		
23	Hall Renovation .....	—	500,000
24	Concord College		
25	Administration Building/		
26	Science Hall		
27	Renovation .....	—	700,000
28	West Virginia		
29	School of Osteopathic		
30	Medicine Building		
31	Renovation .....	—	2,500,000
32	West Virginia		
33	State College		
34	Fleming Hall		
35	Renovation .....	—	500,000
36	State-Wide Computer		
37	System Upgrade.....	—	2,300,000
38	Total .....	\$ —	\$ 25,000,000

39 The total amount of this appropriation shall be paid  
 40 from the proceeds of revenue bonds issued pursuant to  
 41 section four, article twenty four, chapter eighteen of the  
 42 code. Projects are to be made available from the date  
 43 of passage.

44 Any unexpended balances remaining in prior years'  
 45 and the 1988-89 appropriations are hereby reappropri-  
 46 ated and reauthorized for expenditure during the  
 47 fiscal year 1989-90.

109—Board of Regents—  
 State System Tuition Fee—  
 Special Capital Improvement Fund  
 (Capital Improvement and  
 Bond Retirement Fund)  
 (WV Code Chapter 18)

## Acct. No. 8855

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service .....	\$	—	\$	11,150,000
2	Building and				
3	Campus Renewal .....		—		7,000,000
4	Dental School .....		—		1,200,000
5	WVU Computer .....		—		1,000,000
6	West Virginia				
7	Northern Community				
8	College New				
9	Martinsville .....		—		1,900,000
10	Total .....	\$	—	\$	22,250,000

11 Any unexpended balances remaining in prior years'  
12 and 1988-89 appropriations are hereby reappropriated  
13 for expenditure during the fiscal year 1989-90.

14 The total amount of this appropriation shall be paid  
15 from the special capital improvement fund created by  
16 article twelve-b, chapter eighteen of the code. Projects  
17 are to be paid on a cash basis and made available from  
18 date of passage.

19 The above appropriation is intended to include repairs  
20 and alterations for Jackson's Mill.

*110—Board of Regents—  
State System Tuition Fee—  
Revenue Bond Construction Fund*

(WV Code Chapter 18)

## Acct. No. 8860

## TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years'  
2 and 1988-89 appropriations are hereby reappropriated  
3 for expenditure during the fiscal year 1989-90.

*111—West Virginia University—  
Schools of Health Sciences*

(WV Code Chapter 18)

## Acct. No. 9280

## TO BE PAID FROM MEDICAL SCHOOL FUND

1	Unclassified—Total .....	\$	—	\$	14,664,430
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2 Any unexpended balances remaining in the appropri-  
 3 ations for Capital Outlay (account no. 9280-08) and in  
 4 the 1988-89 appropriation for the West Virginia  
 5 University—Medical Center at the close of the fiscal  
 6 year 1988-89 are hereby reappropriated for expenditure  
 7 during the fiscal year 1989-90.

**DEPARTMENT OF HEALTH  
 AND HUMAN RESOURCES**

*112—Board of Barbers and Beauticians*

(WV Code Chapters 16 and 30)

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	126,327
2	Annual Increment .....		—		3,492
3	Employee Benefits .....		—		22,705
4	Unclassified .....		—		90,041
5	Total .....	\$	—	\$	242,565

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of collections made by  
 8 the board of barbers and beauticians as provided by law.

*113—Hospital Finance Authority*

(WV Code Chapter 16)

Acct. No. 8330

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	49,092
2	Annual Increment .....		—		437
3	Employee Benefits .....		—		8,632
4	Unclassified .....		—		70,245
5	Total .....	\$	—	\$	128,406

6 The total amount of this appropriation shall be paid  
 7 from the special revenue fund out of fees and collections

8 as provided by article twenty-nine-a, chapter sixteen of  
9 the code.

10 Special funds in excess of the amount herein approp-  
11 riated may be made available by budget amendment  
12 upon request of the commissioner of finance and  
13 administration and the approval of the governor.

*114—State Board of Rehabilitation  
Division of Rehabilitation Services  
West Virginia Rehabilitation  
Center—Special Account  
(WV Code Chapter 18)*

Acct. No. 8137

TO BE PAID FROM SPECIAL REVENUE FUND

1	Certification of the			
2	Rehabilitation Center . . . . .	\$	—	\$ 200,000
3	Total . . . . .	\$	—	\$ 200,000

*115—Division of Health—  
Hospital Services Revenue Account  
(Special Fund)  
(Capital Improvement, Renovation and Operation)  
(WV Code Chapter 16)*

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified . . . . .	\$	—	\$ —0—
2	Debt Service . . . . .		—	3,400,000
3	Institutional Facilities			
4	Operations . . . . .		—	14,000,000
5	Medley Placement . . . . .		—	4,600,000
6	Total . . . . .	\$	—	\$ 22,000,000

7 Any unexpended balance remaining in the appropri-  
8 ation for hospital services revenue account at the close  
9 of the fiscal year 1988-89 is hereby reappropriated for  
10 expenditure during the fiscal year 1989-90, except the  
11 following account numbers:

12 (Appropriation year '82): 8500-06, 8500-07, 8500-08,  
13 8500-10, 8500-11, 8500-12 and 8500-13. (Appropriation

14 year '84): 8500-00, 8500-01, 8500-20, 8500-21, 8500-22,  
 15 8500-23, 8500-24, 8500-25, 8500-26, 8500-27, 8500-28,  
 16 8500-29, 8500-31, 8500-32, 8500-34 and 8500-35.  
 17 (Appropriation year '85): 8500-00, 8500-01, 8500-21,  
 18 8500-22, 8500-23, 8500-26, 8500-29, 8500-32, 8500-34,  
 19 8500-38, 8500-39, 8500-41 and 8500-42. (Appropriation  
 20 year '86): 8500-04, 8500-21, 8500-22, 8500-23, 8500-29,  
 21 8500-32, 8500-38, 8500-40, 8500-44, 8500-45 and 8500-46.

22 The total amount of this appropriation shall be paid  
 23 from the hospital services revenue account special fund  
 24 created by section fifteen-a, article one, chapter sixteen  
 25 of the code, and shall be used only for operating  
 26 expenses and for improvements in connection with  
 27 existing facilities, Medley and bond payments.

28 Projects are to be paid on a cash basis and made  
 29 available from the date of passage. Items and projects  
 30 of this appropriation are to begin as funds become  
 31 available in the special fund or from bond proceeds.

32 Necessary funds from the above appropriation may be  
 33 used for medical facilities operations, either in connec-  
 34 tion with this account or in connection with the item  
 35 designated Institutional Facilities Operations in the  
 36 Consolidated Medical Services Fund (Account no. 4190).

*116—Health Care Cost Review Authority*

(WV Code Chapter 16)

Acct. No. 8564

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	548,081
2	Annual Increment .....		—		5,544
3	Employee Benefits .....		—		96,607
4	Unclassified .....		—		365,817
5	Total .....	\$	—	\$	1,016,049

6 The above appropriation is to be expended in accor-  
 7 dance with and pursuant to the provisions of article  
 8 twenty-nine-b, chapter sixteen of the code, and from the  
 9 special revolving fund designated health care cost  
 10 review fund.

*117—Workers' Compensation Fund*

(WV Code Chapter 23)

Acct. No. 9000

## TO BE PAID FROM WORKERS' COMPENSATION FUND

1	Personal Services .....	\$	—	\$	7,976,803
2	Annual Increment .....		—		126,700
3	Employee Benefits .....		—		1,463,337
4	Unclassified .....		—		6,409,050
5	Employers' Excess				
6	Liability Fund.....		—		126,740
7	Total.....	\$	—	\$	16,102,630

8 There is hereby authorized to be paid out of the above  
 9 appropriation, the amount necessary for the premiums  
 10 on bonds given by the treasurer as bond custodian for  
 11 the protection of the workers' compensation fund. This  
 12 sum shall be transferred to the state board of insurance.

**DEPARTMENT OF PUBLIC SAFETY***118—Regional Jail and Prison Authority*

(WV Code Chapter 31)

Acct. No. 8051

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	329,625
2	Annual Increment .....		—		2,808
3	Employee Benefits .....		—		62,563
4	Unclassified .....		—		194,864
5	Total.....	\$	—	\$	589,860

*119—Division of Public Safety—  
Inspection Fees*

(WV Code Chapter 15)

Acct. No. 8350

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	468,226
2	Annual Increment .....		—		1,404



3	Employee Benefits .....	—	114,535
4	Unclassified .....	—	152,510
5	Total .....	\$ —	\$ 736,675

6 The total amount of this appropriation shall be paid  
 7 from the special revenue fund out of fees collected for  
 8 inspection stickers as provided by law.

*120—Division of Public Safety—  
 Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Acct. No. 8355

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total .....	\$ —	\$ 642,000
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2 The total amount of this appropriation shall be paid  
 3 from the special revenue fund out of receipts collected  
 4 pursuant to sections nine-a and sixteen, article fifteen,  
 5 chapter eleven of the code and paid into a revolving fund  
 6 account in the state treasury.

*121—Crime Victims Compensation Fund*

(WV Code Chapter 14)

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 105,719
2	Annual Increment .....	—	468
3	Employee Benefits .....	—	18,368
4	Unclassified .....	700,000	43,125
5	Total .....	\$ 700,000	\$ 167,680

6 These funds are intended to be expended for court  
 7 costs and administrative costs and federal reimburse-  
 8 ment for compensation paid to crime victims.

**DEPARTMENT OF TAX AND REVENUE**

*122—Agency of Insurance Commissioner*

(WV Code Chapter 33)

Acct. No. 8016

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 925,412
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2	Annual Increment .....	—	10,654
3	Employee Benefits .....	—	235,550
4	Unclassified .....	—	525,924
5	Total .....	\$ —	\$ 1,697,540

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund out of collections of fees and  
8 charges as provided by law.

*123—Racing Commission*

(WV Code Chapter 19)

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses—Total ...	\$ —	\$ 114,000
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2 The total amount of this appropriation shall be paid  
3 from the special revenue fund out of collections of  
4 license fees and fines as provided by law.

5 No expenditures shall be made from this account  
6 except for hospitalization, medical care and/or funeral  
7 expenses for persons contributing to this fund.

*124—Office of Alcohol  
Beverage Control Commissioner*

(WV Code Chapter 60)

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 7,784,493
2	Annual Increment .....	—	200,100
3	Employee Benefits .....	—	1,485,134
4	Unclassified .....	—	6,944,634
5	Total .....	\$ —	\$ 16,414,361

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund out of liquor revenues.

8 The above appropriation includes the salary of the

9 commissioner, salaries of store personnel and store  
 10 inspectors, store operating expenses and equipment, and  
 11 salaries, expenses and equipment of administration  
 12 offices.

13 There is hereby appropriated from liquor revenues, in  
 14 addition to the appropriation, the necessary amount for  
 15 the purchase of liquor as provided by law.

## DEPARTMENT OF TRANSPORTATION

### *125—Division of Highways*

(WV Code Chapters 17 and 17C)

Acct. No. 6700

#### TO BE PAID FROM STATE ROAD FUND

1	Maintenance, Expressway,		
2	Trunkline and Feeder . . . . \$	—	\$ 61,500,000
3	Maintenance, State		
4	Local Services . . . . .	—	84,500,000
5	Maintenance, Contract		
6	Paving and Secondary		
7	Road Maintenance . . . . .	—	50,750,000
8	Bridge Repair and		
9	Replacement . . . . .	—	25,000,000
10	Industrial Access Road . . . .	—	1,899,000
11	Inventory Revolving . . . . .	—	1,500,000
12	Equipment Revolving . . . . .	—	17,514,000
13	General Operations . . . . .	—	29,104,000
14	Annual Increment . . . . .	—	206,000
15	Debt Service . . . . .	—	81,300,000
16	Interstate Construction . . . .	—0—	50,000,000
17	Other Federal Aid Programs	—0—	140,000,000
18	Appalachian Program . . . . .	—0—	38,000,000
19	Nonfederal Aid Construction	—	10,611,000
20	Highway Litter		
21	Control . . . . .	—	1,930,000
22	Total . . . . . \$	—0—	\$593,814,000

23 The above appropriations are to be expended in  
 24 accordance with the provisions of chapters seventeen  
 25 and seventeen-c of the code.

26 The commissioner of highways shall have the author-  
 27 ity to operate revolving funds within the state road fund  
 28 for the operation and purchase of various types of  
 29 equipment used directly and indirectly in the construc-  
 30 tion and maintenance of roads and for the purchase of  
 31 inventories and materials and supplies.

32 There is hereby appropriated within the above items  
 33 sufficient money for the payment of claims, accrued or  
 34 arising during this budgetary period, to be paid in  
 35 accordance with sections seventeen and eighteen, article  
 36 two, chapter fourteen of the code.

37 It is the intent of the Legislature to capture and match  
 38 all federal funds available for expenditure on the  
 39 Appalachian Highway system at the earliest possible  
 40 time. Therefore, should amounts in excess of those  
 41 appropriated be required for the purposes of Appalachi-  
 42 an programs, funds in excess of the amount approp-  
 43 riated may be made available upon recommendation of  
 44 the Commissioner and approval of the Governor.  
 45 Further, for the purpose of Appalachian programs,  
 46 funds appropriated to line items may be transferred to  
 47 other line items upon recommendation of the Commis-  
 48 sioner and approval of the Governor.

*126—Division of Motor Vehicles*

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

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

1	Personal Services .....	\$	—	\$	2,371,460
2	Annual Increment .....		—		46,312
3	Employee Benefits .....		—		651,208
4	Unclassified .....		100,000		3,462,613
5	Total .....	\$	100,000	\$	6,531,593

*127—Real Estate Commission*

(WV Code Chapter 47)

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	—	\$	125,968
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2	Annual Increment .....	—	2,016
3	Employee Benefits .....	—	22,422
4	Unclassified .....	—	103,193
5	Total .....	\$ —	\$ 253,599

6 The total amount of this appropriation shall be paid  
7 out of collections of license fees as provided by law.

## MISCELLANEOUS BOARDS AND COMMISSIONS

### *128—Public Service Commission*

(WV Code Chapter 24)

Acct. No. 8280

#### TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 3,907,451
2	Annual Increment .....	—	41,000
3	Employee Benefits .....	—	618,138
4	Unclassified .....	93,700	1,769,848
5	Total .....	\$ 93,700	\$ 6,336,437

6 Any unexpended balance remaining in the appropri-  
7 ation for Headquarters Building Development (account  
8 no. 8280-10) at the close of the fiscal year 1988-89 is  
9 hereby reappropriated for expenditure during the fiscal  
10 year 1989-90.

11 The total amount of this appropriation shall be paid  
12 from a special revenue fund out of collections for special  
13 license fees from public service corporations as provided  
14 by law.

### *129—Public Service Commission— Gas Pipeline Division*

(WV Code Chapter 24B)

Acct. No. 8285

#### TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 123,363
2	Annual Increment .....	—	1,296
3	Employee Benefits .....	—	21,764

4	Unclassified .....	119,600	75,016
5	Total .....	\$ 119,600	\$ 221,439

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of receipts collected for  
 8 or by the public service commission pursuant to and in  
 9 the exercise of regulatory authority over pipeline  
 10 companies as provided by law.

*130—Public Service Commission—  
 Motor Carrier Division*

(WV Code Chapter 24A)

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 1,116,885
2	Annual Increment .....	—	15,915
3	Employee Benefits .....	—	197,106
4	Unclassified .....	468,800	430,523
5	Total .....	\$ 468,800	\$ 1,760,429

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of receipts collected for  
 8 or by the public service commission pursuant to and in  
 9 the exercise of regulatory authority over motor carriers  
 10 as provided by law.

*131—Public Service Commission—  
 Consumer Advocate*

(WV Code Chapter 24)

Acct. No. 8295

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 308,195
2	Annual Increment .....	—	1,260
3	Employee Benefits .....	—	53,814
4	Unclassified .....	—	269,242
5	Total .....	\$ —	\$ 632,511

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of collections made by  
 8 the public service commission.

1     **Sec. 5. Awards for claims against the state.—**

2     There are hereby appropriated, for the remainder of the  
3     fiscal year 1988-89 and to remain in effect until June  
4     30, 1990 from the funds as designated in the amount as  
5     specified and for the claimant as named in enrolled  
6     house bill no. 2408, acts, Legislature, regular session,  
7     1989—crime victims compensation fund of \$166,000.00  
8     for payment of claims against the state.

9     There are hereby appropriated, for the reminder of  
10    the fiscal year 1988-89 and to remain in effect until June  
11    30, 1990, from the funds as designated, in the amounts  
12    as specified and for the claimants as named in enrolled  
13    senate bill no. 615, acts, Legislature, regular session,  
14    1989—state road funds of \$738,133.83, special revenue  
15    funds of \$784,608.24, federal funds of \$5,695.50 and  
16    workers' compensation funds of \$2,709.30.

17    There is hereby appropriated, for the reminder of the  
18    fiscal year 1988-89 and to remain in effect until June  
19    30, 1990, from the fund as designated, in the amounts  
20    as specified and for the claimants as named in enrolled  
21    senate bill no. 615 and in enrolled house bill no. 2426,  
22    acts, Legislature, regular session, 1989—general re-  
23    venue funds of \$503,407.02.

1     **Sec. 6. Supplemental and deficiency appropri-**  
2     **ations.—**From the state fund, general revenue, except as  
3     otherwise provided, there are hereby appropriated the  
4     following amounts, as itemized, for expenditure during  
5     the fiscal year one thousand nine hundred eighty-nine  
6     to supplement the 1988-89 appropriations, and to be  
7     available for expenditure upon date of passage.

8     Any unexpended balances remaining in the appropri-  
9     ations at the close of the fiscal year 1988-89 are hereby  
10    reappropriated for expenditure during the fiscal year  
11    1989-90.

132—Governor's Office

Acct. No. 1200

1	Other Personal Services . . . . .	\$	—	\$	83,450
2	Current Expenses . . . . .		—		77,500
3	Equipment . . . . .		—		6,350
4	Total . . . . .	\$	—	\$	167,300

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

Acct. No. 1240

1	Unclassified .....	\$	—		\$	750,000
2	Buffalo Creek Claim .....					1,789,922
3	Total .....	\$	—		\$	2,539,922

*134—State Board of Risk and  
Insurance Management*

Acct. No. 2250

1	Unclassified—Total .....	\$	—		\$	3,000,000
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*135—West Virginia Board of Regents (Control)*

Acct. No. 2790

1	Unclassified—Total .....	\$	—		\$	2,500,000
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*136—West Virginia Board of Regents*

Acct. No. 2800

1	Unclassified—Total .....	\$	—		\$	165,000
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*137—State Department of Education*

Acct. No. 2860

1	Tuition Waiver—Total .....	\$	—		\$	13,079
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*138—Teachers Retirement System*

Acct. No. 2980

1	Unclassified—Total .....	\$	—		\$	—0—
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*139—West Virginia Library Commission*

Acct. No. 3500

1	Unclassified—Total .....	\$	—		\$	318,934
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*140—Department of Human Services*

Acct. No. 4050

1	Unclassified .....	\$	—		\$	5,000,000
2	Medical Services .....					25,851,083
3	Total .....	\$	—		\$	30,851,083



*141—Consolidated Medical Services Fund*

## Acct. No. 4190

1	Institutional Facilities .....	\$	—	\$	4,000,000
2	ICF/MR Match .....		—		4,000,000
3	Total .....	\$	—	\$	8,000,000

*142—Department of Energy*

## Acct. No. 4775

1	Unclassified—Total .....	\$	—	\$	135,000
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*143—West Virginia Public  
Legal Services Council*

## Acct. No. 5900

1	Unclassified—Total .....	\$	—	\$	1,800,000
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*144—Human Rights Commission*

## Acct. No. 5980

1	Unclassified—Total .....	\$	—	\$	74,850
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*145—West Virginia  
Public Employees Retirement System*

## Acct. No. 6140

1	Unclassified—Total .....	\$	—	\$	—0—
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*146—West Virginia Public  
Employees Insurance Agency*

## Acct. No. 6150

1	Unclassified—Total .....	\$	—	\$	7,750,000
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1     **Sec. 7. Deposit of net profits of lottery.** Net profits  
2 of the lottery, not to exceed eighteen million dollars, are  
3 to be deposited by the lottery director to the following  
4 accounts in the amounts indicated. The auditor shall  
5 prorate each deposit of net profits by the lottery director  
6 among the following accounts not to exceed the amounts  
7 indicated. Net profits in excess of eighteen million  
8 dollars are not subject to spending authorized by article  
9 two, chapter five-a of the code.

*147—Board of Trustees of the  
University System of West Virginia  
Board of Directors of the  
State College System  
(Board of Regents)*

(WV Code Chapter 18B)

Acct. No. 8825

TO BE PAID FROM LOTTERY NET PROFITS

1 Unclassified . . . . . \$ — \$ 2,160,000

*148—State Department of Education*

(WV Code Chapters 18 and 18A)

Acct. No. 8243

TO BE PAID FROM LOTTERY NET PROFITS

1 Elementary Computer  
2 Education . . . . . \$ — \$ 7,020,000

*149—Department of Health and Human Resources*

(WV Code Chapters 9, 48 and 49)

Acct. No. 9132

TO BE PAID FROM LOTTERY NET PROFITS

1 Catastrophic Health Care for  
2 Senior Citizens . . . . . \$ — \$ 1,800,000

*150—Division of Commerce*

(WV Code Chapter 5B)

Acct. No. 8546

TO BE PAID FROM LOTTERY NET PROFITS

1 Unclassified . . . . . \$ — \$ 7,020,000

1 **Sec. 8. Appropriations and reappropriations—**  
2 **Revenue sharing trust fund.**—Any unexpended balan-  
3 ces to appropriations made by the 1979, 1980, 1981,  
4 1982, 1983, 1984, 1985, 1986, 1987, and 1988 budget acts  
5 and any supplementary transfers or redesignations  
6 made by the above-listed budget acts from the revenue

7 sharing trust fund at the close of the fiscal year 1988-  
8 89 are hereby reappropriated for expenditure during  
9 the fiscal year 1989-90.

*151—West Virginia Department of Highways*

Acct. No. 9705

1 Chief Mingo Recreation  
2 Park Capital Outlay ..... \$ — \$ 50,000

1 **Sec. 9. Appropriations from federal block**  
2 **grants.**—The following items are hereby appropriated  
3 from federal block grants to be available for expendi-  
4 ture during the fiscal year 1989-90.

*152—Office of Community and Industrial  
Development—Community Development*

Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 15,288,000

*153—Office of Community and Industrial  
Development—Job Partnership Training Act*

Acct. No. 8030

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 45,954,217

*154—Office of Community and Industrial  
Development—Community Service*

Acct. No. 8031

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 6,323,664

*155—Office of Community and Industrial  
Development—Justice Assistance*

Acct. No. 8032

TO BE PAID FROM FEDERAL FUNDS

1 To Local Entities—Total ..... \$ 320,000

*156—State Department of Education—  
Education Grant*

Acct. No. 8242

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 44,834,122

*157—Division of Health—  
Maternal and Child Health*

Acct. No. 8502

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 7,350,340

*158—Division of Health—  
Alcohol, Drug Abuse and Mental Health*

Acct. No. 8503

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 7,500,000

*159—Division of Health—Preventive Health*

Acct. No. 8506

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 1,499,572

*160—Division of Health—  
Mental Health Services  
for the Homeless*

Acct. No. 8508

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 400,000

*161—Division of Health—  
Alcohol and Drug Abuse  
Treatment and Rehabilitation*

Acct. No. 8510

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 750,000

*162—Division of Human Services—  
Energy Assistance*

Acct. No. 9147

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 13,851,068

*163—Division of Human Services—  
Social Services*

Acct. No. 9161

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total ..... \$ 21,375,039

1 **Sec. 10. Appropriations from surplus revenue.—**  
2 The following items are hereby appropriated from the  
3 state fund, general revenue, and are to be available for  
4 expenditure during the fiscal year 1989-90 out of  
5 surplus funds only, subject to the terms and conditions  
6 set forth in this section.

7 It is the intent and mandate of this Legislature that  
8 the following appropriations made by this section shall  
9 be payable only from the surplus accrued as of June 30,  
10 1989.

11 In the event that the surplus revenues as of June 30,  
12 1989 are not sufficient to meet all of the appropriations  
13 made by this section, then the appropriations shall be  
14 available, only to the extent of the total actual surplus  
15 accrued as of June 30, 1989.

*164—Division of Finance and Administration*

Acct. No. 2100

1 Urban Mass Transit  
2 Matching Funds ..... \$ 1,000,000

*165—Governor's Office-Debt Service*

Acct. No. 1250

1 Loan Payback to Consolidated  
2 Investment Fund ..... \$ 8,000,000

166—*West Virginia Public Employees  
Insurance Agency*

Acct. No. 6150

1 PEIA State Contribution ..... \$ 13,000,000

1     **Sec. 11. Special revenue appropriations.**—There  
2 are hereby appropriated for expenditure during the  
3 fiscal year one thousand nine hundred ninety appropri-  
4 ations made by general law from special revenue which  
5 are not paid into the state fund as general revenue under  
6 the provisions of section two, article two, chapter twelve  
7 of the code: *Provided*, That none of the money so  
8 appropriated by this section shall be available for  
9 expenditure except in compliance with and in conform-  
10 ity to the provisions of articles two and three, chapter  
11 twelve, and article two, chapter five-a of the code, unless  
12 the spending unit has filed with the director of the  
13 budget, the auditor and the legislative auditor prior to  
14 the beginning of each fiscal year:

15     (a) An estimate of the amount and sources of all  
16 revenues accruing to such fund;

17     (b) A detailed expenditure schedule showing for what  
18 purposes the fund is to be expended.

1     **Sec. 12. State improvement fund appropri-**  
2 **tions.**—Bequests or donations of nonpublic funds,  
3 received by the governor on behalf of the state during  
4 the fiscal year one thousand nine hundred ninety, for the  
5 purpose of making studies and recommendations  
6 relative to improvements of the administration and  
7 management of spending units in the executive branch  
8 of state government, shall be deposited in the state  
9 treasury in a separate account therein designated state  
10 improvement fund.

11     There are hereby appropriated all moneys so depos-  
12 ited during the fiscal year one thousand nine hundred  
13 ninety to be expended as authorized by the governor, for  
14 such studies and recommendations which may encom-  
15 pass any problems of organization, procedures, systems,  
16 functions, powers or duties of a state spending unit in

17 the executive branch, or the betterment of the economic,  
18 social, educational, health and general welfare of the  
19 state or its citizens.

1 **Sec. 13. Specific funds and collection accounts.—**

2 A fund or collection account which by law is dedicated  
3 to a specific use is hereby appropriated in sufficient  
4 amount to meet all lawful demands upon the fund or  
5 collection account and shall be expended according to  
6 the provisions of article three, chapter twelve of the  
7 code.

1 **Sec. 14. Appropriations for refunding erroneous**  
2 **payment.—** Money that has been erroneously paid into  
3 the state treasury is hereby appropriated out of the fund  
4 into which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money  
6 for the state finds that a sum has been erroneously paid,  
7 he shall issue his requisition upon the auditor for the  
8 refunding of the proper amount. The auditor shall issue  
9 his warrant to the treasurer and the treasurer shall pay  
10 the warrant out of the fund into which the amount was  
11 originally paid.

1 **Sec. 15. Sinking fund deficiencies.—**There is  
2 hereby appropriated to the governor a sufficient amount  
3 to meet any deficiencies that may arise in the mortgage  
4 finance bond insurance fund of the West Virginia  
5 housing development fund which is under the supervi-  
6 sion and control of the municipal bond commission as  
7 provided by section twenty-b, article eighteen, chapter  
8 thirty-one of the code, or in the funds of the municipal  
9 bond commission because of the failure of any state  
10 agency for either general obligations or revenue bonds  
11 or any local taxing district for general obligation bonds  
12 to remit funds necessary for the payment of interest and  
13 sinking fund requirements. The governor is authorized  
14 to transfer from time to time such amounts to the  
15 municipal bond commission as may be necessary for  
16 these purposes.

17 The municipal bond commission shall reimburse the  
18 state of West Virginia through the governor from the  
19 first remittance collected from the West Virginia

20 housing development fund or from any state agency or  
21 local taxing district for which the governor advanced  
22 funds, with interest at the rate carried by the bonds for  
23 security or payment of which the advance was made.

1     **Sec. 16. Appropriations to pay costs of publica-**  
2 **tion of delinquent corporations.**—There is hereby  
3 appropriated out of the state fund, general revenue, out  
4 of funds not otherwise appropriated, to be paid upon  
5 requisition of the auditor and/or the governor, as the  
6 case may be, a sum sufficient to pay the cost of  
7 publication of delinquent corporations as provided by  
8 sections eighty-four and eighty-six, article twelve,  
9 chapter eleven of the code.

1     **Sec. 17. Appropriations for local governments.**—  
2 There are hereby appropriated for payment to counties,  
3 districts and municipal corporations such amounts as  
4 will be necessary to pay taxes due counties, districts and  
5 municipal corporations and which have been paid into  
6 the treasury:

- 7     (a) For redemption of lands;  
8     (b) By public service corporations;  
9     (c) For tax forfeitures.

1     **Sec. 18. Total appropriations.**—Where only a total  
2 sum is appropriated to a spending unit, the total sum  
3 shall include personal services, annual increment,  
4 current expenses, repairs and alterations, equipment  
5 and capital outlay, where not otherwise specifically  
6 provided and except as otherwise provided in TITLE I—  
7 GENERAL PROVISIONS, Sec. 3.

1     **Sec. 19. General school fund.**—The balance of the  
2 proceeds of the general school fund remaining after the  
3 payment of the appropriations made by this act is  
4 appropriated for expenditure in accordance with section  
5 sixteen, article nine-a, chapter eighteen of the code.

### TITLE III. ADMINISTRATION.

- §1. Appropriations conditional.  
§2. Constitutionality.

1     **Section 1. Appropriations conditional.**—The ex-



2   penditure 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  
5   the compliance by the spending unit with the require-  
6   ments of article two, chapter five-a of the code.

7       Where spending units or parts of spending units have  
8   been absorbed by or combined with other spending  
9   units, it is the intent of this act that appropriations and  
10  reappropriations shall be to the succeeding or later  
11  spending 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  
4   this act which remains, but the remaining portion shall  
5   be in full force and effect as if the portion declared  
6   unconstitutional had never been a part of the act.

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## CHAPTER 11

(H. B. 2586—By Delegates M. Burke and Murphy)

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[Passed March 29, 1989; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Racing Commission, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the Budget Bill.

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

That items of the total appropriation of Account No. 4950, chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, be supplemented, amended and transferred to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations From General Revenue.		
3	BUSINESS AND INDUSTRIAL RELATIONS		
4	<i>61—West Virginia Racing Commission</i>		
5	(WV Code Chapter 19)		
6	Account No. 4950		
7	1	Personal Services .....	\$ _____ \$1,193,412
8	2	Annual Increment.....	\$ _____ 6,588
9	3	Unclassified .....	\$ _____ 100,000
10		Total .....	\$ _____ \$1,300,000

11. The purpose of this supplementary appropriation bill  
 12 is to supplement, amend and transfer certain moneys  
 13 between items of the existing appropriation for the  
 14 designated spending unit. The amounts as itemized for  
 15 expenditure during the fiscal year one thousand nine  
 16 hundred eighty-nine shall be made available for  
 17 expenditure upon the effective date of this bill.

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## CHAPTER 12

(S. B. 449—Originating in the Committee on Finance)

[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of all federal funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-nine, to the Geological and Economic Survey, Account No. 5200, supplementing chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill.

WHEREAS, The Governor has established the receipt and availability of federal funds for the extension of a continuing program, now available for expenditure in the current fiscal

year of 1988-89, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That Account No. 5200, chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1                    TITLE 2. APPROPRIATIONS.  
 2    Section 2.    Appropriation of federal funds.  
 3                    CONSERVATION AND DEVELOPMENT  
 4                    69—*Geological and Economic Survey*  
 5                    (WV Code Chapter 29)  
 6                    Account No. 5200  
 7    3    Unclassified ..... \$50,000

8    The purpose of this supplementary appropriation bill  
 9    is to supplement this account in the budget bill for fiscal  
 10   year 1988-89 by adding to this existing line item an  
 11   amount to be used for the continuation of the coal  
 12   availability program in cooperation with the U.S.  
 13   Department of the Interior.

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## CHAPTER 13

(Com. Sub. for S. B. 368—By Senators Tucker, Mr. President, and Harman,  
 By Request of the Executive)

[Passed March 17, 1989; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-nine, to the West Virginia Department of Highways, Account No. 6700, supplementing chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated February 13, 1989, wherein on page XIV thereof are set forth the revenues and expenditures of the State Road Fund, including fiscal year 1988-1989; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1988-1989, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

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

That the total appropriations from the state road fund to the West Virginia Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-nine, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill, be supplemented, amended and thereafter read as follows:

1	<b>TITLE 2. APPROPRIATIONS.</b>		
2	<b>Section 3. Appropriations from other funds.</b>		
3	<b>Section 4. Appropriations of federal funds.</b>		
4	<i>86—West Virginia Department of Highways</i>		
5	(WV Code Chapters 17 and 17C)		
6	Account No. 6700		
7	TO BE PAID FROM STATE ROAD FUND		
8		<b>Federal</b>	<b>Other</b>
9		<b>Funds</b>	<b>Funds</b>
10		<b>Fiscal</b>	<b>Fiscal</b>
11		<b>Year</b>	<b>Year</b>
12		<b>1988-89</b>	<b>1988-89</b>
13	1		
14			
15	2	\$ —	\$ 56,100,000
16	3		
17	4	—	79,080,000
18	5		
19	6		
20			
21	7	—	41,268,000

22	8	Bridge Repair		
23	9	and Replacement ....	—	15,500,000
24	10	Inventory Revolving ...	—	1,500,000
25	11	Equipment Revolving ..	—	15,750,000
26	12	General Operations ....	—	28,125,000*
27	13	Annual Increment .....	—	228,000
28	14	Debt Service.....	—	120,800,000
29	15	Interstate Construction	—	50,000,000
30	16	Other Federal		
31	17	Aid Programs .....	—	145,000,000
32	18	Appalachian Program	—	30,500,000
33	19	Nonfederal Aid		
34	20	Construction.....	—	10,066,000
35	21	Highway Litter		
36	22	Control.....	—	1,900,000
37	23	Early Retirement		
38	24	Transfer of Funds ...	—	3,962,000
39	26	TOTAL .....	\$ —	\$599,779,000

40 \*Includes salary of Commissioner at \$47,500 per  
41 annum.

42 The purpose of this supplementary appropriation bill  
43 is to supplement and amend the existing items in the  
44 aforesaid account for expenditure in the fiscal year of  
45 1988-1989, and to reflect the new total spending  
46 authority of the spending unit for such fiscal year. Such  
47 increased amounts shall be available for expenditure  
48 upon the effective date of this bill.

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## CHAPTER 14

(S. B. 627—Originating in the Committee on Finance)

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[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire a certain unexpended amount of Account No. 8016-99, Insurance Commissioner, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill, and transferring such amount to the general revenue fund.

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

That the sum of one million dollars of the balance in Account No. 8016-99, Insurance Commissioner, including balances carried forward on the first day of July, one thousand nine hundred eighty-eight, available for expenditure in the current fiscal year 1988-1989, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill, be supplemented, amended, reduced and caused to expire, and that said sum be transferred to the state fund, general revenue, and be available for other and further appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation is to supplement, amend, reduce and cause to expire out of the aforesaid account the sum of one million dollars; to transfer this sum into the general revenue fund, and to make such sum available for other and further appropriation and expenditure immediately upon the effective date of this bill.

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## CHAPTER 15

(H. B. 2869—By Delegates Farley and Murphy)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts of Account No. 8280-99, Public Service Commission; Account No. 8285-99, Public Service Commission-Gas Pipeline Division; and Account No. 8290-99, Public Service Commission-Motor Carrier Division, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill, and transferring such amount to the Account No. 9155-67, medical services program, Department of Human Services.

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

- 1 That the sum of two hundred thirty-eight thousand
- 2 three hundred fourteen dollars of the balance in Account
- 3 No. 8280-99, Public Service Commission; the sum of
- 4 thirty thousand six hundred seventeen dollars of the

5 balance in Account No. 8285-99, Public Service Commis-  
6 sion-Gas Pipeline Division; and the sum of two hundred  
7 seventy-seven thousand seven hundred sixty-six dollars  
8 of the balance in Account No. 8290-99, Public Service  
9 Commission-Motor Carrier Division, including balances  
10 in each of these accounts carried forward on the first  
11 day of July, one thousand nine hundred eighty-eight,  
12 available for expenditure in the current fiscal year 1988-  
13 1989, as appropriated by chapter two, acts of the  
14 Legislature, second extraordinary session, one thousand  
15 nine hundred eighty-eight, known as the budget bill, be  
16 supplemented, amended, reduced and caused to expire,  
17 and that said sums be transferred to Account No. 9155-  
18 67, medical services program, Department of Human  
19 Services and be available for expenditure for payment  
20 of medical services upon the effective date of this bill.

21 The purpose of this supplementary appropriation is to  
22 supplement, amend, reduce and cause to expire out of  
23 the aforesaid accounts the total sum of five hundred  
24 forty-six thousand six hundred ninety-seven dollars to  
25 transfer this sum into the medical service program of  
26 the Department of Human Services and to make such  
27 sum available for expenditure immediately upon the  
28 effective date of this act.

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## CHAPTER 16

(S. B. 188—Originating in the Committee on Finance)

[Passed April 1, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expiration of appropriations; and clarifying authority of the Legislature to expire appropriations prior to the end of a fiscal year.

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

That section twelve, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.****§12-3-12. Expiration of unexpended appropriations.**

1 Every appropriation which is payable out of the  
2 general revenue, or so much thereof as may remain  
3 undrawn at the end of the year for which made, shall  
4 be deemed to have expired at the end of the year for  
5 which it is made, and no warrant shall thereafter be  
6 issued upon it: *Provided*, That warrants may be drawn  
7 through the thirty-first day of July after the end of the  
8 year for which the appropriation is made if the warrants  
9 are in payment of bills for such year and have been  
10 encumbered by the budget office prior to July first; but  
11 appropriations for buildings and land or capital outlay  
12 shall remain in effect, and shall not be deemed to have  
13 expired until the end of three years after the passage  
14 of the act by which such appropriations are made:  
15 *Provided, however*, That if such thirty-first day of July  
16 is on Saturday, then warrants may only be drawn  
17 through the Friday immediately preceding such Satur-  
18 day, but if such thirty-first day of July is on Sunday,  
19 the warrants may be drawn through the Monday  
20 immediately following such Sunday.

21 The Legislature may expire or provide for the  
22 expiration of any appropriation prior to the end of the  
23 fiscal year for which it is made.

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## CHAPTER 17

(H. B. 2115—By Delegates Roop and Kiss)

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[Passed March 21, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the selection of deputy assessors.

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

That section three, article two, chapter eleven of the code



of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. ASSESSORS.**

**§11-2-3. Selection of deputy assessors.**

1 The deputy assessors, including the transfer and office  
2 deputies, shall be residents and voters in the county:  
3 *Provided*, That a deputy assessor whose primary  
4 responsibility is that of updating the assessor's maps  
5 may be a resident and voter of a contiguous county of  
6 this state. The deputy assessors shall be appointed by the  
7 assessor with the advice and consent of the county  
8 commission, and may be removed at any time in the  
9 discretion of the assessor. Vacancies occurring from any  
10 cause in the office of any deputy assessor shall be filled  
11 by the assessors.

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## CHAPTER 18

(H. B. 2674—By Delegates Metheny and Criss)

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[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article eight-a, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article eight-b of said chapter, all relating to permitting the acquiring of a state bank by an out-of-state holding company, and to allow the banking commissioner to evaluate and investigate a bank holding company so as to permit the holding company to perform financially related services.

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

That section one, article eight-a, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section four, article eight-b of said chapter be amended and reenacted, all to read as follows:

**CHAPTER 31A. BANKS AND BANKING.**

**Article****8A. Acquisition of Bank Shares.****8B. Community Reinvestment Act.****ARTICLE 8A. ACQUISITION OF BANK SHARES.****§31A-8A-1. Legislative findings and purpose.**

1 After a review of the structure of banking organiza-  
2 tions in the state of West Virginia and after full  
3 consideration of the complex issues involved, the  
4 Legislature hereby finds and determines that:

5 (a) Well managed and financially sound banking  
6 institutions are essential to the financial well-being of  
7 the citizens, and the promotion of the future economic  
8 and industrial growth and development of this state;

9 (b) The formation of bank holding companies will  
10 strengthen and supplement traditional banking services  
11 and facilitate the development of the type of banking  
12 institutions that are necessary for the economic and  
13 industrial growth and development of this state;

14 (c) It is in the best interests of this state and its  
15 citizens for the board to have the power and authority  
16 to disapprove the acquisition of a bank by a bank  
17 holding company when the board determines that such  
18 acquisition would result in a monopoly, substantially  
19 lessen competition, or be contrary to the best interests  
20 of the shareholders or customers of the bank involved;  
21 and

22 (d) The deposits of the citizens of this state are a  
23 substantial and valuable resource which should serve  
24 the economic and industrial growth and development  
25 needs, and the consumer needs of the citizens of this  
26 state; and since the board could not effectively make a  
27 determination that the control of deposits of the citizens  
28 of this state by bank holding companies with any  
29 banking subsidiaries located outside this state would be  
30 used for the above enumerated local needs of this state's  
31 citizenry, a bank holding company with any bank  
32 subsidiary located outside this state shall be prohibited  
33 from acquiring, directly or indirectly, five percent or  
34 more of the interest in, or assets of, any bank or bank

35 holding company located in this state, unless acquired  
36 pursuant to section seven of this article.

**ARTICLE 8B. COMMUNITY REINVESTMENT ACT.**

**§31A-8B-4. Assessment of the institution's reinvestment in the community.**

1 In connection with its examination or investigation of  
2 a banking institution or bank holding company, the  
3 commissioner or board shall:

4 (a) Assess the institution's record of meeting the  
5 credit needs of its entire community, including low-and  
6 moderate-income neighborhoods, consistent with the  
7 safe and sound operation of such institution; and

8 (b) Take such record into account in its evaluation of  
9 an application for a deposit facility or for permission to  
10 engage in financially related services by such institu-  
11 tion.

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## CHAPTER 19

(H. B. 2015—By Delegate M. Burke)

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[Passed February 27, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article two-f, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia beef industry program; repealing the "Beef Check-off Act of 1983" which authorized the Beef Industry Self-Improvement Assessment Program.

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

**§1. Repeal of article creating West Virginia beef industry self-improvement assessment program.**

1 That article two-f, chapter nineteen of the code of  
2 West Virginia, one thousand nine hundred thirty-one, as  
3 amended, is hereby repealed.

## CHAPTER 20

(H. B. 2755—By Delegates Farley and R. Burk)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to repeal sections six, seven, eight, nine and ten, article eight, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four and five, article eight, chapter twenty-nine of said code, all relating to the Blennerhassett historical park commission; making Blennerhassett historical park a state park; creating the Blennerhassett historical state park commission as an advisory commission; transferring all employee positions, assets, real and personal property, debts, liabilities, powers and duties of the former Blennerhassett historical park commission to the division of commerce as of the first day of July, one thousand nine hundred eighty-nine; and providing for civil service coverage for former commission employees.

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

That sections six, seven, eight, nine and ten, article eight, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four and five of said article be amended and reenacted, all to read as follows:

### CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

#### ARTICLE 8. BLANNERHASSETT HISTORICAL PARK COMMISSION.

- §29-8-1. Legislative findings.
- §29-8-2. Blennerhassett historical state park commission established; members; terms; meeting; quorum; compensation; expenses.
- §29-8-3. General powers of division of commerce with respect to the Blennerhassett historical state park.
- §29-8-4. Duties of division of commerce with respect to the development of Blennerhassett Island.
- §29-8-5. Cooperation of state agencies and local government with Blennerhassett historical state park commission and division of commerce; powers of local government with respect to development.

**§29-8-1. Legislative findings.**

1 The Legislature hereby finds and declares that:

2 (1) Blennerhassett Island, situate in the Ohio River  
3 near the city of Parkersburg, is a significant historical,  
4 natural and archaeological resource of importance to  
5 this state and the nation;

6 (2) A well-planned and executed program for the  
7 development of educational, cultural and recreational  
8 attractions related to events known and believed to have  
9 occurred on and near scenic Blennerhassett Island will  
10 be of great benefit to all the people of this state and  
11 constitutes a most worthy public undertaking; and

12 (3) The primary responsibility for the planning and  
13 execution of such a program rests upon the state of West  
14 Virginia, while the secondary responsibility for develop-  
15 ment rests upon private and other public resources.

**§29-8-2. Blennerhassett historical state park commission established; members; terms; meeting; quorum; compensation; expenses.**

1 As of the first day of July, one thousand nine hundred  
2 eighty-nine, there is established within the division of  
3 commerce the Blennerhassett historical state park  
4 commission. As of said date, all assets, real and personal  
5 property, debts, liabilities, duties, powers and authority  
6 of the Blennerhassett historical park commission are  
7 hereby transferred to the division of commerce. The  
8 Blennerhassett historical state park commission shall be  
9 maintained as an advisory commission as hereinafter  
10 provided. The commission shall be composed of ten  
11 members who shall be citizens and residents of this  
12 state, appointed by the governor for terms of four years,  
13 by and with the advice and consent of the Senate:  
14 *Provided*, That the terms of all members previously  
15 appointed to the Blennerhassett historical park commis-  
16 sion prior to the amendment and reenactment of this  
17 section shall continue for the periods originally speci-  
18 fied, and no such member serving as of the effective date  
19 of such amendment and reenactment need be reap-  
20 pointed.

21 Each member shall be qualified to carry out the  
22 functions of the commission under this article by reason  
23 of his special interest, training, education or experience.

24 No person shall be eligible to appointment as a  
25 member who is an officer or member of any political  
26 party executive committee; or the holder of any other  
27 public office or public employment under the United  
28 States government or the government of this state or a  
29 political subdivision of this state. Not more than six  
30 members shall belong to the same political party.

31 At its first meeting, which shall be held within fifty  
32 days after this section takes effect, the commission shall  
33 elect from among its members a chairman, who shall  
34 preside over its meetings until the second Monday in  
35 September of the next year. Thereafter, the commission  
36 shall elect a chairman from among its members on the  
37 second Monday in September of each year.

38 All members shall be eligible for reappointment once  
39 by the governor. A member shall, unless sooner re-  
40 moved, continue to serve until his term expires and his  
41 successor has been appointed and has qualified. A  
42 vacancy caused by the death, resignation or removal of  
43 a member prior to the expiration of his term shall be  
44 filled only for the remainder of such term.

45 For the purpose of carrying out its powers, duties and  
46 responsibilities under this article, six members of the  
47 commission shall constitute a quorum for the transac-  
48 tion of business. Each member shall be entitled to one  
49 vote. The commission shall meet at a time and place  
50 designated by the chairman at least four times each  
51 fiscal year. Additional meetings may be held when  
52 called by the chairman or when requested by five  
53 members of the commission or by the governor. All  
54 meetings of the commission shall be open to the public.  
55 Each member shall be reimbursed for all reasonable  
56 and necessary expenses actually incurred in the perfor-  
57 mance of his duties under this article.

58 The commission shall advise the division of commerce

59 in all matters relating to the development, establish-  
60 ment and maintenance of the Blennerhassett historical  
61 state park.

62 All employee positions in the former Blennerhassett  
63 historical park commission are hereby transferred to the  
64 division of commerce and shall be included in the  
65 classified service of the civil service system pursuant to  
66 article six, chapter twenty-nine of this code. Any person  
67 included in the classified service by the provisions of this  
68 section who is employed in any of such positions as of  
69 the effective date of this amendment and reenactment  
70 shall not be required to take and pass qualifying or  
71 competitive examinations upon or as a condition to being  
72 added to the classified service: *Provided*, That no person  
73 included in the classified service by the provisions of this  
74 section who is employed in any of such positions as of  
75 the effective date of this section, shall be thereafter  
76 severed, removed or terminated from such employment  
77 prior to his entry into the classified service except for  
78 cause as if such person had been in the classified service  
79 when severed, removed or terminated.

**§29-8-3. General powers of division of commerce with  
respect to the Blennerhassett historical state  
park.**

1 The administrator of the division of commerce, with  
2 respect to developing and maintaining Blennerhassett  
3 historical state park, may exercise all powers and duties  
4 granted to him and his predecessor in respect to the  
5 development and operation of other state parks, and in  
6 addition, is specifically authorized to:

7 (1) Establish and maintain an office in the county of  
8 Wood;

9 (2) Exercise his powers in the state of Ohio to the  
10 extent permitted by the laws of the state of Ohio;

11 (3) Enter into any agreement with the state of Ohio  
12 or any person, firm or corporation therein for the  
13 provision of electricity, water, sewer and such similar  
14 services to Blennerhassett Island as are necessary;

15 (4) Own or operate, or both, individually or in

16 conjunction with any other public agency or any private  
 17 person, firm or corporation, such facilities and equip-  
 18 ment as he considers necessary or convenient for the  
 19 implementation of his duties under this article. Without  
 20 limiting the generality of the foregoing, such facilities  
 21 and equipment may include boats, docks, an amphitheatre,  
 22 parking facilities, the reconstructed Blennerhassett  
 23 mansion and other buildings; and

24 (5) Promulgate rules and regulations, in accordance  
 25 with the provisions of chapter twenty-nine-a of this code,  
 26 to implement and make effective the powers and duties  
 27 vested in him by the provisions of this article and take  
 28 such other steps as may, in his discretion, be necessary  
 29 or expedient for the proper and effective development  
 30 of Blennerhassett Island and related locations in the  
 31 county of Wood into a major educational, cultural and  
 32 recreational attraction.

**§29-8-4. Duties of division of commerce with respect to  
 the development of Blennerhassett Island.**

1 Within the limit of funds available from this state, the  
 2 United States and any other source, whether public or  
 3 private, the administrator shall:

4 (1) Plan and execute a program for the development  
 5 of educational, cultural and recreational attractions  
 6 related to events known or believed to have occurred on  
 7 and near Blennerhassett Island; and

8 (2) Plan and execute a program for the development  
 9 of Blennerhassett Island and related locations in the  
 10 county of Wood so as to preserve and enhance the island  
 11 and related locations as a significant historical, natural  
 12 and archaeological resource of importance to this state  
 13 and the nation.

14 In carrying out his duties under subdivisions (1) and  
 15 (2) of this section, he shall, as near as practicable, adhere  
 16 to the recommendations and plans for development  
 17 contained in the documents prepared for the Blenner-  
 18 hassett historical commission, submitted to the Blenner-  
 19 hassett historical park commission on the eighteenth day  
 20 of February, one thousand nine hundred seventy-five,



21 and titled as follows: (a) Summary report for the  
22 development of Blennerhassett Island, (b) physical  
23 master plan, (c) interpretive master plan, (d) environ-  
24 mental impact and (e) market and economic impact.

**§29-8-5. Cooperation of state agencies and local govern-  
ment with Blennerhassett historical state park  
commission and division of commerce; powers  
of local government with respect to  
development.**

1 (a) All other state and local governmental personnel  
2 and agencies shall cooperate to the fullest possible  
3 extent with the commission and the division to accomp-  
4 lish the proper and effective development of Blennerhas-  
5 sett Island and related locations in the county of Wood  
6 into a major educational, cultural and recreational  
7 attraction.

8 (b) The county of Wood, the city of Parkersburg, any  
9 other municipality in the county and any board,  
10 commission, authority, agency or other office created  
11 under authority thereof may, in its discretion, engage in  
12 any activity or undertaking designed to assist the  
13 commission and the division in the proper and effective  
14 development of Blennerhassett Island and related  
15 locations in the county of Wood into a major educational,  
16 cultural and recreational attraction.

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## CHAPTER 21

(H. B. 2700—By Delegate Farley)

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[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-one, article two-  
c, chapter thirteen of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, relating  
to the allocation of the state ceiling for private activity  
bonds; declaring public policy of the state to include the  
construction of facilities for the generation of power  
through the utilization of coal waste; clarifying that  
issuers of private activity bonds shall include the West  
Virginia public energy authority; facilitating the

allocation of the state ceiling for certain projects producing energy from coal waste; and expanding the period for reservation of the state ceiling for certain projects producing energy from coal waste.

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

That section twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.**

**§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.**

1 (a) Private activity bonds (as defined in section  
2 141(a) of the United States Internal Revenue Code of  
3 1986, other than those described in section 146(g) of the  
4 Internal Revenue Code) issued pursuant to this article,  
5 including bonds issued by the West Virginia public  
6 energy authority pursuant to subsection (8), section five,  
7 article one, chapter five-d of this code, or under article  
8 eighteen, chapter thirty-one of this code, during any  
9 calendar year shall not exceed the ceiling established by  
10 section 146(d) of the United States Internal Revenue  
11 Code. It is hereby determined and declared as a matter  
12 of legislative finding (i) that the production of bitumi-  
13 nous coal in this state has resulted in coal waste, which  
14 coal waste is stored in areas generally referred to as gob  
15 piles; (ii) that such gob piles are unsightly and have the  
16 potential to pollute the environment in this state;  
17 (iii) that the utilization of the materials in such gob piles  
18 to produce alternative forms of energy needs to be  
19 encouraged; (iv) that section 142(a)(6) of the United  
20 States Internal Revenue Code of 1986 permits the  
21 financing of solid waste disposal facilities through the  
22 issuance of such private activity bonds; (v) that it is in  
23 the best interest of this state and the citizens thereof to  
24 facilitate the construction of facilities for the generation  
25 of power through the utilization of coal waste by

26 providing an orderly mechanism for the commitment of  
27 the annual ceiling for private activity bonds for such  
28 projects.

29 (b) On or before the first day of each calendar year,  
30 the director of the governor's office of community and  
31 industrial development shall determine the state ceiling  
32 for such year based on the criteria of the United States  
33 Internal Revenue Code, which annual ceiling shall be  
34 allocated among the several issuers of bonds under this  
35 article or under article eighteen, chapter thirty-one of  
36 this code, as follows:

37 (1) Fifty million dollars shall be allocated to the West  
38 Virginia housing development fund for the purpose of  
39 issuing qualified mortgage bonds, qualified mortgage  
40 certificates or bonds for qualified residential rental  
41 projects.

42 (2) One half the total state ceiling for each year  
43 remaining after the allocation to the West Virginia  
44 housing development fund described in subdivision  
45 (1) shall be allocated to the counties on a per capita  
46 basis and, unless the context in which used requires  
47 otherwise, shall be hereinafter in this section referred  
48 to as the "county allocation."

49 (3) One half of the total state ceiling for each year  
50 remaining after the allocation to the West Virginia  
51 housing development fund described in subdivision  
52 (1) shall be retained by the state of West Virginia by  
53 the governor's office of community and industrial  
54 development and, unless the context in which used  
55 requires otherwise, shall be hereinafter in this section  
56 referred to as the "state allocation."

57 (c) The director of the governor's office of community  
58 and industrial development shall notify each clerk of the  
59 county commission of that county's apportionment from  
60 the county allocation. All apportionments made to any  
61 county from the county allocation shall be for issues of  
62 the county commission of that county and for issues of  
63 all municipalities or other governmental bodies within  
64 that county.

65 (d) Notwithstanding the foregoing, in the event the  
66 state allocation is fully distributed prior to the first day  
67 of July of each calendar year, the governor's office of  
68 community and industrial development may reallocate  
69 all or any portion of the then remaining county  
70 allocation to the state upon the director's notification of  
71 such action to the clerk of the several county commis-  
72 sions. Any reallocations of less than all of the then  
73 remaining county allocation shall be made proportion-  
74 ately from each county's apportionment then remaining.

75 (e) Distribution of both the county and state alloca-  
76 tions to lessees, purchasers or owners of proposed  
77 commercial or industrial projects shall be on a first  
78 come, first serve basis and shall not be distributed or  
79 allocated for any project until the governmental body,  
80 seeking the same shall submit an application for  
81 reservation of funds as provided in subsection (f) of this  
82 section. The governmental body must first adopt an  
83 inducement resolution approving the prospective issu-  
84 ance of bonds and setting forth the amount of bonds to  
85 be issued. Each governmental body, which includes the  
86 West Virginia public energy authority, seeking an  
87 allocation of the state ceiling following the adoption of  
88 such inducement resolution shall submit a notice of  
89 inducement signed by its clerk, secretary or recorder or  
90 other appropriate official to the governor's office of  
91 community and industrial development. Such notice  
92 shall include such information as may be required by  
93 the governor's office of community and industrial  
94 development by rule or regulation. Notwithstanding the  
95 foregoing, when an issuer described in this section  
96 proposes to issue bonds for the purpose of constructing  
97 an energy producing project which relies, in whole or  
98 in part, upon coal waste as fuel, to the extent such  
99 project qualifies as a solid waste facility under section  
100 142(a)(6) of the United States Internal Revenue Code of  
101 1986, such project may be given an allocation from the  
102 state ceiling available for any year subsequent to the  
103 year in which application is made (other than the  
104 amount to be allocated pursuant to subdivision (1) of  
105 subsection (b) of this section), at the discretion of the  
106 director of the governor's office of community and

107 industrial development: *Provided*, That no such discre-  
108 tionary allocation may be made to any single project in  
109 an amount in excess of forty percent of the state ceiling  
110 available for such year subsequent to the year in which  
111 the request is made (exclusive of the amount to be  
112 allocated pursuant to subdivision (1) of subsection (b) of  
113 this section for such year). A discretionary allocation of  
114 the state ceiling for a project described in the preceding  
115 sentence shall not be granted by the director of the  
116 governor's office of community and industrial develop-  
117 ment unless the project for which the request is made  
118 has received a certification from the Federal Energy  
119 Regulatory Commission as a qualifying facility or a  
120 cogeneration project.

121 (f) Currently with or following the submission of its  
122 notice of inducement, the governmental body at any  
123 time deemed expedient by it may submit its notice of  
124 reservation of funds which shall include the following  
125 information:

126 (1) The date of the notice of reservation of funds;

127 (2) The identity of the governmental body issuing the  
128 bonds;

129 (3) The date of inducement and the prospective date  
130 of issuance;

131 (4) The name of the entity for which the bonds are to  
132 be issued;

133 (5) The amount of the bond issue, or, if the amount  
134 of the bond issue for which a reservation of funds has  
135 been made has been increased, the amount of the  
136 increase;

137 (6) The type of issue; and

138 (7) A description of the project for which the bonds  
139 are to be issued.

140 (g) (1) Upon receipt of the notice of reservation of  
141 funds by the governor's office of community and  
142 industrial development, such office shall immediately  
143 note upon the face of such notice the date and time the  
144 same was so received and shall within ten days certify

145 to the governmental body submitting the same (A) that  
146 the statewide ceiling has not been exceeded, if such be  
147 the case, and (B) that the amount of the bond issue has  
148 been allocated and reserved in the name of such  
149 governmental body for the project for which the bonds  
150 are to be issued and, thereafter, the amount of such bond  
151 issue shall be so allocated and reserved.

152 (2) In the event the amount required in the notifica-  
153 tion of reservation of funds, as provided for in subdivi-  
154 sion (1) of this subsection, exceeds the apportionment  
155 available to that county from the county allocation, the  
156 governor's office of community and industrial develop-  
157 ment shall immediately notify the governmental body  
158 proposing to issue such bonds of that fact and such body  
159 may apply to such office for an apportionment to the  
160 extent of such excess from the state allocation.

161 (h) The governmental body shall submit a new notice  
162 of reservation of funds pursuant to subsections (f) and  
163 (g) above for any increase in the amount of a bond issue  
164 for which a reservation of funds has been made. Such  
165 notice shall be treated as a new request for a reservation  
166 of funds to the extent of such increase.

167 (i) If the bond issue for which a reservation has been  
168 made has not been finally closed within one hundred  
169 twenty days of the date of the certification of reservation  
170 to be made by the governor's office of community and  
171 industrial development, as required by the provisions of  
172 subsection (g) of this section, or the thirty-first day of  
173 December following such date of certification if sooner  
174 and a statement of bond closure which has been  
175 executed by the clerk, secretary, recorder or other  
176 appropriate official of the governmental body reserving  
177 the same has not been received by such office within  
178 that time, then such reservation shall expire and be  
179 deemed to have been forfeited and the funds so reserved  
180 shall be released and revert to the county and/or state  
181 allocation, as the case may be, from which the funds  
182 were originally reserved and allocation will then be  
183 made available for other qualified issues in accordance  
184 with this section and the Internal Revenue Code:  
185 *Provided, That, as to any notice of reservation of funds*

186 received by the governor's office of community and  
187 industrial development during the month of December  
188 in any calendar year with respect to any project  
189 qualifying as an elective carry forward pursuant to  
190 section 146(f)(5) of the Internal Revenue Code, such  
191 reservation of funds and the allocation to which the  
192 same relates shall not expire or be subject to forfeiture:  
193 *Provided, however,* That any unused state ceiling as of  
194 the thirty-first day of December in any year not  
195 otherwise subject to a carry forward pursuant to section  
196 146(f) of the Internal Revenue Code shall be allocated  
197 to the West Virginia housing development fund, which  
198 shall be deemed to have elected to carry forward the  
199 unused state ceiling for the purpose of issuing qualified  
200 mortgage bonds, qualified mortgage credit certificates  
201 or bonds for qualified residential rental projects, each  
202 as defined in the Internal Revenue Code. All requests  
203 for subsequent reservation of funds and reallocation  
204 upon loss of a reservation pursuant to this section will  
205 be treated in the same manner as a new notice of  
206 reservation of funds in accordance with subsections  
207 (f) and (g) above.

208 (j) Once a reservation of an allocation has been made  
209 to an energy producing project which relies, in whole  
210 or in part, upon coal waste as fuel and otherwise  
211 qualifies as a solid waste facility under section  
212 142(a)(6) of the United States Internal Revenue Code of  
213 1986, notwithstanding the language of subsection (i) of  
214 this section, such reservation shall remain fully availa-  
215 ble with respect to such project until the first day of  
216 October in the year from which the reservation of  
217 allocation was made at which time, if the bond issue has  
218 not been finally closed, the reservation shall expire and  
219 be deemed forfeited and the funds so reserved shall be  
220 released as provided in subsection (i) of this section.

221 (k) Any amount of the county allocation remaining  
222 unreserved on the first day of October in any calendar  
223 year (which amount shall be determined by the director  
224 of the governor's office of community and industrial  
225 development) shall revert to the state allocation for the  
226 remainder of that year, and all notification of reserva-

227 tion of funds by either the state or any county submitted  
 228 on or after such date shall be treated on a first come,  
 229 first serve basis.

230 (1) The amendments to this section adopted by the  
 231 Legislature at the regular session thereof, held in the  
 232 year one thousand nine hundred eighty-nine, shall apply  
 233 and be effective with respect to such year and to all  
 234 subsequent years.

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## CHAPTER 22

(Com. Sub. for S. B. 572—By Senator Tucker, Mr. President)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the exemption of certain charitable organizations from filing annual registration statements with the secretary of state provided that each such charitable organization does not employ professional solicitors or fund-raisers or does not intend to solicit and receive and does not actually raise or receive contributions in excess of ten thousand dollars; and changing the statement printed on solicitation materials relating to the source for documents.

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

That section six, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

#### §29-19-6. Certain persons and organizations exempt from registration.

1 (a) The following charitable organizations shall not be  
 2 required to file an annual registration statement with  
 3 the secretary of state:

4 (1) Educational institutions, the curriculums of which



5 in whole or in part are registered or approved by the  
6 state board of education, either directly or by acceptance  
7 of accreditation by an accrediting body recognized by  
8 the state board of education; and any auxiliary associ-  
9 ations, foundations and support groups which are  
10 directly responsible to any such educational institutions;

11 (2) Persons requesting contributions for the relief of  
12 any individual specified by name at the time of the  
13 solicitation when all of the contributions collected  
14 without any deductions whatsoever are turned over to  
15 the named beneficiary for his or her use;

16 (3) Hospitals which are nonprofit and charitable;

17 (4) Organizations which solicit only within the mem-  
18 bership of the organization by the members thereof:  
19 *Provided*, That the term "membership" shall not include  
20 those persons who are granted a membership upon  
21 making a contribution as the result of solicitation. For  
22 the purpose of this section, "member" means a person  
23 having membership in a nonprofit corporation, or other  
24 organization, in accordance with the provisions of its  
25 articles of incorporation, bylaws or other instruments  
26 creating its form and organization; and, having bona  
27 fide rights and privileges in the organization, such as  
28 the right to vote, to elect officers, directors and issues,  
29 to hold office or otherwise as ordinarily conferred on  
30 members of such organizations;

31 (5) Religious organizations, churches or any group  
32 affiliated with and forming an integral part of these  
33 organizations of which no part of the net income inures  
34 to the direct benefits of any individual and which have  
35 received a declaration of current tax-exempt status from  
36 the government of the United States.

37 (b) The following charitable organizations are exempt  
38 from filing an annual registration statement with the  
39 secretary of state if they do not employ a professional  
40 solicitor or fund-raiser or do not intend to solicit and  
41 receive and do not actually raise or receive contributions  
42 from the public in excess of ten thousand dollars during  
43 a calendar year:

- 44 (1) Local youth athletic organizations: *Provided*, That  
45 such organizations may solicit and receive contributions  
46 from the public in excess of ten thousand dollars during  
47 a calendar year and still be exempt from filing an  
48 annual registration statement;
- 49 (2) Community civic clubs;
- 50 (3) Community service clubs;
- 51 (4) Fraternal organizations;
- 52 (5) Labor unions;
- 53 (6) Local posts, camps, chapters or similarly desig-  
54 nated elements or county units of such elements of bona  
55 fide veterans organizations or auxiliaries which issue  
56 charters to such local elements throughout the state;
- 57 (7) Bona fide organizations of volunteer firemen or  
58 auxiliaries;
- 59 (8) Bona fide ambulance associations or auxiliaries;
- 60 (9) Bona fide rescue squad associations or auxiliaries.
- 61 Charitable organizations which do not intend to solicit  
62 and receive in excess of ten thousand dollars, but do  
63 receive in excess of that amount from the public, shall  
64 file the annual registration statement within thirty days  
65 after contributions are in excess of ten thousand dollars.
- 66 (c) Every printed solicitation shall include the follow-  
67 ing statement: "West Virginia residents may obtain a  
68 summary of the registration and financial documents  
69 from the secretary of state, state capitol, Charleston,  
70 West Virginia 25305. Registration does not imply  
71 endorsement."

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## CHAPTER 23

(H. B. 2031—By Delegates Love and Leggett)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section,

designated section sixteen, relating to continuation of the commission on charitable organizations.

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

That article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section sixteen, to read as follows:

**ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.**

**§29-19-16. Continuation of commission.**

1 After having conducted a performance and fiscal  
2 audit through its joint committee on government  
3 operations, pursuant to section nine, article ten, chapter  
4 four of this code, the Legislature hereby finds and  
5 declares that the commission on charitable organiza-  
6 tions should be continued and reestablished. Accord-  
7 ingly, notwithstanding the provisions of section four,  
8 article ten, chapter four of this code, the commission on  
9 charitable organizations shall continue to exist until the  
10 first day of July, one thousand nine hundred ninety-five.

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## CHAPTER 24

(Com. Sub. for S. B. 377—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section eight, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to guidelines for child support awards generally; establishing a rebuttable presumption that the amount of a child support award resulting from the application of such child support guidelines is correct; describing the circumstances under which such guidelines should not be followed, with specific provision made for support agreements; and requiring a review of child support guidelines at least once every four years.

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

That section eight, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.**

**§48A-2-8. Guidelines for child support awards.**

1 (a) The director of the child advocate office shall, by  
2 legislative rule, establish guidelines for child support  
3 award amounts so as to ensure greater uniformity by  
4 those persons who make child support recommendations  
5 and enter child support orders, and to increase predic-  
6 tability for parents, children and other persons who are  
7 directly affected by child support orders. There shall be  
8 a rebuttable presumption, in any proceeding before a  
9 family law master or circuit court judge for the award  
10 of child support, that the amount of the award which  
11 would result from the application of such guidelines is  
12 the correct amount of child support to be awarded. A  
13 written finding or specific finding on the record that the  
14 application of the guidelines would be unjust or  
15 inappropriate in a particular case shall be sufficient to  
16 rebut the presumption in that case. The guidelines shall  
17 not be followed:

18 (1) When the child support award proposed to be  
19 made pursuant to the guidelines has been disclosed to  
20 the parties and each party has made a knowing and  
21 intelligent waiver of said amount, and the support  
22 obligors have entered into an agreement which provides  
23 for the custody and support of the child or children of  
24 the parties; or

25 (2) When the child support award proposed to be  
26 made pursuant to the guidelines would be contrary to  
27 the best interests of the child or children, or contrary  
28 to the best interests of the parties.

29 (b) The Legislature, by the enactment of this article,  
30 recognizes that children have a right to share in their  
31 natural parents' level of living. Accordingly, guidelines  
32 promulgated under the provisions of this section shall  
33 not be based upon any schedule of minimum costs for  
34 rearing children based upon subsistence level amounts  
35 set forth by various agencies of government. The

36 Legislature recognizes that expenditures in families are  
37 not made in accordance with subsistence level stand-  
38 ards, but are rather made in proportion to household  
39 income, and as parental incomes increase or decrease,  
40 the actual dollar expenditures for children also increase  
41 or decrease correspondingly. In order to ensure that  
42 children properly share in their parents' resources,  
43 regardless of family structure, the guidelines shall be  
44 structured so as to provide that after a consideration of  
45 respective parental incomes, that child support will be  
46 related, to the extent practicable, to the level of living  
47 which such children would enjoy if they were living in  
48 a household with both parents present.

49 (c) The guidelines promulgated under the provisions  
50 of this section shall take into consideration the financial  
51 contributions of both parents. The Legislature recog-  
52 nizes that expenditures in households are made in  
53 aggregate form and that total family income is pooled  
54 to determine the level at which the family can live. The  
55 guidelines shall provide for examining the financial  
56 contributions of both parents in relationship to total  
57 income, so as to establish and equitably apportion the  
58 child support obligation. Under the guidelines, the child  
59 support obligation of each parent will vary proportion-  
60 ately according to their individual incomes.

61 (d) The guidelines shall be structured so as to take  
62 into consideration any preexisting support orders which  
63 impose additional duties of support upon an obligor  
64 outside of the instant case, and shall provide direction  
65 in cases involving split or shared custody.

66 (e) The guidelines shall have application to cases of  
67 divorce, paternity, actions for support, and modifica-  
68 tions thereof.

69 (f) In promulgating the legislative rule provided for  
70 under the provisions of this section, the director shall be  
71 directed by the following legislative findings:

72 (1) That amounts to be fixed as child support should  
73 not include awards for alimony, notwithstanding the  
74 fact that any amount fixed as child support will impact  
75 upon the living conditions of custodial parents;

76 (2) That parental expenditures on children represent  
77 a relatively constant percentage of family consumption  
78 as family consumption increases, so that as family  
79 income increases, the family's level of consumption  
80 increases, and the children should share in and benefit  
81 from this increase;

82 (3) That parental expenditures on children represent  
83 a declining proportion of family income as the gross  
84 income of the family increases, so that while total dollar  
85 outlays for children have a positive relationship to the  
86 family's gross income, the proportion of gross family  
87 income allotted for the children has a negative relation-  
88 ship to gross income;

89 (4) That expenditures on children vary according to  
90 the number of children in the family, and as the number  
91 of children in the family increase, the expenditures for  
92 the children as a group increase, and the expenditures  
93 on each individual child decrease; so that due to  
94 increasing economies of scale and the increased sharing  
95 of resources among family members, spending will not  
96 increase in direct proportion to the number of children;

97 (5) That as children grow older, expenditures on  
98 children increase, particularly during the teenage years.

99 (g) The director of the child advocate office shall  
100 review the guidelines at least once every four years to  
101 ensure that their application results in the determina-  
102 tion of appropriate child support awards. Such four-year  
103 period shall begin on the first day of July, one thousand  
104 nine hundred eighty-nine.

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## CHAPTER 25

(S. B. 380—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend article three, chapter forty-eight-a of the  
code of West Virginia, one thousand nine hundred

thirty-one, as amended, by adding thereto a new section, designated section three-a; and to amend and reenact sections twelve, eighteen, thirty-six and thirty-seven, article seven of said chapter, all relating to whom the children's advocate represents.

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

That article three, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-a; and that sections twelve, eighteen, thirty-six and thirty-seven, article seven of said chapter, be amended and reenacted, all to read as follows:

**Article**

**3. Children's Advocate.**

**7. Revised Uniform Reciprocal Enforcement of Support Act.**

**ARTICLE 3. CHILDREN'S ADVOCATE.**

**§48A-3-3a. Representation by the children's advocate.**

1 Unless otherwise specifically provided, the children's  
2 advocate shall represent only the child when participat-  
3 ing in any civil action pursuant to the duties of the  
4 children's advocate under the provisions of this chapter  
5 or chapter forty-eight of this code. The pleadings shall  
6 indicate that the children's advocate represents only the  
7 child.

**ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT  
OF SUPPORT ACT.**

§48A-7-12. Children's advocate to represent child.

§48A-7-18. Duty of court and officials of this state as responding state.

§48A-7-36. Children's advocate to represent child.

§48A-7-37. Registration procedure; notice; children's advocate to enforce order.

**§48A-7-12. Children's advocate to represent child.**

1 If this state is acting as an initiating state, the  
2 children's advocate shall represent the child in any  
3 proceedings under this article.

**§48A-7-18. Duty of court and officials of this state as  
responding state.**

1 (a) After a circuit court of this state, acting as the

2 responding court, receives copies of the petition or  
3 complaint, certificate and act from the initiating court  
4 of another state, the clerk of the circuit court shall  
5 docket the case and notify the children's advocate of  
6 such action.

7 (b) The children's advocate shall prosecute the case  
8 diligently in the best interests of the child. He or she  
9 shall take all action necessary in accordance with the  
10 laws of this state to enable the court to obtain jurisdic-  
11 tion over the obligor or his property and shall request  
12 the court to set a time and place for a hearing and give  
13 notice thereof to the obligor in accordance with law.

**§48A-7-36. Children's advocate to represent child.**

1 If this state is acting either as a rendering or a  
2 registering state, the children's advocate shall represent  
3 the child in proceedings under sections thirty-three  
4 through thirty-eight of this article.

**§48A-7-37. Registration procedure; notice; children's  
advocate to enforce order.**

1 (a) An obligee seeking to register a foreign support  
2 order in a circuit court of this state shall transmit to  
3 the clerk of the court (1) three certified copies of the  
4 order with all modifications thereof, (2) one copy of the  
5 reciprocal enforcement of support law of the state in  
6 which the order was made, and (3) a statement verified  
7 and signed by the obligee, showing the post-office  
8 address of the obligee, the last known place of residence  
9 and post-office address of the obligor, the amount of  
10 support remaining unpaid, a description and the  
11 location of any property of the obligor available upon  
12 execution, and a list of the states in which the order is  
13 registered. Upon receipt of these documents the clerk of  
14 the court, without payment of a filing fee or other cost  
15 to the obligee, shall file them in the registry of foreign  
16 support orders. The filing constitutes registration under  
17 this article.

18 (b) Promptly upon registration the clerk of the court  
19 shall send by certified or registered mail to the obligor  
20 at the address given a notice of the registration with a



21 copy of the registered support order and the post-office  
22 address of the obligee. He shall also docket the case and  
23 notify the children's advocate of his action. The child-  
24 ren's advocate shall proceed diligently to enforce the  
25 order in the best interests of the child.

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## CHAPTER 26

(S. B. 310—By Senator Lucht)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, eight, nine, ten, eleven and fourteen, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section sixteen, all relating to the registration of family day care homes by the commissioner of human services; general requirements for registration; and penalties and injunctions.

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

That sections one, two, three, four, five, six, eight, nine, ten, eleven and fourteen, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section sixteen, all to read as follows:

### ARTICLE 2B. DUTIES OF COMMISSIONER OF HUMAN SERVICES FOR CHILD WELFARE.

- §49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.
- §49-2B-2. Definitions.
- §49-2B-3. License, approval and registration requirements.
- §49-2B-4. Rules.
- §49-2B-5. Penalties; injunctions.
- §49-2B-6. Conditions of licensure, approval and registration.
- §49-2B-8. Application for license or approval.
- §49-2B-9. Supervision and consultation required.
- §49-2B-10. Investigating authority.
- §49-2B-11. Revocation; provisional licenses and approval.

§49-2B-14. Annual reports; directory; licensing reports and recommendations.

§49-2B-16. Education of the public.

**§49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.**

1 It is the policy of the state to assist a child and the  
2 child's family as the basic unit of society through efforts  
3 to strengthen and preserve the family unit. In the event  
4 of a temporary or permanent absence of parents or the  
5 separation of a child from the family unit for care or  
6 treatment purposes, it is the policy of the state to assure  
7 that a child receives care and nurturing as close as  
8 possible to society's expectations of a family's care and  
9 nurturing of its child. The state has a duty to assure that  
10 proper and appropriate care is given and maintained.

11 Through licensing, approving and registering child  
12 care facilities and child welfare agencies, the state  
13 exercises its benevolent police power to protect the user  
14 of a service from risks against which he or she would  
15 have little or no competence for self protection.  
16 Licensing, approval and registration processes must  
17 therefore continually balance the child's rights and need  
18 for protection with the interests, rights and responsibil-  
19 ity of the service providers.

20 In order to carry out the above policy, the Legislature  
21 enacts this article to protect and prevent harm to  
22 children separated from their families and to enhance  
23 their continued growth and well-being while in care.

24 The purposes of this article are:

25 (i) To protect the health, safety and well-being of  
26 children in substitute care by preventing improper and  
27 harmful care; (ii) to establish statewide rules for  
28 regulating programs as defined in this article; and (iii)  
29 to encourage and assist in the improvement of child care  
30 programs. In order to carry out these purposes, the  
31 powers of the child welfare licensing board created by  
32 chapter nineteen, acts of the Legislature, one thousand  
33 nine hundred forty-five, are hereby transferred to the  
34 commissioner of human services, along with the other  
35 powers granted by this article.

**§49-2B-2. Definitions.**

1 As used in this article, unless the context otherwise  
2 requires:

3 "Approval" means a finding by the commissioner that  
4 a facility operated by the state has met the requirements  
5 set forth in the rules promulgated pursuant to this  
6 article.

7 "Certificate of approval" means a statement of the  
8 commissioner that a facility operated by the state has  
9 met the requirements set forth in the rules promulgated  
10 pursuant to this article.

11 "Certificate of license" means a statement issued by  
12 the commissioner authorizing an individual, corpora-  
13 tion, partnership, voluntary association, municipality or  
14 county, or any agency thereof, to provide specified  
15 services for a limited period of time in accordance with  
16 the terms of the certificate.

17 "Certificate of registration" means a statement issued  
18 by the commissioner to a family day care home upon  
19 receipt of a self-certification statement of compliance  
20 with the rules promulgated pursuant to the provisions  
21 of this article.

22 "Child" means any person under eighteen years of age.

23 "Child care" means responsibilities assumed and  
24 services performed in relation to a child's physical,  
25 emotional, psychological, social and personal needs and  
26 the consideration of the child's rights and entitlements.

27 "Child placing agency" means a child welfare agency  
28 organized for the purpose of placing children in private  
29 family homes for foster care or for adoption. The  
30 function of a child placing agency may include the  
31 investigation and certification of foster family homes  
32 and foster family group homes as provided in this  
33 chapter. The function of a child placing agency may also  
34 include the supervision of children who are sixteen or  
35 seventeen years old and living in unlicensed residences.

36 "Commissioner" means the commissioner of human  
37 services.

38 “Day care center” means a facility operated by a child  
39 welfare agency for the care of seven or more children  
40 on a nonresidential basis.

41 “Department” means the state department of human  
42 services.

43 “Facility” means a place or residence, including  
44 personnel, structures, grounds and equipment used for  
45 the care of a child or children on a residential or other  
46 basis for any number of hours a day in any shelter or  
47 structure maintained for that purpose.

48 “Family day care” means nonresidential child care  
49 provided for compensation in a home other than the  
50 child’s own home. The provider may care for four to six  
51 children, including children who are living in the  
52 household, who are under six years of age. No more than  
53 two of the total number of children may be under  
54 twenty-four months of age.

55 “Foster family group home” means a private residence  
56 which is used for the care on a residential basis of six,  
57 seven or eight children who are unrelated by blood,  
58 marriage, or adoption to any adult member of the  
59 household.

60 “Foster family home” means a private residence  
61 which is used for the care on a residential basis of no  
62 more than five children who are unrelated by blood,  
63 marriage, or adoption to any adult member of the  
64 household.

65 “Group home” means any facility, public or private,  
66 which is used to provide residential care for ten or fewer  
67 children.

68 “Group home facility” means any facility, public or  
69 private, which is used to provide residential care for  
70 eleven or more children.

71 “License” means the grant of official permission to a  
72 facility to engage in an activity which would otherwise  
73 be prohibited.

74 “Registration” means the process by which a family

75 day care home self-certifies compliance with the rules  
76 promulgated pursuant to this article.

77 "Residential child care" or "child care on a residential  
78 basis" means child care which includes the provision of  
79 nighttime shelter and the personal discipline and  
80 supervision of a child by guardians, custodians or other  
81 persons or entities on a continuing or temporary basis.

82 "Rule" means a statement issued by the commissioner  
83 of the standard to be applied in the various areas of  
84 child care.

85 "Variance" means a declaration that a rule may be  
86 accomplished in a manner different from the manner set  
87 forth in the rule.

88 "Waiver" means a declaration that a certain rule is  
89 inapplicable in a particular circumstance.

**§49-2B-3. License, approval and registration requirements.**

1 (a) Any person, corporation, or child welfare agency  
2 other than a state agency, which operates a residential  
3 child care facility, a child placing agency or a day care  
4 center shall have a license.

5 (b) Any residential child care facility, day care center  
6 or any child placing agency operated by the state shall  
7 obtain approval of its operations from the commissioner.  
8 Such facilities and placing agencies shall maintain the  
9 same standards of care applicable to licensed facilities,  
10 centers or placing agencies of the same category.

11 (c) Every family day care home shall have a certifi-  
12 cate of registration. Family day care homes approved  
13 by the department of human services for receipt of  
14 funding shall automatically receive a certificate of  
15 registration.

16 (d) This section does not apply to:

17 (1) A kindergarten, preschool or school education  
18 program which is operated by a public school or which  
19 is accredited by the state department of education, or  
20 any other kindergarten, preschool or school programs

21 which operate with sessions not exceeding four hours  
22 per day for any child;

23 (2) An individual or facility which offers occasional  
24 care of children for brief periods while parents are  
25 shopping, engaging in recreational activities, attending  
26 religious services or engaging in other business or  
27 personal affairs;

28 (3) Summer recreation camps operated for children  
29 attending sessions for periods not exceeding thirty days;

30 (4) Hospitals or other medical facilities which are  
31 primarily used for temporary residential care of  
32 children for treatment, convalescence or testing; or

33 (5) Persons providing family day care solely for  
34 children related to them.

#### §49-2B-4. Rules.

1 The commissioner shall promulgate rules for the  
2 purpose of carrying out the provisions of this article, to  
3 include the family day care registration program,  
4 within one hundred eighty days of the effective date  
5 hereof pursuant to the provisions of chapter twenty-  
6 nine-a of this code: *Provided*, That any rule promulgated  
7 as a result of the enactment of this section in the year  
8 one thousand nine hundred eighty-one need not be  
9 repromulgated.

10 The commissioner shall review the rules promulgated  
11 pursuant to the provisions of this article at least once  
12 every five years, making revisions when necessary or  
13 convenient.

#### §49-2B-5. Penalties; injunctions.

1 (a) Any individual or corporation which operates a  
2 child welfare agency, residential child care facility or  
3 day care center without a license when a license is  
4 required is guilty of a misdemeanor, and, upon convic-  
5 tion thereof, shall be punished by imprisonment in jail  
6 not exceeding one year, or a fine of not more than five  
7 hundred dollars, or both fined and imprisoned.

8 (b) Where a violation of this article or a rule or

9 regulation promulgated by the commissioner may result  
10 in serious harm to children under care, the commis-  
11 sioner may seek injunctive relief against any person,  
12 corporation, child welfare agency, child placing agency,  
13 day care center, family day care home or governmental  
14 official through proceedings instituted by the attorney  
15 general, or the appropriate county prosecuting attorney,  
16 in the circuit court of Kanawha County or in the circuit  
17 court of any county where the children are residing or  
18 may be found.

**§49-2B-6. Conditions of licensure, approval and  
registration.**

1 (a) A license or approval is effective for a period of  
2 two years from the date of issuance, unless revoked or  
3 modified to provisional status based on evidence of a  
4 failure to comply with the provisions of this article or  
5 any rules and regulations promulgated pursuant to this  
6 article. The license or approval shall be reinstated upon  
7 application to the commissioner and a determination of  
8 compliance.

9 A certificate of registration is effective for a period  
10 of two years from the date of issuance, unless revoked  
11 based on evidence of a failure to comply with the  
12 provisions of this article or any rules and regulations  
13 promulgated pursuant to this article. The certificate of  
14 registration shall be reinstated upon application to the  
15 commissioner, including a statement of assurance of  
16 continued compliance with the rules and regulations  
17 promulgated pursuant to this article.

18 The license, approval or registration issued under this  
19 article is not transferable and applies only to the facility  
20 and its location stated in the application. The license or  
21 approval shall be publicly displayed, except family day  
22 care homes, foster family homes, foster family group  
23 homes and group homes shall be required to display  
24 licenses or registration certificates upon request rather  
25 than by posting.

26 (b) A provisional license or approval may be issued as:

27 (i) An initial license or approval to a new facility

28 which has been unable to demonstrate full compliance  
29 because the facility is not fully operational; or

30 (ii) A temporary license or approval to an established  
31 licensed facility which is temporarily unable to conform  
32 to the provisions of this article or the rules and  
33 regulations promulgated hereunder.

34 A provisional license or approval shall expire six  
35 months from the date of issuance and may be reinstated  
36 no more than two times. The issuance of a provisional  
37 license or approval shall be contingent upon the  
38 submission to the commissioner of an acceptable plan to  
39 overcome identified deficiencies within the period of the  
40 provisional license or approval. Provisional certificates  
41 of registration shall be issued to family day care homes.

42 (c) The commissioner, as a condition of issuing a  
43 license, registration or approval, may:

44 (i) Limit the age, sex or type of problems of children  
45 allowed admission to a particular facility;

46 (ii) Prohibit intake of any children; or

47 (iii) Reduce the number of children which the agency  
48 or facility operated by the agency is licensed, approved  
49 or registered to receive.

#### §49-2B-8. Application for license or approval.

1 Any person or corporation, or any governmental  
2 agency intending to act as a child welfare agency shall  
3 apply for a license, approval or registration certificate  
4 to operate child care facilities regulated by this article.  
5 Applications for license, approval or registration shall  
6 be made separately for each child care facility to be  
7 licensed, approved or registered.

8 The commissioner may prescribe forms and reasona-  
9 ble application procedures.

10 (a) Before issuing a license or approval, the commis-  
11 sioner shall investigate the facility, program and  
12 persons responsible for the care of children. The  
13 investigation shall include, but not be limited to, review  
14 of resource need, reputation, character and purposes of  
15 applicants, a check of personnel criminal records, if any,  
16 and personnel medical records, the financial records of



17 applicants, and consideration of the proposed plan for  
18 child care from intake to discharge.

19 (b) Before a family day care home registration is  
20 granted, the commissioner shall make inquiry as to the  
21 facility, program and persons responsible for the care  
22 of children. The inquiry shall include self-certification  
23 by the prospective family day care home of compliance  
24 with standards including, but not limited to:

25 (i) Physical and mental health of persons present in  
26 the home while children are in care;

27 (ii) Criminal and child abuse or neglect history of  
28 persons present in the home while children are in care;

29 (iii) Discipline;

30 (iv) Fire and environmental safety;

31 (v) Equipment and program for the children in care;

32 (vi) Health, sanitation and nutrition.

33 Further inquiry and investigation may be made as the  
34 commissioner may direct.

35 The commissioner shall make a decision on each  
36 application within sixty days of its receipt and shall  
37 provide to unsuccessful applicants written reasons for  
38 the decision.

#### §49-2B-9. Supervision and consultation required.

1 The commissioner shall provide supervision to ascer-  
2 tain compliance with the rules and regulations promul-  
3 gated pursuant to this article through regular monitor-  
4 ing, visits to facilities, documentation, evaluation and  
5 reporting. The commissioner shall be responsible for  
6 training and education, within fiscal limitations,  
7 specifically for the improvement of care in family day  
8 care homes. The commissioner shall consult with  
9 applicants, the personnel of child welfare agencies, and  
10 children under care to assure the highest quality child  
11 care possible. The director of the department of health  
12 and the state fire marshal shall cooperate with the  
13 commissioner in the administration of the provisions of

14 this article by providing such reports and assistance as  
15 may be requested by the commissioner.

**§49-2B-10. Investigating authority.**

1 The commissioner shall enforce the provisions of this  
2 article. An on-site evaluation of every facility regulated  
3 pursuant to this article, except registered family day  
4 care homes, shall be conducted no less than once per  
5 year by announced or unannounced visits. A random  
6 sample of not less than five percent of registered family  
7 day care homes shall be monitored annually through on-  
8 site evaluations. The commissioner shall have access to  
9 the premises, personnel, children in care and records of  
10 the facility, including, but not limited to, case records,  
11 corporate and financial records and board minutes.  
12 Applicants for licenses, approvals and certificates of  
13 registration shall consent to reasonable on-site adminis-  
14 trative inspections, made with or without prior notice,  
15 as a condition of licensing, approval or registration.  
16 When a complaint is received by the commissioner  
17 alleging violations of licensure, approval or registration  
18 requirements, the commissioner shall investigate the  
19 allegations. The commissioner may notify the facility's  
20 director before or after a complaint is investigated and  
21 shall cause a written report of the results of the  
22 investigation to be made.

23 The commissioner may enter any unlicensed, or  
24 unapproved child care facility or personal residence for  
25 which there is probable cause to believe that the facility  
26 or residence is operating in violation of this article. Such  
27 entries shall be made with a law-enforcement officer  
28 present. The commissioner may enter upon the premises  
29 of any unregistered family day care facility after two  
30 attempts by the commissioner to bring this facility into  
31 compliance.

**§49-2B-11. Revocation; provisional licenses and approvals.**

1 (a) The commissioner may revoke or make provisional  
2 the license of any facility or child welfare agency  
3 regulated pursuant to this article, except family day  
4 care homes, if a certificate holder materially violates

5 any provision of this article, or any terms or conditions  
6 of the license or approval issued, or fails to maintain  
7 established requirements of child care.

8 (b) The commissioner may revoke the certificate of  
9 registration of any family day care home if a certificate  
10 holder materially violates any provision of this article,  
11 or any terms or conditions of the registration certificate  
12 issued, or fails to maintain established requirements of  
13 child care.

**§49-2B-14. Annual reports; directory; licensing reports  
and recommendations.**

1 The commissioner shall submit on or before the first  
2 day of January of each year a report to the governor,  
3 and upon request to members of the Legislature,  
4 concerning the regulation of child welfare agencies,  
5 child placing agencies, day care centers, family day care  
6 homes and child care facilities during the year. The  
7 report shall include, but not be limited to, data on the  
8 number of children and staff at each facility (except  
9 family day care homes), applications received, types of  
10 licenses, approvals and registrations granted, denied,  
11 made provisional or revoked and any injunctions  
12 obtained or facility closures ordered.

13 The commissioner also shall compile annually a  
14 directory of licensed and approved child care providers  
15 including a brief description of their program and  
16 facilities, the program's capacity and a general profile  
17 of children served. A listing of family day care homes  
18 shall also be compiled annually.

19 Licensing reports and recommendations for licensure  
20 which are a part of the yearly review of each licensed  
21 facility shall be sent to the facility director. Copies shall  
22 be available to the public upon written request to the  
23 commissioner.

**§49-2B-16. Education of the public.**

1 The commissioner shall provide ongoing education of  
2 the public in regard to the requirements of this article  
3 through the use of mass media and other methods as are  
4 deemed appropriate.

## CHAPTER 27

(Com. Sub. for H. B. 2130—By Delegate Hatfield)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-d, relating to providing services to dysfunctional families in order to prevent outside placement of the children thereof; findings and purpose; definitions; requiring a judicial determination of whether or not reasonable efforts have been made before children may be placed outside the home; caseload limits; situational criteria requiring service; service delivery through purchase of service contracts; and provision of special services.

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

That chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-d, to read as follows:

### ARTICLE 2D. HOME-BASED FAMILY PRESERVATION ACT.

§49-2D-1. Findings and purpose.

§49-2D-2. Definitions.

§49-2D-3. Hearing required to determine "reasonable efforts."

§49-2D-4. When family preservation services required.

§49-2D-5. Caseload limits for home-based preservation services.

§49-2D-6. Situational criteria requiring service.

§49-2D-7. Service delivery through service contracts; accountability.

§49-2D-8. Provision of special services.

§49-2D-9. Development of home-based family preservation services.

#### §49-2D-1. Findings and purpose.

1 The Legislature finds that there exists a need in this  
2 state to assist dysfunctional families by providing  
3 nurture and care to such families' children as an  
4 alternative to removing children from such families.

5 The Legislature also finds that the family is the  
6 primary social institution responsible for meeting the

7 needs of children and that the state has an obligation  
8 to assist families in this regard.

9 The Legislature further finds that children have  
10 significant emotional and social ties to the natural or  
11 surrogate family beyond basic care and nurture for  
12 which the family is responsible.

13 The purpose of this article is to establish a pilot  
14 program to evaluate the utility of providing intensive  
15 intervention with the families of children that are at  
16 risk of being removed from the home. For these limited  
17 purposes, the department is authorized to use available  
18 appropriate funds for such intervention service, but only  
19 to the extent that such moneys would normally be  
20 available for the removal and placement of the partic-  
21 ular child at risk.

#### §49-2D-2. Definitions.

1 As used in this article, the following terms have the  
2 meanings indicated:

3 (a) "Dysfunctional family" means a parent or parents  
4 or an adult or adults and a child or children living  
5 together and functioning in an impaired or abnormal  
6 manner so as to cause substantial physical or emotional  
7 danger, injury or harm to one or more children thereof  
8 regardless of whether such children are natural offsp-  
9 ring, adopted children, step children or unrelated  
10 children to such parents.

11 (b) "Home-based family preservation services" means  
12 services dispensed by the department of human services  
13 or by another person, association or group who has  
14 contracted with the department of human services to  
15 dispense such services when such services are intended  
16 to stabilize and maintain the natural or surrogate family  
17 in order to prevent the placement of children in  
18 substitute care. There are two types of home-based  
19 family preservation services and they are as follows:

20 (1) Intensive, short term intervention of four to six  
21 weeks; and

22 (2) Home-based, longer term after care following  
23 intensive intervention.

**§49-2D-3. Hearing required to determine “reasonable efforts.”**

1 A hearing by a circuit court of competent jurisdiction  
2 is required to determine whether or not “reasonable  
3 efforts” have been made to stabilize and maintain the  
4 family situation before any child may be placed outside  
5 the home: *Provided*, That in the event any child appears  
6 in imminent danger of serious bodily or emotional injury  
7 or death in any home, a post-removal hearing shall be  
8 substituted for the pre-removal hearing.

**§49-2D-4. When family preservation services required.**

1 Home-based family preservation services are required  
2 in all cases where the removal of a child or children is  
3 seriously being considered, whether from a natural  
4 home or a surrogate home, wherein a child or children  
5 have lived for a substantial period of time: *Provided*,  
6 That such services are not required when the child  
7 appears in imminent danger of serious bodily or serious  
8 emotional injury.

**§49-2D-5. Caseload limits for home-based preservation services.**

1 For purposes of this article, no contractor employee  
2 of the department of human services may exceed three  
3 families during any period of time when such contractor  
4 employee is engaged in providing intensive, short term  
5 home-based family preservation intervention. In addi-  
6 tion, no caseload may exceed six families during any  
7 period of time when home-based aftercare is provided  
8 pursuant to this article.

9 When providing either type of home-based family  
10 preservation services to any family, the department of  
11 human services or contractor shall provide trained  
12 personnel who shall be available during nonworking  
13 hours to assist families on an emergency basis.

**§49-2D-6. Situational criteria requiring service.**

1 Services required by this article shall be made

2 available to any dysfunctional family in which there  
3 exists an imminent risk of placement of at least one  
4 child outside the home as the result of abuse, neglect,  
5 dependency or delinquency or any emotional and  
6 behavioral problems.

7 Payment for contractual services shall be on a cost per  
8 family basis. Any renewal of any such contract shall be  
9 based on performance.

**§49-2D-7. Service delivery through service contracts;  
accountability.**

1 Services required by this article which are not  
2 practically deliverable directly from the department of  
3 human services may be subcontracted to professionally  
4 qualified private individuals, associations, agencies,  
5 corporations, partnerships or groups. The service  
6 provider shall be required to submit monthly activity  
7 reports as to any services rendered to the department  
8 of human services. Such activity reports shall include  
9 project evaluation in relation to individual families  
10 being served as well as statistical data concerning  
11 families that are referred for services which are not  
12 served due to unavailability of resources. Costs of  
13 program evaluation are an allowable cost consideration  
14 in any service contract negotiated in accordance with  
15 this article. The department shall conduct a thorough  
16 investigation of the contractors utilized by the depart-  
17 ment pursuant to this article. The department shall  
18 further include the results of this investigation in its  
19 report to the Legislature required by section nine of this  
20 article.

**§49-2D-8. Provision of special services.**

1 Costs of providing special services to families receiv-  
2 ing regular services in accordance with this article are  
3 allowable to the extent such goods and services are  
4 justified pursuant to carrying out the purposes of this  
5 article. Such special services may include, but are not  
6 limited to, homemaker assistance, food, clothing,  
7 educational materials, respite care and recreational or  
8 social activities.

**§49-2D-9. Development of home-based family preservation services.**

1 The department is authorized to use appropriate state,  
 2 federal, and/or private funds within its budget for the  
 3 provision of family preservation and reunification  
 4 services. Appropriated state funding made available  
 5 through capture of additional federal funds shall be  
 6 utilized to provide family preservation and reunification  
 7 services as described in this article. Costs of providing  
 8 home-based services described in this article shall not  
 9 exceed the costs of out-of-home care which would be  
 10 incurred otherwise. Notwithstanding the other provi-  
 11 sions of this article to the contrary, it is the intent of  
 12 this legislation to permit the department to establish a  
 13 pilot program in FY90 to serve two hundred families.  
 14 The department is vested with discretion to select target  
 15 populations using geographical or other criteria it  
 16 deems appropriate.

17 The department shall report back to the Legislature  
 18 by the thirty-first day of December, one thousand nine  
 19 hundred ninety, on the feasibility of using funds  
 20 currently earmarked for the placement of children for  
 21 the intervention and what additional amounts may be  
 22 needed to fully implement this article.

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## CHAPTER 28

(Com. Sub. for S. B. 308—By Senators Tucker, Mr. President, and Harman,  
 By Request of the Executive)

[Passed March 23, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section four, article four, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an advisory board of physicians for the handicapped children's board.

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

That section four, article four, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed as follows:



**ARTICLE 4. HANDICAPPED CHILDREN.****§49-4-4. Repeal of section relating to an advisory board of physicians for the handicapped children's board.**

- 1 Section four, article four, chapter forty-nine of the
- 2 code of West Virginia, one thousand nine hundred
- 3 thirty-one, as amended, is hereby repealed.

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**CHAPTER 29**

**(Com. Sub. for H. B. 2665—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)**

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to repeal sections four-a, thirteen, fifteen and eighteen, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article two, chapter five-f; to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen, sixteen, seventeen, seventeen-a, seventeen-b, twenty, twenty-one and twenty-three, article six, chapter twenty-nine; and to further amend article six by adding thereto two new sections, designated sections nine-a and twenty-five, all relating to the civil service system; modification of layoff and bumping rights of classified employees; definition of terms; classified service; classified-exempt service; exemptions; creation of division of personnel; sections; creation of personnel board; members; terms; quorum; vacancies; powers and duties; director of division of personnel appointed; qualifications; powers and duties; civil service commission abolished; transfer of duties and responsibilities; rule of construction; transfer of employees, equipment, and records; continuation of programs, protections and rules; state personnel advisory council; rules of division; eligible lists; duties of state officers and employees; legal proceedings; certification of payrolls; wrongfully withholding certification of payroll; repeal of archaic

provisions and provisions relating to functions formerly transferred to the education and state employees grievance board; records of state personnel division; services to political subdivisions; apprenticeship program; advisory board for the apprenticeship program; favoritism or discrimination; acts prohibited; appropriations, cost of administering article; acceptance of grant or contribution; implementation; and report to governor and Legislature.

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

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

### **Chapter**

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

**29. Miscellaneous Boards and Officers.**

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

### **ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**

**§5F-2-2. Power and authority of secretary of each department.**

1       (a) Notwithstanding any other provision of this code  
2       to the contrary, the secretary of each department shall  
3       have plenary power and authority within and for the  
4       department to:

5       (1) Employ and discharge within the office of the  
6       secretary such employees as may be necessary to carry  
7       out the functions of the secretary, which employees shall  
8       serve at the will and pleasure of the secretary;

9 (2) Cause the various agencies and boards to be  
10 operated effectively, efficiently and economically, and  
11 develop goals, objectives, policies and plans that are  
12 necessary or desirable for the effective, efficient and  
13 economical operation of the department;

14 (3) Eliminate or consolidate positions, other than  
15 positions of administrators or positions of board  
16 members, and name a person to fill more than one  
17 position;

18 (4) Delegate, assign, transfer or combine responsibil-  
19 ities or duties to or among employees, other than  
20 administrators or board members;

21 (5) Reorganize internal functions or operations;

22 (6) Formulate comprehensive budgets for considera-  
23 tion by the governor, and transfer within the depart-  
24 ment funds appropriated to the various agencies of the  
25 department which are not expended due to cost savings  
26 resulting from the implementation of the provisions of  
27 this chapter: *Provided*, That no more than twenty-five  
28 percent of the funds appropriated to any one agency or  
29 board may be transferred to other agencies or boards  
30 within the department: *Provided, however*, That no  
31 funds may be transferred from a special revenue  
32 account, dedicated account, capital expenditure account  
33 or any other account or funds specifically exempted by  
34 the Legislature from transfer, except that the use of  
35 appropriations from the state road fund transferred to  
36 the office of the secretary of the department of trans-  
37 portation is not a use other than the purpose for which  
38 such funds were dedicated and is permitted: *Provided*  
39 *further*, That if the Legislature by subsequent enactment  
40 consolidates agencies, boards or functions, the secretary  
41 may transfer the funds formerly appropriated to such  
42 agency, board or function in order to implement such  
43 consolidation. The authority to transfer funds under this  
44 section shall expire on the thirtieth day of June, one  
45 thousand nine hundred eighty-nine;

46 (7) Enter into contracts or agreements requiring the  
47 expenditure of public funds, and authorize the expen-  
48 diture or obligating of public funds as authorized by

49 law: *Provided*, That the powers granted to the secretary  
50 to enter into contracts or agreements and to make  
51 expenditures or obligations of public funds under this  
52 provision shall not exceed or be interpreted as authority  
53 to exceed the powers heretofore granted by the Legis-  
54 lature to the various commissioners, directors or board  
55 members of the various departments, agencies or boards  
56 that comprise and are incorporated into each secretary's  
57 department under this chapter;

58 (8) Acquire by lease or purchase property of whatever  
59 kind or character, and convey or dispose of any property  
60 of whatever kind or character as authorized by law:  
61 *Provided*, That the powers granted to the secretary to  
62 lease, purchase, convey or dispose of such property shall  
63 not exceed or be interpreted as authority to exceed the  
64 powers heretofore granted by the Legislature to the  
65 various commissioners, directors or board members of  
66 the various departments, agencies or boards that  
67 comprise and are incorporated into each secretary's  
68 department under this chapter;

69 (9) Conduct internal audits;

70 (10) Supervise internal management;

71 (11) Promulgate rules, as defined in section two,  
72 article one, chapter twenty-nine-a of this code, to  
73 implement and make effective the powers, authority and  
74 duties granted and imposed by the provisions of this  
75 chapter, such promulgation to be in accordance with the  
76 provisions of chapter twenty-nine-a of this code;

77 (12) Grant or withhold written consent to the proposal  
78 of any rule, as defined in section two, article one,  
79 chapter twenty-nine-a of this code, by any administra-  
80 tor, agency or board within the department, without  
81 which written consent no proposal of a rule shall have  
82 any force or effect;

83 (13) Delegate to administrators such duties of the  
84 secretary as the secretary may deem appropriate from  
85 time to time to facilitate execution of the powers,  
86 authority and duties delegated to the secretary; and

87 (14) Take any other action involving or relating to  
88 internal management not otherwise prohibited by law.

89 (b) The secretaries of the departments hereby created  
90 shall engage in a comprehensive review of the practices,  
91 policies and operations of the agencies and boards  
92 within their departments to determine the feasibility of  
93 cost reductions and increased efficiency which may be  
94 achieved therein, including, but not limited to, the  
95 following:

96 (1) The elimination, reduction and restrictions in the  
97 use of the state's vehicle or other transportation fleet;

98 (2) The elimination, reduction and restrictions in the  
99 preparation of state government publications, including  
100 annual reports, informational materials and promo-  
101 tional materials;

102 (3) The termination or renegotiation of terms con-  
103 tained in lease agreements between the state and private  
104 sector for offices, equipment and services;

105 (4) The adoption of appropriate systems for account-  
106 ing, including consideration of an accrual basis financial  
107 accounting and reporting system;

108 (5) The adoption of revised procurement practices to  
109 facilitate cost effective purchasing procedures, includ-  
110 ing consideration of means by which domestic busi-  
111 nesses may be assisted to compete for state government  
112 purchases; and

113 (6) The computerization of the functions of the state  
114 agencies and boards.

115 (c) Notwithstanding the provisions of subsections  
116 (a) and (b) of this section, none of the powers granted  
117 to the secretaries herein shall be exercised by the  
118 secretary if to do so would violate or be inconsistent with  
119 the provisions of any federal law or regulation, any  
120 federal-state program or federally delegated program or  
121 jeopardize the approval, existence or funding of any  
122 such program, and the powers granted to the secretary  
123 shall be so construed.

124 (d) The layoff and recall rights of employees within  
125 the classified service of the state as provided in  
126 subsections five and six, section ten, article six, chapter

127 twenty-nine of this code shall be limited to the organ-  
 128 izational unit within the agency or board and within the  
 129 occupational group established by the classification and  
 130 compensation plan for the classified service of the  
 131 agency or board in which the employee was employed  
 132 prior to the agency or board's transfer or incorporation  
 133 into the department: *Provided*, That the employee shall  
 134 possess the qualifications established for the job class.  
 135 The duration of recall rights provided in this subsection  
 136 shall be limited to two years or the length of tenure,  
 137 whichever is less. Except as provided in this subsection,  
 138 nothing contained in this section shall be construed to  
 139 abridge the rights of employees within the classified  
 140 service of the state as provided in sections ten and ten-  
 141 a, article six, chapter twenty-nine of this code or the  
 142 right of classified employees of the board of regents to  
 143 the procedures and protections set forth in article  
 144 twenty-six-b, chapter eighteen of this code.

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### ARTICLE 6. CIVIL SERVICE SYSTEM.

- §29-6-2. Definition of terms.
- §29-6-3. Classified service.
- §29-6-4. Classified-exempt service; additions to classified service; exemptions.
- §29-6-5. Creation of division of personnel; sections.
- §29-6-6. State personnel board created; members; term; quorum; vacancies; powers and duties.
- §29-6-7. Director of personnel; appointment; qualifications; powers and duties.
- §29-6-8. Duties of board generally.
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§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.  
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§29-6-25. Implementation; report to governor and Legislature.

### §29-6-2. Definition of terms.

1 As used in this article, unless the context indicates  
2 otherwise, the term:

3 (a) "Administrator" means any person who fills a  
4 statutorily created position within or related to an  
5 agency or board (other than a board member) and who  
6 is designated by statute as commissioner, deputy  
7 commissioner, assistant commissioner, director, chancel-  
8 lor, chief, executive director, executive secretary,  
9 superintendent, deputy superintendent or other admi-  
10 nistrative title, however designated;

11 (b) "Agency" means any administrative unit of state  
12 government, including any authority, board, bureau,  
13 commission, committee, council, division, section or  
14 office;

15 (c) "Appointing authority" means a person or group  
16 of persons authorized by an agency to make appoint-  
17 ments to positions in the classified or classified-exempt  
18 service;

19 (d) "Board" means the state personnel board created  
20 by section six of this article;

21 (e) "Class" or "class of positions" means a group of  
22 positions sufficiently similar in duties, training, expe-  
23 rience and responsibilities, as determined by specifica-  
24 tions, that the same qualifications, the same title and the  
25 same schedule of compensation and benefits may be  
26 equitably applied to each position in the group;

27 (f) "Classification plan" means the plan by which  
28 positions in the classified service and classified-exempt  
29 service have been allocated by class;

30 (g) "Classified-exempt service" means an employee  
31 whose position satisfies the definitions for "class" and  
32 "classify" but who is not covered under the civil service  
33 system or employed by the board of regents;

34 (h) "Classified service" means an employee whose job  
35 satisfies the definitions for "class" and "classify" and  
36 who is covered under the civil service system;

37 (i) "Classify" means to group all positions in classes  
38 and to allocate every position to the appropriate class in  
39 the classification plan;

40 (j) "Director" means the head of the division of  
41 personnel as appointed by section seven of this article;

42 (k) "Council" means the state personnel advisory  
43 council created in section nine-a of this article;

44 (l) "Division" means the division of personnel herein  
45 created;

46 (m) "Policymaking position" means a position in  
47 which the person occupying it (1) acts as an advisor to,  
48 or formulates plans for the implementation of broad  
49 goals for an administrator or the governor, (2) is in  
50 charge of major administrative component of the agency  
51 and (3) reports directly and is directly accountable to an  
52 administrator or the governor;

53 (n) "Position" means a particular job which has been  
54 classified based on specifications;

55 (o) "Secretary" means the secretary of the department  
56 of administration created in section two, article one,  
57 chapter five-f of this code;

58 (p) "Specification" means a description of a class of  
59 position which defines the class, provides examples of  
60 work performed and the minimum qualifications  
61 required for employment;

62 (q) "Veteran" means any person who has served in the  
63 armed forces of the United States of America during  
64 World War I (April 6, 1917-November 11, 1918), World  
65 War II (December 7, 1941-December 31, 1946), the  
66 Korean Conflict (June 27, 1950-January 31, 1955), or the



67 Vietnam Conflict (August 5, 1964-May 7, 1975), and who  
68 has received a discharge under honorable conditions  
69 from such service.

**§29-6-3. Classified service.**

1 The classified service includes all positions covered by  
2 the civil service system as of the effective date of this  
3 article, except as otherwise provided in this article.  
4 Positions may be added to the classified service as  
5 provided in section four of this article.

**§29-6-4. Classified-exempt service; additions to classified  
service; exemptions.**

1 (a) The classified-exempt service includes all positions  
2 included in the classified-exempt service on the effective  
3 date of this article.

4 (b) Except for the period commencing on the first day  
5 of July, one thousand nine hundred ninety-two, and  
6 ending on the first Monday after the second Wednesday  
7 of the following January and except for the same periods  
8 commencing in the year one thousand nine hundred  
9 ninety-six, and in each fourth year thereafter, the  
10 governor may, by executive order, with the written  
11 consent of the state personnel board and the appointing  
12 authority concerned, add to the list of positions in the  
13 classified service, but such additions shall not include  
14 any positions specifically exempted from coverage as  
15 provided in this section.

16 (c) The following offices and positions are exempt  
17 from coverage under the classified service:

18 (1) All judges, officers and employees of the judiciary;

19 (2) All members, officers and employees of the  
20 Legislature;

21 (3) All officers elected by popular vote and employees  
22 of the officer;

23 (4) All secretaries of departments and employees  
24 within the office of a secretary;

25 (5) Members of boards and commissions and heads of  
26 departments appointed by the governor or such heads

27 of departments selected by commissions or boards when  
28 expressly exempt by law or board order;

29 (6) Excluding the policymaking positions in an  
30 agency, one principal assistant or deputy and one  
31 private secretary for each board or commission or head  
32 of a department elected or appointed by the governor  
33 or Legislature;

34 (7) All policymaking positions;

35 (8) Patients or inmates employed in state institutions;

36 (9) Persons employed in a professional or scientific  
37 capacity to make or conduct a temporary and special  
38 inquiry, investigation or examination on behalf of the  
39 Legislature or a committee thereof, an executive  
40 department or by authority of the governor;

41 (10) All employees of the office of the governor,  
42 including all employees assigned to the executive  
43 mansion;

44 (11) County road supervisors employed by the depart-  
45 ment of highways or their successors;

46 (12) Part-time professional personnel engaged in  
47 professional services without administrative duties and  
48 personnel employed for ninety days or less during a  
49 working year;

50 (13) Members and employees of the board of regents  
51 or its successor agencies;

52 (14) Uniformed personnel of the division of public  
53 safety; and

54 (15) Seasonal employees in the state forests, parks,  
55 and recreational areas working less than 1040 hours per  
56 calendar year.

57 (d) The Legislature finds that the holding of political  
58 beliefs and party commitments consistent or compatible  
59 with those of the governor contributes in an essential  
60 way to the effective performance of and is an approp-  
61 riate requirement for occupying certain offices or  
62 positions in state government, such as the secretaries of

63 departments and the employees within their offices, the  
64 heads of agencies appointed by the governor and, for  
65 each such head of agency, a private secretary and one  
66 principal assistant or deputy, all employees of the office  
67 of the governor including all employees assigned to the  
68 executive mansion, as well as any persons appointed by  
69 the governor to fill policymaking positions and county  
70 road supervisors or their successors, in that such offices  
71 or positions are confidential in character and/or require  
72 their holders to act as advisors to the governor or his  
73 appointees, to formulate and implement the policies and  
74 goals of the governor or his appointees, or to help the  
75 governor or his appointees communicate with and  
76 explain their policies and views to the public, the  
77 Legislature and the press.

**§29-6-5. Creation of division of personnel; sections.**

- 1 (a) Effective the first day of July, one thousand nine  
2 hundred eighty-nine, there is hereby created a division  
3 of personnel within the executive branch.
- 4 (b) The division of personnel shall consist of the  
5 following sections:
- 6 (1) Applicant services;
  - 7 (2) Classification and compensation;
  - 8 (3) Management development and training;
  - 9 (4) Program evaluation and payroll;
  - 10 (5) Employee services;
  - 11 (6) Employee relations; and
  - 12 (7) Administrative and staff services.
- 13 Each section shall be under the control of a section  
14 chief to be appointed by the director who shall be  
15 qualified by reason of exceptional training and expe-  
16 rience in the field of activities of the respective section.  
17 The director has authority to establish such additional  
18 sections as may be determined necessary to carry out the  
19 purpose of this article.

**§29-6-6. State personnel board created; members; term; quorum; vacancies; powers and duties.**

1 (a) There is hereby created within the division a state  
2 personnel board which shall consist of five members  
3 appointed by the governor with the advice and consent  
4 of the Senate for terms of four years and until the  
5 appointment of their successors: *Provided*, That of the  
6 members first appointed, one shall be appointed for a  
7 term of one year, one for two years, one for three years,  
8 and one for four years. No more than three members  
9 may be of the same political party. Three members of  
10 the board constitute a quorum.

11 (b) A member of the board may not be removed from  
12 office except for official misconduct, incompetence,  
13 neglect of duty, gross immorality or malfeasance, and  
14 then only in the manner prescribed in article six,  
15 chapter six of this code for the removal by the governor  
16 of state elected officers.

17 (c) Citizen members of the board shall each be paid  
18 one hundred dollars for each day devoted to the work  
19 of the board. Each member shall be reimbursed for all  
20 reasonable and necessary expenses actually incurred in  
21 the performance of his duties, except that in the event  
22 the expenses are paid, or are to be paid, by a third party,  
23 the members shall not be reimbursed by the state.

24 (d) The board shall elect one of its members as  
25 chairperson and shall meet at such time and place as  
26 shall be specified by the call of the chairman. At least  
27 one meeting shall be held in each month. All meetings  
28 shall be open to the public. Notice of each meeting shall  
29 be given in writing to each member by the director at  
30 least three days in advance of the meeting period.

31 (e) In addition to other powers and duties invested in  
32 it by this article or by any other law, the board shall:

33 (1) Promulgate rules in accordance with chapter  
34 twenty-nine-a of this code to implement the provisions  
35 of this article;

36 (2) Interpret the application of this article to any  
37 public body or entity;

38 (3) Authorize and conduct such studies, inquiries,  
39 investigations or hearings in the operation of this article  
40 as it deems necessary.

41 (f) The director or the board may subpoena and  
42 require the attendance of witnesses in the production of  
43 evidence or documents relevant to any proceeding under  
44 this article.

**§29-6-7. Director of personnel; appointment; qualifica-  
tions; powers and duties.**

1 (a) The governor shall appoint, by and with the advice  
2 and consent of the Senate, the director who shall serve  
3 at the will and pleasure of the governor and who shall  
4 be paid an annual salary and be governed by the  
5 provisions of section three, article two, chapter five-f of  
6 this code. The director shall be a person knowledgeable  
7 of the application of the merit principles in public  
8 employment as evidenced by the obtainment of a degree  
9 in business administration, personnel administration,  
10 public administration or the equivalent and at least five  
11 years of administrative experience in public personnel  
12 administration.

13 (b) The director shall:

14 (1) Consistent with the provisions of this article  
15 administer the operations of the division, allocating the  
16 functions and activities of the division among sections  
17 as the director may establish;

18 (2) Maintain a personnel management information  
19 system necessary to carry out the provisions of this  
20 article;

21 (3) Supervise payrolls and audit payrolls, reports or  
22 transactions for conformity with the provisions of this  
23 article;

24 (4) Plan, evaluate, administer and implement person-

25 nel programs and policies in state government and to  
26 political subdivisions after agreement by the parties;

27 (5) Supervise the employee selection process and  
28 employ performance evaluation procedures;

29 (6) Develop programs to improve efficiency and  
30 effectiveness of the public service, including, but not  
31 limited to, employee training, development, assistance  
32 and incentives;

33 (7) Establish pilot programs and other projects for a  
34 maximum of one year outside of the provisions of this  
35 article, subject to approval by the board, to be included  
36 in the annual report;

37 (8) Establish and provide for a public employee  
38 interchange program and may provide for a voluntary  
39 employee interchange program between public and  
40 private sector employees;

41 (9) Establish an internship program;

42 (10) Assist the governor and secretary of the depart-  
43 ment of administration in general work force planning  
44 and other personnel matters;

45 (11) Make an annual report to the governor and  
46 Legislature and all other special or periodic reports as  
47 may be required;

48 (12) Assess cost for special or other services;

49 (13) Recommend rules to the board for implementa-  
50 tion of this article; and

51 (14) Conduct schools, seminars or classes regarding  
52 handling of complaints, disciplinary matters and  
53 operation of the state personnel board for supervisory  
54 employees of the state.

**§29-6-8. Duties of board generally.**

1 In addition to the duties expressly set forth elsewhere  
2 in this article, the board shall:

3 (1) Represent the public interest in the improvement  
4 of personnel administration in the classified service.

5 (2) Advise the governor, the secretary, and the  
6 director on problems concerning personnel  
7 administration.

8 (3) Foster the interest of institutions of learning and  
9 of industrial, civic, professional and employee organiza-  
10 tions in the improvement of personnel standards in the  
11 classified service.

12 (4) Make any investigation which it may consider  
13 desirable concerning the administration of personnel in  
14 the classified service and make recommendations to the  
15 director with respect thereto.

16 (5) Approve the budget as prepared by the director  
17 for administration of this article before submission to  
18 the division of finance and administration.

**§29-6-9. Civil service commission abolished; transfer of  
duties and responsibilities; rule of construc-  
tion; transfer of employees, equipment, and  
records; continuation of programs, protections  
and rules.**

1 (a) The civil service commission is hereby abolished.  
2 All duties and responsibilities heretofore imposed upon  
3 the civil service commission are hereby imposed upon  
4 the state personnel board, and all duties and reponsibil-  
5 ities heretofore imposed upon the director of the civil  
6 service system are hereby imposed upon the director of  
7 the division of personnel. Except as used in this section,  
8 the words "civil service commission" or "commission,"  
9 when used in this article, shall refer to and mean the  
10 state personnel board. Whenever reference is made to  
11 the director of the civil service commission, the power  
12 or duty prescribed shall apply to the director of the  
13 division of personnel.

14 (b) Persons employed on the effective date of this  
15 article by the civil service commission, the duties and  
16 functions of which have been transferred to the division

17 of personnel, are hereby assigned and transferred to the  
18 division of personnel. It is the intent of this article to  
19 consolidate into the division of personnel those agencies  
20 and employees performing personnel functions which  
21 will be facilitated by their consolidation, except as  
22 excluded in section four of this article. On the effective  
23 date of this article, all personnel payroll positions and  
24 employees occupying those positions necessary to  
25 effectuate the purposes of this article shall be trans-  
26 ferred to the division of personnel: *Provided*, That in  
27 order to provide for a smooth transition, the governor  
28 may, by executive order, determine those positions and  
29 employees that shall be transferred and provide that the  
30 transfers provided for in this subsection take effect no  
31 later than the last day of September, one thousand nine  
32 hundred eighty-nine.

33 (c) Upon the transfer, if any, of any personnel payroll  
34 positions as provided in subsection (b) of this section  
35 from the division of highways, the division of motor  
36 vehicles, the workers' compensation fund, the public  
37 service commission, or any other department or division  
38 operating from special revenue funds or federal funds,  
39 such department or division shall pay to the division of  
40 personnel the costs of personnel services, as determined  
41 by the secretary of the department of administration,  
42 provided to their respective divisions. When no specific  
43 appropriation is made for this purpose, such payments  
44 shall be made from personal services, annual increment,  
45 and employee benefit appropriations to the department  
46 or division. Upon the transfer of any personnel payroll  
47 positions to the division of personnel from any depart-  
48 ment or division funded from general revenues of the  
49 state, the governor is authorized and empowered to  
50 order the transfer of funds for those positions.

51 (d) The abolishment of the civil service commission  
52 and the creation of the division of personnel shall in no  
53 way hinder any ongoing programs, benefits, litigation,  
54 or grievance procedures. Employees in the classified  
55 service who have gained permanent status as of the  
56 effective date of this article will not be subject to further  
57 qualifying examination by reason of any transfer



58 required by the provisions of this section, except when  
59 they wish to qualify for promotion. Nothing contained  
60 in this section shall be construed to abridge the rights  
61 of employees within the classified service of the state to  
62 the procedures and protections set forth in sections ten  
63 and ten-a of this article, except as provided in subsection  
64 (d), section two, article two, chapter five-f of this code.

65 (e) On the effective date of this article, all equipment  
66 and records necessary to effectuate the purposes of this  
67 article shall be transferred to the division of personnel:  
68 *Provided*, That in order to provide for a smooth  
69 transition, the governor may, by executive order,  
70 determine the equipment and records to be transferred  
71 and provide that the transfers provided for in this  
72 subsection take effect no later than the last day of  
73 September, one thousand nine hundred eighty-nine.

74 (f) The rules of the civil service commission shall  
75 remain in force and effect until promulgation of new or  
76 additional rules by the state personnel board.

77 (g) Nothing contained in this article shall be  
78 construed to preclude the reclassification or reallocation  
79 of positions in accordance with procedures set forth in  
80 section ten of this article.

#### §29-6-9a. State personnel advisory council.

1 (a) There is hereby created the state personnel  
2 advisory council, which consists of eleven members  
3 appointed by the governor. Six members shall be  
4 classified employees and two, classified-exempt em-  
5 ployees. Of the remaining three members, one shall be  
6 appointed from a list of three persons recommended by  
7 the American federation of state, county, and municipal  
8 employees; one, from a list of three persons recom-  
9 mended by the communication workers of America; and  
10 one, from a list of three persons recommended by  
11 district 1199, national union of hospital and health care  
12 employees, AFL-CIO. Members of the council shall  
13 serve for a term concurrent with that of the governor.

14 (b) The state personnel advisory council shall:

15 (1) Advise the director and the board in the develop-  
16 ment of comprehensive policies and programs for the  
17 improvement of personnel administration in the state;

18 (2) Assist in the formulation of rules and standards  
19 relating to the state system of personnel administration;

20 (3) Assist in the promotion of public understanding of  
21 the purposes, policies and practices of the state system  
22 of personnel administration.

23 (c) Members of the council shall receive no compen-  
24 sation, but shall be reimbursed for their actual and  
25 necessary expenses.

#### §29-6-10. Rules of division.

1 The board shall have the authority to promulgate,  
2 amend or repeal rules, in accordance with chapter  
3 twenty-nine-a of this code, to implement the provisions  
4 of this article.

5 (1) For the preparation, maintenance and revision of  
6 a position classification plan for all positions in the  
7 classified service and a position classification plan for  
8 all positions in the classified-exempt service, based upon  
9 similarity of duties performed and responsibilities  
10 assumed, so that the same qualifications may reasonably  
11 be required for and the same schedule of pay may be  
12 equitably applied to all positions in the same class. The  
13 position classification plan for classified-exempt service  
14 shall become effective not later than the first day of  
15 July, one thousand nine hundred seventy-nine. Except  
16 for persons employed by the board of regents, all  
17 persons receiving compensation in the form of a wage  
18 or salary, funded either in part or in whole by the state,  
19 shall be included in either the position classification  
20 plan for classified service or classified-exempt service.  
21 After each such classification plan has been approved  
22 by the board, the director shall allocate the position of  
23 every employee in the classified service to one of the  
24 classes in the classified plan and the position of every  
25 employee in the classified-exempt service to one of the  
26 positions in the classified-exempt plan. Any employee

27 affected by the allocation of a position to a class shall,  
28 after filing with the director of personnel a written  
29 request for reconsideration thereof in such manner and  
30 form as the director may prescribe, be given a reason-  
31 able opportunity to be heard thereon by the director.  
32 The interested appointing authority shall be given like  
33 opportunity to be heard.

34 (2) For a pay plan for all employees in the classified  
35 service, after consultation with appointing authorities  
36 and the state fiscal officers, and after a public hearing  
37 held by the board. Such pay plan shall become effective  
38 only after it has been approved by the governor after  
39 submission to him by the board. Amendments to the pay  
40 plan may be made in the same manner. Each employee  
41 shall be paid at one of the rates set forth in the pay plan  
42 for the class of position in which he is employed. The  
43 principle of equal pay for equal work in the several  
44 agencies of the state government shall be followed in the  
45 pay plan as established hereby.

46 (3) For open competitive examinations to test the  
47 relative fitness of applicants for the respective positions  
48 in the classified service. Such examinations need not be  
49 held until after the rules have been adopted, the service  
50 classified and a pay plan established, but shall be held  
51 not later than one year after this article takes effect.  
52 Such examinations shall be announced publicly at least  
53 fifteen days in advance of the date fixed for the filing  
54 of applications therefor, and may be advertised through  
55 the press, radio and other media. The director may,  
56 however, in his discretion, continue to receive applica-  
57 tions and examine candidates long enough to assure a  
58 sufficient number of eligibles to meet the needs of the  
59 service; and may add the names of successful candidates  
60 to existing eligible lists in accordance with their  
61 respective ratings.

62 An additional five points shall be awarded to the score  
63 of any examination successfully completed by a veteran.  
64 A disabled veteran shall be entitled to an additional ten  
65 points, rather than five points as aforesaid, upon  
66 successful completion of any examination.

67 (4) For promotions within the classified service which  
68 shall give appropriate consideration to the applicant's  
69 qualifications, record of performance and his score on  
70 a written examination, when such examination is  
71 practicable. In filling vacancies an effort should be  
72 made to achieve a balance between promotion from  
73 within the service and the introduction into the service  
74 of qualified new employees. An advancement in rank or  
75 grade or an increase in salary beyond the maximum  
76 fixed for the class shall constitute a promotion.

77 (5) For layoffs by classification for reason of lack of  
78 funds or work, or abolition of a position, or material  
79 changes in duties or organization, or any loss of position  
80 because of the provisions of this subdivision and for  
81 recall of employees so laid off, consideration shall be  
82 given to an employee's seniority as measured by  
83 permanent employment in the classified service or a  
84 state agency. In the event that the agency wishes to lay  
85 off a more senior employee, the agency must demon-  
86 strate that the senior employee cannot perform any  
87 other job duties held by less senior employees within  
88 that agency in the job class, or any other equivalent or  
89 lower job class for which the senior employee is  
90 qualified: *Provided*, That if an employee refuses to  
91 accept a position in a lower job class, such employee  
92 shall retain all rights of recall as hereinafter provided.

93 (6) For recall of employees, recall shall be by reverse  
94 order of layoff to any job class that the employee has  
95 previously held or a lower class in the series within the  
96 agency as that job class becomes vacant. An employee  
97 will retain his place on the recall list for the same period  
98 of time as his seniority on the date of his layoff, or for  
99 a period of two years, whichever is less. No new  
100 employees shall be hired for any vacancy in his or her  
101 job class or in a lower job class in the series until all  
102 eligible employees on layoff are given the opportunity  
103 to refuse that job class. An employee shall be recalled  
104 onto jobs within the county wherein his last place of  
105 employment is located or within a county contiguous  
106 thereto. Any laid-off employee who is eligible for a  
107 vacant position shall be notified by certified mail of the

108 vacancy. It shall be the responsibility of the employee  
109 to notify the agency of any change in his address.

110 (7) For the establishment of eligible lists for appoint-  
111 ment and promotion within the classified service, upon  
112 which lists shall be placed the names of successful  
113 candidates in the order of their relative excellence in the  
114 respective examinations. Eligibility for appointment  
115 from any such list shall continue not longer than three  
116 years. An appointing authority shall make his selection  
117 from the top ten names on the appropriate lists of  
118 eligibles, or may choose any person scoring at or above  
119 the ninetieth percentile on the examination.

120 (8) For the rejection of candidates or eligibles within  
121 the classified service who fail to comply with reasonable  
122 requirements in regard to such factors as age, physical  
123 condition, character, training and experience, who are  
124 addicted to alcohol or narcotics, or who have attempted  
125 any deception or fraud in connection with an examina-  
126 tion, or where in the judgment of the board there is  
127 reasonable doubt of the loyalty of the candidate or  
128 allegiance to the nation.

129 (9) For a period of probation not to exceed one year  
130 before appointment or promotion may be made complete  
131 within the classified service.

132 (10) For provisional employment without competitive  
133 examination within the classified service when there is  
134 no appropriate eligible list available. No such provi-  
135 sional employment may continue longer than six  
136 months, nor shall successive provisional appointments  
137 be allowed, except during the first year after the  
138 effective date of this article, in order to avoid stoppage  
139 of orderly conduct of the business of the state.

140 (11) For keeping records of performance of all  
141 employees in the classified service, which service  
142 records may be considered in determining salary  
143 increases and decreases provided in the pay plan; as a  
144 factor in promotion tests; as a factor in determining the  
145 order of layoffs because of lack of funds or work and  
146 in reinstatement; and as a factor in demotions, dis-  
147 charges and transfers.

148 (12) For discharge or reduction in rank or grade only  
149 for cause of employees in the classified service.  
150 Discharge or reduction of these employees shall take  
151 place only after the person to be discharged or reduced  
152 has been presented with the reasons for such discharge  
153 or reduction stated in writing, and has been allowed a  
154 reasonable time to reply thereto in writing, or upon  
155 request to appear personally and reply to the appointing  
156 authority or his deputy. The statement of reasons and  
157 the reply shall be filed as a public record with the  
158 director. Notwithstanding the foregoing provisions of  
159 this subdivision, no permanent employee shall be  
160 discharged from the classified service for absenteeism  
161 upon using all entitlement to annual leave and sick leave  
162 when such use has been due to illness or injury as  
163 verified by a physician's certification or for other  
164 extenuating circumstances beyond the employee's  
165 control unless his disability is of such a nature as to  
166 permanently incapacitate him from the performance of  
167 the duties of his position. Upon exhaustion of annual  
168 leave and sick leave credits for the reasons specified  
169 herein and with certification by a physician that the  
170 employee is unable to perform his duties, a permanent  
171 employee shall be granted a leave of absence without  
172 pay for a period not to exceed six months if such  
173 employee is not permanently unable to satisfactorily  
174 perform the duties of his position.

175 (13) For such other rules and administrative regula-  
176 tions, not inconsistent with this article, as may be proper  
177 and necessary for its enforcement.

178 (14) The board shall review and approve by rules and  
179 regulations the establishment of all classified-exempt  
180 positions to assure consistent interpretation of the  
181 provisions of this article.

182 The provisions of this section are subject to any  
183 modifications contained in chapter five-f of this code.  
184 The board may include in the rules provided for in this  
185 article such provisions as are necessary to conform to

186 regulations and standards of any federal agency  
187 governing the receipt and use of federal grants-in-aid by  
188 any state agency, anything in this article to the contrary  
189 notwithstanding. The board and the director shall see  
190 that rules and practices meeting such standards are in  
191 effect continuously after the effective date of this article.

**§29-6-11. Duty to furnish facilities for division's use.**

1 All officers and employees of the state and of munic-  
2 ipalities and political subdivisions of the state shall  
3 allow the division the reasonable use of public buildings  
4 under their control, and furnish heat, light and furni-  
5 ture, for any examination, hearing or investigation  
6 authorized by this article. The division shall pay to a  
7 municipality or political subdivision the reasonable cost  
8 of any such facilities furnished by it.

**§29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.**

1 All officers and employees of the state shall comply  
2 with and aid in all proper ways in carrying out the  
3 provisions of this article and the rules and orders  
4 thereunder. All officers and employees shall furnish any  
5 records or information which the director may request  
6 for any purpose of this article. The director may  
7 institute and maintain any action or proceeding at law  
8 or in equity that he considers necessary or appropriate  
9 to secure compliance with this article and the rules and  
10 orders thereunder.

**§29-6-14. Certification of payrolls; wrongfully withholding certification of payroll.**

1 (a) No state disbursing or auditing officer shall make  
2 or approve or take any part in making or approving any  
3 payment for personal service to any person holding a  
4 position in the classified service unless the payroll  
5 voucher or account of such pay bears the certification  
6 of the director, or of his authorized agent, that the  
7 persons named therein have been appointed and em-  
8 ployed in accordance with the provisions of this article

9 and the rules, regulations and orders thereunder. The  
10 director may for proper cause withhold certification  
11 from an entire payroll or from any specific item or items  
12 thereon. The director may, however, provide that  
13 certification of payrolls may be made once every six  
14 months, and such certification shall remain in effect  
15 except in the case of any officer or employee whose  
16 status has changed after the last certification of his  
17 payroll. In the latter case no voucher for payment of  
18 salary to such employee shall be issued or payment of  
19 salary made without further certification by the  
20 director.

21 (b) If the director wrongfully withholds certification  
22 of the payroll voucher or account of any employee, such  
23 employee may maintain a proceeding in the courts to  
24 compel the director to certify such payroll voucher or  
25 account.

**§29-6-16. Records of division.**

1 The records of the division, except such records as the  
2 rules may properly require to be held confidential for  
3 reasons of public policy, shall be public records and  
4 shall be open to public inspection, subject to reasonable  
5 regulations as to the time and manner of inspection  
6 which may be prescribed by the director.

**§29-6-17. Services to political subdivisions; cooperation  
with agencies for other jurisdictions.**

1 (a) Subject to the approval of the board the director  
2 may enter into agreements with any municipality or  
3 other political subdivision of the state to furnish services  
4 and facilities of the division to such municipality or  
5 political subdivision in the administration of its person-  
6 nel on merit principles. Any such agreements shall  
7 provide for the reimbursement to the state of the  
8 reasonable cost of the services and facilities furnished,  
9 as determined by the director. All municipalities and  
10 political subdivisions of the state are hereby authorized  
11 to enter into such agreements. Subject to the approval  
12 of the board, the director may enter into an agreement  
13 with the state department of health for the inclusion of



14 personnel of local health departments under the classi-  
15 fied service system established by this article.

16 (b) The director may cooperate with governmental  
17 agencies for other jurisdictions charged with personnel  
18 administration in conducting joint tests and establishing  
19 joint lists from which eligibles shall be certified for  
20 appointment in accordance with the provisions of this  
21 article.

**§29-6-17a. Apprenticeship program.**

1 (a) The division of personnel shall develop and  
2 monitor apprenticeship programs for all state agencies  
3 that have employees working in apprenticeable trades  
4 which are, or may be recognized by, the United States  
5 department of labor, bureau of apprenticeship and  
6 training.

7 (b) These apprenticeship programs will be developed  
8 and conducted in a manner that will assure meeting the  
9 national minimum requirements of quality and be  
10 registered with the United States department of labor,  
11 bureau of apprenticeship and training.

12 (c) The director or his designee, in cooperation with  
13 the participating appointing authorities within each  
14 agency, shall develop and annually revise by the thirty-  
15 first day of December a list of employment classifica-  
16 tions appropriate for apprenticeship training, which  
17 may include, but not be limited to, the following  
18 classifications: Computer service technicians; legal  
19 assistants; computer systems analysts; computer pro-  
20 grammers; computer operators; office machine repair-  
21 ers; physical therapy assistants; electrical engineers;  
22 civil engineering technicians; peripheral edp equipment  
23 operators; insurance clerks, medical, electrical and  
24 electronic technicians; occupational therapists; surveyor  
25 helpers; credit clerks, banking and insurance; physical  
26 therapists; employment interviewers; mechanical engi-  
27 neers; mechanical engineering technicians; and com-  
28 pression and injection mold machine operators.

29 (d) The chief administrative officer of each agency in

30 cooperation with the director or his designee shall  
31 establish procedures for the coordination of apprentice-  
32 ship programs developed in accordance with this  
33 section.

34 (e) Subject to the approval of the director and the  
35 procedures established, each participating agency shall  
36 determine the location and positions in which apprent-  
37 iceships are to be established.

38 (f) The director, or his designee, shall make an annual  
39 report to the Legislature and shall include in such  
40 report the following:

41 (1) A review of the development and operation of  
42 apprenticeship programs;

43 (2) The current list of apprenticeable classifications;

44 (3) A summary of the agencies and types of positions  
45 involved;

46 (4) A summary of registered apprenticeships;

47 (5) The number of persons who applied for apprent-  
48 iceship positions under this section;

49 (6) The number of persons accepted into the apprent-  
50 iceship programs established in accordance with this  
51 section;

52 (7) The number of persons who successfully completed  
53 and received a certificate of completion from the United  
54 States department of labor, bureau of apprenticeship  
55 and training;

56 (8) The number of persons who failed to complete  
57 apprenticeships in accordance with this section;

58 (9) The number of persons who remain employed  
59 after successfully completing apprenticeships; and

60 (10) A summary of characteristics of applicants and  
61 participants in the program deemed pertinent to the  
62 director.

63 (g) The recruitment, selection and training of ap-  
64 prentices during their apprenticeship shall be without  
65 discrimination because of race, color, religion, national  
66 origin or sex. The division will take affirmative action  
67 to provide equal opportunity in apprenticeship pro-  
68 grams and will operate the program to assure equal  
69 employment in apprenticeship.

70 (h) No contract between the state and a vendor,  
71 whereby persons who have participated in the apprenti-  
72 ceship program are to be hired, may be approved by  
73 the attorney general unless and until said contract  
74 contains a statement that the vendor will not discrim-  
75 inate in employment or public accommodation because  
76 of race, religion, color, national origin, ancestry, sex,  
77 age, blindness or handicap of any individual.

**§29-6-17b. Advisory board for the apprenticeship  
program.**

1 In order to better accomplish the goals of this  
2 program the apprenticeship advisory board is continued  
3 and reestablished. Its members shall include the  
4 commissioner of labor or a designee, the commissioner  
5 of finance and administration or a designee, the state  
6 superintendent of the department of education or a  
7 designee, two employees of the state who are covered  
8 under the civil service system, and one private citizen,  
9 with the employee and citizen members to be appointed  
10 by the governor. The employees and the private citizen  
11 members shall serve without compensation for two  
12 years, after which they may be reappointed. The  
13 chairman of the board shall be elected by the board as  
14 a whole.

15 The apprenticeship advisory board shall meet at least  
16 semiannually, at the call of the chairman, for the  
17 purpose of receiving, reviewing and evaluating reports  
18 from the director on the achievements and deficiencies  
19 of the program. The apprenticeship advisory board may  
20 seek the advice and counsel from appropriate members  
21 of the United States department of labor who may be  
22 knowledgeable about such apprenticeship programs,

23 and may also prepare written recommendations to the  
24 director, secretary, or governor on ways to improve the  
25 apprenticeship program.

**§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.**

1 (a) No person shall be appointed or promoted to or  
2 demoted or dismissed from any position in the classified  
3 service or in any way favored or discriminated against  
4 with respect to such employment because of his political  
5 or religious opinions or affiliations or race; but nothing  
6 herein shall be construed as precluding the dismissal of  
7 any employee who may be engaged in subversive  
8 activities or found disloyal to the nation.

9 (b) No person shall seek or attempt to use any political  
10 endorsement in connection with any appointment in the  
11 classified service.

12 (c) No person shall use or promise to use, directly or  
13 indirectly, any official authority or influence, whether  
14 possessed or anticipated, to secure or attempt to secure  
15 for any person an appointment or advantage in appointment  
16 to a position in the classified service, or an increase  
17 in pay or other advantage in employment in any such  
18 position, for the purpose of influencing the vote or  
19 political action of any person or for any consideration.

20 (d) No employee in the classified service or member  
21 of the board or the director shall, directly or indirectly,  
22 solicit or receive any assessment, subscription or  
23 contribution, or perform any service for any political  
24 party, committee or candidate for compensation, other  
25 than for expenses actually incurred, or in any manner  
26 take part in soliciting any such assessment, subscription,  
27 contribution or service of any employee in the classified  
28 service.

29 (e) Notwithstanding any other provision of this code,  
30 no employee in the classified service shall:

31 (1) Use his official authority or influence for the

32 purpose of interfering with or affecting the result of an  
33 election or a nomination for office;

34 (2) Directly or indirectly coerce, attempt to coerce,  
35 command or advise a state or local officer or employee  
36 to pay, lend or contribute anything of value to a party,  
37 committee, organization, agency or person for political  
38 purposes; or

39 (3) Be a candidate for any national or state paid  
40 public office or court of record; or hold any paid public  
41 office; or be a candidate or delegate to any state or  
42 national political party convention, a member of any  
43 national, state or local committee of a political party, or  
44 a financial agent or treasurer within the meaning of the  
45 provisions of section three, four or five-e, article eight,  
46 chapter three of this code. Other types of partisan or  
47 nonpartisan political campaigning and management not  
48 inconsistent with the provisions of this subdivision and  
49 with the provisions of subsection (d) of this section shall  
50 be permitted.

51 (f) Political participation pertaining to constitutional  
52 amendments, referendums, approval of municipal  
53 ordinances or activities shall not be deemed to be  
54 prohibited by the foregoing provisions of this section.

55 (g) Any classified employee who becomes a candidate  
56 for any paid public office as permitted by this section  
57 shall be placed on a leave of absence without pay for the  
58 period of such candidacy, commencing upon the filing  
59 of the certificate of candidacy.

#### §29-6-21. Acts prohibited.

1 (a) No person shall make any false statement, certif-  
2 icate, mark, rating or report with regard to any test,  
3 certification or appointment made under any provisions  
4 of this article or in any manner commit or attempt to  
5 commit any fraud preventing the impartial execution of  
6 this article and the rules.

7 (b) No person shall, directly or indirectly, give,  
8 render, pay, offer, solicit or accept any money, or other

9 valuable consideration for or on account of any certifi-  
10 cation, appointment, proposed appointment, promotion  
11 or proposed promotion to, or any advantage in, a position  
12 in the classified service.

13 (c) No employee of the division, examiner, or other  
14 person shall defeat, deceive or obstruct any person in his  
15 right to examination, eligibility, certification or appoint-  
16 ment under this article, or furnish to any person any  
17 special or secret information for the purpose of affecting  
18 the rights or prospects of any person with respect to  
19 employment in the classified service.

**§29-6-23. Appropriations; cost of administering article;  
acceptance of grants or contribution.**

1 (a) Appropriations shall be made from the general  
2 fund to the division of personnel to meet the cost of  
3 administering the provisions of this article.

4 (b) The director shall maintain accurate records  
5 reflecting the cost of administering the provisions of this  
6 article.

7 (c) The division is authorized and directed to accept  
8 on behalf of the state any grant or contribution, federal  
9 or otherwise, made to assist in meeting the cost of  
10 carrying out the purposes of this article.

**§29-6-25. Implementation; report to governor and  
Legislature.**

1 (a) General implementation is to be completed no  
2 later than twelve months following the effective date of  
3 this article.

4 (b) There is hereby created an implementation task  
5 force to assist in the general implementation of this  
6 article and the establishment of the division. The task  
7 force shall consist of twelve members and the director  
8 of personnel. Task force members shall be appointed by  
9 the governor.

10 (c) The director shall provide a report to the secretary  
11 of the department of administration, who shall then,

- 12 within one year from the effective date of this article,  
13 report to the governor and Legislature on the progress  
14 of the implementation of this article.

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## CHAPTER 30

(S. B. 615—Originating in the Committee on Finance)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

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

### CLAIMS AGAINST THE STATE.

- §1. Finding and declaring certain claims against the alcohol beverage control commissioner; attorney general; nonintoxicating beer commission; department of corrections; department of culture and history; department of education; educational broadcasting authority; department of finance and administration; governor's office; department of health; department of health-office of the chief medical examiner; department of highways; human rights commission; department of human services; department of motor vehicles; department of natural resources; board of probation and parole; public employees insurance agency; department of public safety; public service commission; board of regents; state board of rehabilitation; secretary of state; state tax department; treasurer's office; water resources board; and workers' compensation fund, to be moral obligations of the state and directing payment thereof; and finding and declaring a claim against the state for unjust arrest and imprisonment to be a moral obligation of the state and directing payment thereof.

- 1 The Legislature has considered the findings of fact

2 and recommendations reported to it by the court of  
 3 claims concerning various claims against the state and  
 4 agencies thereof, and in respect to each of the following  
 5 claims the Legislature adopts those findings of fact as  
 6 its own, and in respect of certain claims herein, the  
 7 Legislature has independently made findings of fact and  
 8 determinations of award and hereby declares it to be the  
 9 moral obligation of the state to pay each such claim in  
 10 the amount specified below, and directs the auditor to  
 11 issue warrants for the payment thereof out of any fund  
 12 appropriated and available for the purpose.

13 (a) *Claims against the*

14 *Alcohol Beverage Control Commissioner:*

15 (TO BE PAID FROM SPECIAL REVENUE FUND)

16	(1) The City of Charleston .....	\$	292.65
17	(2) Riley's Department Store, Inc. ...	\$	235.22

18 (b) *Claims against the Attorney General:*

19 (TO BE PAID FROM GENERAL REVENUE FUND)

20	(1) Paul T. Camilletti .....	\$	5,600.50
21	(2) Career Track, Inc. ....	\$	85.00
22	(3) West Publishing Company .....	\$	7,282.69

23 (c) *Claims against the*

24 *Nonintoxicating Beer Commission:*

25 (TO BE PAID FROM GENERAL REVENUE FUND)

26	(1) AT & T Communications, Inc. ...	\$	3.22
27	(2) Atomic Distributing Company ..	\$	53.46

28 (d) *Claims against the*

29 *Department of Corrections:*

30 (TO BE PAID FROM GENERAL REVENUE FUND)

31	(1) AT & T Communications, Inc. ...	\$	174.48
32	(2) Sanford Clegg, III .....	\$	4,691.20
33	(3) Davis Memorial Hospital .....	\$	560.45
34	(4) John XXIII, Pastoral Center ...	\$	298.00
35	(5) Levin Auto Parts, Inc. ....	\$	752.79
36	(6) National Laboratories .....	\$	946.09
37	(7) Samuel K. Roberts .....	\$	260.00
38	(8) Lee E. Smith, M.D. and		
39	Robert M. Jones, M.D., P.C. ...	\$	2,045.00



40	(9)	Thoracic and Cardiovascular		
41		Surgery, Inc. ....	\$	764.79
42	(10)	Tincher Dental Laboratory .....	\$	216.77
43	(11)	Wheeling Clinic .....	\$	2,025.00
44	(12)	Williams Generics, Inc. ....	\$	588.19
45	(13)	Xerox Corporation .....	\$	699.35
46	(14)	Youth Services System, Inc. ....	\$	290.22
47	(e)	<i>Claim against the</i>		
48		<i>Department of Culture and History:</i>		
49		(TO BE PAID FROM GENERAL REVENUE FUND)		
50	(1)	AT & T Communications, Inc. ...	\$	324.06
51	(f)	<i>Claims against the</i>		
52		<i>Department of Education:</i>		
53		(TO BE PAID FROM GENERAL REVENUE FUND)		
54	(1)	Bell Atlanticom Systems, Inc. ...	\$	3,141.12
55	(2)	Sherry Lynne Perkey .....	\$	199.00
56	(3)	Mary Pheasant .....	\$	204.00
57	(4)	Stephanie R. Short .....	\$	210.00
58	(5)	Lucy Snyder .....	\$	2,032.00
59	(6)	Rodney C. Stansberry .....	\$	504.00
60	(g)	<i>Claims against the</i>		
61		<i>Educational Broadcasting Authority:</i>		
62		(TO BE PAID FROM GENERAL REVENUE FUND)		
63	(1)	Myra Lowery .....	\$	700.00
64	(2)	Wesco Equipment, Inc. ....	\$	6,973.50
65	(h)	<i>Claim against the</i>		
66		<i>Department of Finance and Administration:</i>		
67		(TO BE PAID FROM GENERAL REVENUE FUND)		
68	(1)	Xerox Corporation .....	\$	5,050.57
69	(i)	<i>Claims against the Governor's Office:</i>		
70		(TO BE PAID FROM GENERAL REVENUE FUND)		
71	(1)	John P. Bailey .....	\$	2,036.25
72	(2)	Frederick E. Gardner .....	\$	1,532.50
73	(3)	Robert W. Kagler .....	\$	5,615.00
74	(4)	Michael E. Kelly .....	\$	7,599.50

75	(5)	Jeffrey V. Kessler .....	\$	12,390.00
76	(6)	J. Thomas Madden .....	\$	5,229.20
77	(7)	Michael W. McGuane .....	\$	6,065.00
78	(8)	Town of Harrisville .....	\$	40,500.00
79	(j)	<i>Claims against the</i>		
80		<i>Department of Health:</i>		
81		(TO BE PAID FROM GENERAL REVENUE FUND)		
82	(1)	David M. Baker .....	\$	996.45
83	(2)	Patricia Butcher .....	\$	39.65
84	(3)	Walter Allen Clark, II .....	\$	30.55
85	(4)	Beulah Cohernour .....	\$	447.74
86	(5)	Donald Cohernour .....	\$	68.34
87	(6)	Gladys Sluss Cox .....	\$	950.61
88	(7)	Erma Hagerman .....	\$	19.79
89	(8)	Rebecca Hassan .....	\$	663.31
90	(9)	Wendell Hiatt .....	\$	20.00
91	(10)	Joseph N. Hurley .....	\$	58.00
92	(11)	Lee A. Johnson .....	\$	1,799.20
93	(12)	Sadie Jones .....	\$	13.75
94	(13)	Steve Lambe .....	\$	10.00
95	(14)	Sharon Lansdale .....	\$	1,465.40
96	(15)	Manpower Temporary Services ...	\$	731.50
97	(16)	Sunil Mehta .....	\$	1,760.10
98	(17)	Chloie Lynn Osborne .....	\$	10.00
99	(18)	Otis Elevator Company .....	\$	971.84
100	(19)	Warren R. Pistey .....	\$	50.00
101	(20)	Potomac Comprehensive		
102		Diagnostic and		
103		Guidance Center, Inc. ....	\$	106,354.00
104	(21)	Alana Rose .....	\$	1,455.49
105	(22)	Gordon Eric Runyon .....	\$	217.96
106	(23)	Marsha Runyon .....	\$	286.73
107	(24)	Kellie Saunders .....	\$	86.95
108	(25)	Mildred Sayre .....	\$	1,555.70
109	(26)	Stonewall Jackson		
110		Memorial Hospital .....	\$	3,334.58
111	(27)	Genevieve Taylor .....	\$	2,965.94
112	(28)	Timothy Tolliver .....	\$	180.95
113	(29)	Xerox Corporation .....	\$	2,595.80

114	(k)	<i>Claims against the</i>		
115		<i>Department of Health—Office</i>		
116		<i>of the Chief Medical Examiner:</i>		
117		(TO BE PAID FROM GENERAL REVENUE FUND)		
118	(1)	Joe Adams .....	\$	50.00
119	(2)	James C. Bosley, M.D. ....	\$	150.00
120	(3)	John J. Keefe, M.D. ....	\$	150.00
121	(4)	James M. Marsh, M.D. ....	\$	150.00
122	(5)	J. Keith Pickens, M.D. ....	\$	250.00
123	(l)	<i>Claims against the</i>		
124		<i>Department of Highways:</i>		
125		(TO BE PAID FROM STATE ROAD FUND)		
126	(1)	Aetna Casualty & Surety,		
127		subrogee of		
128		Dianna Rinehart Jones .....	\$	301.20
129	(2)	Carol J. Baker .....	\$	90.00
130	(3)	Barboursville Bridge Company ..	\$	136,426.00
131	(4)	Alice Hope Bomboy and		
132		David Lynn Bomboy .....	\$	694.67
133	(5)	Barry M. Doss and Kathy L. Doss	\$	100.00
134	(6)	Diane Earliwine .....	\$	259.58
135	(7)	William Ray Fitzwater .....	\$	32,040.00
136	(8)	Helen Hanson and		
137		Howard Hanson .....	\$	2,500.00
138	(9)	Jo Ellen Lagowski .....	\$	275.00
139	(10)	The Lane Construction		
140		Corporation .....	\$	517,478.00
141	(11)	Jarvey G. Marcum .....	\$	7,200.00
142	(12)	Roy Paul Messer .....	\$	10,000.00
143	(13)	Dave Minch and Barbara Minch	\$	100.96
144	(14)	John M. Pratt .....	\$	258.86
145	(15)	State Farm Mutual Automobile		
146		Insurance Company, as		
147		subrogee of Pamela Reid		
148		and Howard Reid .....	\$	350.30
149	(16)	Peggy Stover .....	\$	270.60
150	(17)	Jeanette E. Straw .....	\$	388.66
151	(18)	Lawrence Terrell		
152		and Sarah Terrell .....	\$	9,000.00
153	(19)	Virgie Mae Varney .....	\$	15,000.00

196		CLAIMS		[Ch. 30
154	(20)	William Ernest Varney .....	\$	5,000.00
155	(m)	<i>Claims against the</i>		
156		<i>Human Rights Commission:</i>		
157		(TO BE PAID FROM GENERAL REVENUE FUND)		
158	(1)	AAA Court Reporting .....	\$	115.05
159	(2)	Phyllis H. Edens, CCR, Inc. ....	\$	519.70
160	(3)	Sheriff-Treasurer/Marion		
161		County .....	\$	5.00
162	(4)	Paul R. Stone .....	\$	1,306.23
163	(n)	<i>Claims against the</i>		
164		<i>Department of Human Services:</i>		
165		(TO BE PAID FROM SPECIAL REVENUE FUND)		
166	(1)	Rolando Ugalde Layos .....	\$	32,000.00
167	(2)	Olympic Center-Preston .....	\$	1,100.00
168	(o)	<i>Claim against the</i>		
169		<i>Department of Motor Vehicles:</i>		
170		(TO BE PAID FROM STATE ROAD FUND)		
171	(1)	Harold Casto .....	\$	400.00
172	(p)	<i>Claim against the</i>		
173		<i>Department of Natural Resources:</i>		
174		(TO BE PAID FROM GENERAL REVENUE FUND)		
175	(1)	Motorola C & E, Inc. ....	\$	1,773.99
176	(q)	<i>Claim against the</i>		
177		<i>Board of Probation and Parole:</i>		
178		(TO BE PAID FROM GENERAL REVENUE FUND)		
179	(1)	AT & T Communications, Inc. ...	\$	2.67
180	(r)	<i>Claim against the Public</i>		
181		<i>Employees Insurance Agency:</i>		
182		(TO BE PAID FROM GENERAL REVENUE FUND)		
183	(1)	West Virginia University		
184		Hospitals, Inc. ....	\$	15,445.72

185	(s)	<i>Claims against the</i>		
186		<i>Department of Public Safety:</i>		
187		(TO BE PAID FROM GENERAL REVENUE FUND)		
188	(1)	Beaver Family Care Associates ..	\$	97.60
189	(2)	Chesapeake and Potomac		
190		Telephone Company		
191		of West Virginia .....	\$	200.00
192	(3)	St. Francis Hospital .....	\$	227.20
193	(t)	<i>Claim against the</i>		
194		<i>Public Service Commission:</i>		
195		(TO BE PAID FROM SPECIAL REVENUE FUND)		
196	(1)	R. L. Banks & Associates, Inc. ...	\$	4,799.00
197	(u)	<i>Claims against the</i>		
198		<i>Board of Regents:</i>		
199		(TO BE PAID FROM GENERAL REVENUE FUND)		
200	(1)	Casto Technical Services, Inc. ...	\$	1,604.00
201	(2)	Bernard Dickter .....	\$	92.74
202	(3)	Cecil Watson .....	\$	1,205.55
203	(4)	Xerox Corporation .....	\$	3,553.04
204		(TO BE PAID FROM SPECIAL REVENUE FUND)		
205		from Acct. No. 8855		
206	(1)	Kirby Electric Company .....	\$	107,835.04
207	(2)	Mellon-Stuart Company .....	\$	638,346.33
208	(v)	<i>Claims against the</i>		
209		<i>State Board of Rehabilitation:</i>		
210		(TO BE PAID FROM FEDERAL FUNDS)		
211		from Acct. No. 7873		
212	(1)	C. Lee Dunnivant, Jr. ....	\$	2,180.00
213	(2)	Michael P. King .....	\$	2,616.50
214	(3)	Process-Strategies Institute .....	\$	899.00
215	(w)	<i>Claims against the</i>		
216		<i>Secretary of State:</i>		
217		(TO BE PAID FROM GENERAL REVENUE FUND)		

218	(1) Moore Business Forms, Inc. &		
219	Systems Division .....	\$	1,290.20
220	(2) Xerox Corporation .....	\$	578.49
221	(x) <i>Claims against the</i>		
222	<i>State Tax Department:</i>		
223	(TO BE PAID FROM GENERAL REVENUE FUND)		
224	(1) Bell Atlanticom Systems, Inc. ...	\$	1,022.94
225	(2) Joe L. Smith, Jr.,		
226	Inc./BJW Printers Div. ....	\$	6,880.00
227	(3) Pentree, Inc. ....	\$	182,100.00
228	(y) <i>Claim against the State Treasurer:</i>		
229	(TO BE PAID FROM GENERAL REVENUE FUND)		
230	(1) H. John Rogers .....	\$	2,937.00
231	(z) <i>Claim against the</i>		
232	<i>Water Resources Board:</i>		
233	(TO BE PAID FROM GENERAL REVENUE FUND)		
234	(1) AT & T Communications, Inc. ...	\$	5.20
235	(aa) <i>Claims against the</i>		
236	<i>Workers' Compensation Fund:</i>		
237	(TO BE PAID FROM WORKERS' COMPENSATION FUND)		
238	(1) Executone/Mountain State		
239	Communications, Inc. ....	\$	1,872.30
240	(2) Xerox Corporation .....	\$	837.00
241	The Legislature finds the following claim to be a		
242	moral obligation of the State of West Virginia for unjust		
243	arrest and imprisonment or conviction and im-		
244	prisonment.		
245	(bb) <i>Claim against the</i>		
246	<i>State of West Virginia:</i>		
247	(TO BE PAID FROM GENERAL REVENUE FUND)		
248	(1) William C. Edens, Jr. ....	\$	20,000.00
249	The Legislature finds that the above moral obligations		
250	and the appropriations made in satisfaction thereof shall		
251	be the full compensation for all claimants, and that prior		

253 to the payments to any claimant provided for in this bill,  
254 the court of claims shall receive a release from said  
255 claimant releasing any and all claims for moral  
256 obligations arising from the matters considered by the  
257 Legislature in the finding of the moral obligations and  
258 the making of the appropriations for said claimant. The  
259 court of claims shall deliver all releases obtained from  
260 claimants to the department against which the claim  
261 was allowed: *Provided*, That the claim of the Board of  
262 Education of the County of McDowell against the West  
263 Virginia State Board of Education for \$2,305,816.60  
264 shall be recertified by the clerk of the court of claims  
265 to the Legislature next year.

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## CHAPTER 31

(H. B. 2408—By Delegates Seacrist and Stemple)

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[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

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AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia 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:*

### COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

1 The Legislature has duly considered the findings of  
2 fact and recommendations for awards reported to it by  
3 the court of claims in respect to the following named  
4 claimants who were innocent victims of crime within  
5 this state and entitled to compensation; and in respect  
6 to each of such named claimants the Legislature adopts  
7 those findings of fact as its own, hereby declares it to  
8 be the moral obligation of the state to pay each such  
9 claimant in the amount specified below, and directs the

10 auditor to issue warrants for the payment thereof out  
11 of any fund appropriated and available for the purpose.

12 *Claims for crime victims compensation awards:*

13 (TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

14	(1) Browning, Peggy Lynn.....	\$ 15,000.00
15	(2) Carroll, Robert E., as guardian	
16	of Timothy E. Carroll.....	\$ 10,000.00
17	(3) Chapman, Karl Dean.....	\$ 2,500.00
18	(4) Chapman, Sylvia,	
19	administratrix of the estate	
20	of Hinton Richmond.....	\$ 5,000.00
21	(5) Duty, Steve A. ....	\$ 10,000.00
22	(6) Duty, Steve A., as guardian of	
23	Jared Duty.....	\$ 5,000.00
24	(7) Ellis, Tammy, as guardian of	
25	Tabithe Graham.....	\$ 10,000.00
26	(8) Gandy, Bonnie.....	\$ 10,000.00
27	(9) Gandy, John E. ....	\$ 2,500.00
28	(10) Gandy, Keith Edward.....	\$ 10,000.00
29	(11) Harris, Kenneth R., as guardian	
30	of Larry Ray Harris.....	\$ 5,000.00
31	(12) Harris, Kenneth R., as guardian of	
32	Timothy M. Harris.....	\$ 5,000.00
33	(13) Hemingway, Debra A.,	
34	as guardian of	
35	Shasta A. Hemingway.....	\$ 5,000.00
36	(14) Pennington, Tammy M. ....	\$ 5,000.00
37	(15) Robinson, Brian K.....	\$ 1,000.00
38	(16) Smith, Sandra, as guardian	
39	of Dawn Christine Smith.....	\$ 10,000.00
40	(17) Smith, Sandra, as guardian	
41	of Richard Wayne Smith.....	\$ 10,000.00
42	(18) Taylor, Marcella.....	\$ 5,000.00
43	(19) Taylor, Marcella,	
44	as guardian of	
45	Eleesha K. Taylor.....	\$ 5,000.00
46	(20) Taylor, Marcella, as guardian	
47	of Ellis Taylor, III.....	\$ 5,000.00
48	(21) Thompson, Gregg.....	\$ 10,000.00
49	(22) Woods, Donald.....	\$ 10,000.00



50	(23) Wright, Guadalupe, as guardian	
51	of April Ann Adkins.....	\$ 5,000.00
52	(24) Wright, Guadalupe, as guardian	
53	of Harley Joe Adkins .....	<u>\$ 5,000.00</u>
54	TOTAL.....	\$166,000.00

55     The Legislature finds that the above moral obligations  
56     and the appropriations made in satisfaction thereof shall  
57     be the full compensation for all claimants herein.

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## CHAPTER 32

(H. B. 2426—By Delegates Seacrist and Helmick)

[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring a certain claim against the state and its agency to be a moral obligation of the state and directing the auditor to issue a warrant for the payment thereof.

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

**CLAIM AGAINST THE STATE.**

**§1. Finding and declaring a certain claim against the department of education to be a moral obligation of the state and directing payment thereof.**

1     The Legislature has heretofore made findings of fact  
2     that the state has received the benefit of the services  
3     rendered by a certain claimant herein and has consid-  
4     ered this claim against the state agency thereof, which  
5     has arisen due to an over-expenditure of the departmen-  
6     tal appropriations by officers of such state spending  
7     unit, such claim having been previously considered by  
8     the court of claims which also found that the state has  
9     received the benefit of the services rendered by the  
10    claimant, but was denied by the court of claims on the  
11    purely statutory grounds that to allow such claim would  
12    be condoning illegal acts contrary to the laws of the  
13    state. The Legislature pursuant to its findings of fact  
14    and also by the adoption of the findings of fact by

15 court of claims as its own, and, while not condoning such  
 16 illegal acts, hereby declares it to be the moral obligation  
 17 of the state to pay this claim in the amount specified  
 18 below, and directs the auditor to issue a warrant upon  
 19 receipt of a properly executed requisition supported by  
 20 an itemized invoice, statement or other satisfactory  
 21 document as required by section ten, article three,  
 22 chapter twelve of the code of West Virginia, one  
 23 thousand nine hundred thirty-one, as amended, for the  
 24 payment thereof out of any fund appropriated and  
 25 available for the purpose.

26 *Claim against the Department of Education:*

27 (TO BE PAID FROM GENERAL REVENUE FUND)

28 Lester R. Lucas, Jr. . . . . \$ 4,911.47

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## CHAPTER 33

(Com. Sub. for S. B. 455—By Senator Tucker, Mr. President, By Request)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying the term claimant when granting awards to minors; compensating West Virginia citizens who are victimized in states without compensation programs.

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

That section three, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.**

**§14-2A-3. Definitions.**

- 1 As used in this article, the term:
- 2 (a) "Claimant" means any of the following persons,
- 3 whether residents or nonresidents of this state, who

4 claim an award of compensation under this article:

5 (1) A victim: *Provided*, That the term victim does not  
6 include a nonresident of this state where the criminally  
7 injurious act did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased  
9 victim; or in the event that the deceased victim is a  
10 minor, the parents, legal guardians and siblings of the  
11 victim;

12 (3) A third person other than a collateral source who  
13 legally assumes or voluntarily pays the obligations of a  
14 victim, or of a dependent of a victim, which obligations  
15 are incurred as a result of the criminally injurious  
16 conduct that is the subject of the claim;

17 (4) A person who is authorized to act on behalf of a  
18 victim, dependent or a third person who is not a  
19 collateral source; and, in the event that the victim,  
20 dependent or third person who is not a collateral source  
21 is a minor or other legally incompetent person, the duly  
22 qualified fiduciary of such minor.

23 (b) "Collateral source" means a source of benefits or  
24 advantages for economic loss otherwise compensable  
25 that the victim or claimant has received, or that is  
26 readily available to him, from any of the following  
27 sources:

28 (1) The offender, except any restitution received from  
29 the offender pursuant to an order by a court of law  
30 sentencing the offender or placing him on probation  
31 following a conviction in a criminal case arising from  
32 the criminally injurious act for which a claim for  
33 compensation is made;

34 (2) The government of the United States or any of its  
35 agencies, a state or any of its political subdivisions, or  
36 an instrumentality of two or more states;

37 (3) Social security, medicare and medicaid;

38 (4) State-required, temporary, nonoccupational dis-  
39 ability insurance; other disability insurance;

40 (5) Workers' compensation;

41 (6) Wage continuation programs of any employer;

42 (7) Proceeds of a contract of insurance payable to the  
43 victim or claimant for loss that was sustained because  
44 of the criminally injurious conduct;

45 (8) A contract providing prepaid hospital and other  
46 health care services or benefits for disability;

47 (9) That portion of the proceeds of all contracts of  
48 insurance payable to the claimant on account of the  
49 death of the victim which exceeds twenty-five thousand  
50 dollars.

51 (c) "Criminally injurious conduct" means conduct that  
52 occurs or is attempted in this state or in any state not  
53 having a victim compensation program which by its  
54 nature poses a substantial threat of personal injury or  
55 death, and is punishable by fine or imprisonment or  
56 death, or would be so punishable but for the fact that  
57 the person engaging in the conduct lacked capacity to  
58 commit the crime under the laws of this state. Criminally injurious conduct does not include conduct  
59 arising out of the ownership, maintenance or use of a  
60 motor vehicle, except when the person engaging in the  
61 conduct intended to cause personal injury or death, or  
62 except when the person engaging in the conduct  
63 committed negligent homicide, driving under the  
64 influence of alcohol, controlled substances or drugs, or  
65 reckless driving.  
66

67 (d) "Dependent" means an individual who received  
68 over half of his support from the victim. For the purpose  
69 of determining whether an individual received over half  
70 of his support from the victim, there shall be taken into  
71 account the amount of support received from the victim  
72 as compared to the entire amount of support which the  
73 individual received from all sources, including support  
74 which the individual himself supplied. The term  
75 "support" includes, but is not limited to, food, shelter,  
76 clothing, medical and dental care and education. The  
77 term "dependent" includes a child of the victim born  
78 after his death.

79 (e) "Economic loss" means economic detriment con-

80 sisting only of allowable expense, work loss and  
81 replacement services loss. If criminally injurious  
82 conduct causes death, economic loss includes a depend-  
83 ent's economic loss and a dependent's replacement  
84 services loss. Noneconomic detriment is not economic  
85 loss; however, economic loss may be caused by pain and  
86 suffering or physical impairment.

87 (f) "Allowable expense" means reasonable charges  
88 incurred or to be incurred for reasonably needed  
89 products, services and accommodations, including those  
90 for medical care, prosthetic devices, eye glasses,  
91 dentures, rehabilitation and other remedial treatment  
92 and care.

93 Allowable expense includes a total charge not in  
94 excess of three thousand dollars for expenses in any way  
95 related to funeral, cremation and burial. It does not  
96 include that portion of a charge for a room in a hospital,  
97 clinic, convalescent home, nursing home or any other  
98 institution engaged in providing nursing care and  
99 related services in excess of a reasonable and customary  
100 charge for semiprivate accommodations, unless accom-  
101 modations other than semiprivate accommodations are  
102 medically required.

103 (g) "Work loss" means loss of income from work that  
104 the injured person would have performed if he had not  
105 been injured and expenses reasonably incurred or to be  
106 incurred by him to obtain services in lieu of those he  
107 would have performed for income, reduced by any  
108 income from substitute work actually performed or to  
109 be performed by him, or by income he would have  
110 earned in available appropriate substitute work that he  
111 was capable of performing but unreasonably failed to  
112 undertake.

113 (h) "Replacement services loss" means expenses  
114 reasonably incurred or to be incurred in obtaining  
115 ordinary and necessary services in lieu of those the  
116 injured person would have performed, not for income  
117 but for the benefit of himself or his family, if he had  
118 not been injured.

119 (i) "Dependent's economic loss" means loss after a

120 victim's death of contributions or things of economic  
121 value to his dependents, not including services they  
122 would have received from the victim if he had not  
123 suffered the fatal injury, less expenses of the dependents  
124 avoided by reason of the victim's death.

125 (j) "Dependent's replacement service loss" means loss  
126 reasonably incurred or to be incurred by dependents  
127 after a victim's death in obtaining ordinary and  
128 necessary services in lieu of those the victim would have  
129 performed for their benefit if he had not suffered the  
130 fatal injury, less expenses of the dependents avoided by  
131 reason of the victim's death and not subtracted in  
132 calculating dependent's economic loss.

133 (k) "Noneconomic detriment" means sorrow, mental  
134 anguish, and solace which may include society, compan-  
135 ionship, comfort, guidance, kindly offices and advice.

136 (l) "Victim" means a person who suffers personal  
137 injury or death as a result of any one of the following:  
138 (1) Criminally injurious conduct; (2) the good faith effort  
139 of the person to prevent criminally injurious conduct; or  
140 (3) the good faith effort of the person to apprehend a  
141 person that the injured person has observed engaging  
142 in criminally injurious conduct, or who such injured  
143 person has reasonable cause to believe has engaged in  
144 such criminally injurious conduct immediately prior to  
145 the attempted apprehension.

146 (m) "Contributory misconduct" means any conduct of  
147 the claimant, or of the victim through whom the  
148 claimant claims an award, that is unlawful or intention-  
149 ally tortious and that, without regard to the conduct's  
150 proximity in time or space to the criminally injurious  
151 conduct has causal relationship to the criminally  
152 injurious conduct that is the basis of the claim and shall  
153 also include the voluntary intoxication of the claimant,  
154 either by the consumption of alcohol or the use of any  
155 controlled substance when such intoxication has a causal  
156 connection or relationship to the injury sustained. The  
157 voluntary intoxication of a victim shall not be a defense  
158 against the estate of a deceased victim.

## CHAPTER 34

(Com. Sub. for H. B. 2858—By Delegate Love)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to office of community and industrial development; low-interest loans to private companies processing West Virginia mined coal to coke; changing requirement for using West Virginia coal to not less than seventy-five percent.

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

That section seven, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL DEVELOPMENT.

#### §5B-2-7. Authority of director to provide low-interest loans to private companies entering into the process of converting West Virginia coal to coke; funding.

1 Effective the first day of July, one thousand nine  
2 hundred eighty-seven, the director, with the approval of  
3 the governor, is hereby empowered to provide reduced  
4 rate loans to private companies for the building of coal  
5 processing facilities for the making of coke for steel  
6 production. Funds for such loans shall be provided from  
7 moneys borrowed from any fund administered by the  
8 state. The loans will be repaid through the governor's  
9 office of community and industrial development to the  
10 fund from which they were borrowed. The rate of  
11 interest charged shall be two percent below the current  
12 prime lending rate for funds available from private  
13 sources in projects of a similar nature. The state shall  
14 fund no more than eighty percent of the total cost of the  
15 project. The private company sponsoring the project  
16 must provide the other twenty percent of the project's  
17 funds from its own capital or from moneys borrowed

18 from nonpublic sources. The moneys borrowed are to be  
19 used for the construction of coal coking facilities and  
20 related buildings and other structures: *Provided*, That  
21 not less than seventy-five percent of coal processed at  
22 this facility during the time when loan moneys are being  
23 utilized must be coal mined exclusively in West  
24 Virginia. For the five years following the repayment of  
25 the loan, not less than seventy-five percent of coal  
26 processed at this facility must also be coal mined  
27 exclusively in West Virginia, provided there is sufficient  
28 quantity of coal mined exclusively in West Virginia  
29 meeting environmental regulatory standards. A private  
30 company applying to the governor's office of community  
31 and industrial development for a loan pursuant to this  
32 section shall certify on its loan application that the  
33 reduced rate loan will be used exclusively for construct-  
34 ing coal coking facilities and that those facilities will be  
35 used for the process of converting West Virginia coal to  
36 coke.

37 The director is authorized to promulgate rules and  
38 regulations consistent with the provisions of this section  
39 to aid in administration of the provisions of this section:  
40 *Provided*, That the rules and regulations promulgated  
41 by the director shall contain equal requirements for the  
42 provision of low interest loans, for in-state and out-of-  
43 state private companies.

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## CHAPTER 35

(H. B. 2824—By Delegates Farmer and Johnson)

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[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article six-a, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to consumer protection—new motor vehicle warranties; dealer's written disclosure of repairs to consumers.

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



That article six-a, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-a, to read as follows:

**ARTICLE 6A. CONSUMER PROTECTION—NEW MOTOR VEHICLE WARRANTIES.**

**§46A-6A-3a. Dealer's duty to disclose repairs to consumer.**

1 Beginning the first day of July, one thousand nine  
2 hundred eighty-nine, all authorized dealers of new  
3 motor vehicles purchased in this state shall provide to  
4 any consumer a written disclosure of any repairs to a  
5 new motor vehicle which repairs have a retail value of  
6 five hundred dollars or more and were performed after  
7 shipment from the manufacturer to the dealer, includ-  
8 ing damage to the new motor vehicle while in transit.

9 This disclosure requirement does not apply to identi-  
10 cal replacement of stolen or damaged accessories or  
11 their components, tires or antennae.

12 For purposes of this section, a motor vehicle is not a  
13 new motor vehicle when it has been previously titled or  
14 the motor vehicle has been damaged in such a manner  
15 that, were the damage not repaired, the value and  
16 usability of the motor vehicle would be substantially  
17 impaired.

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## CHAPTER 36

(Com. Sub. for H. B. 2138—By Mr. Speaker, Mr. Chambers, and Delegate Rollins)

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[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections fifty-three and fifty-four, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to corporations generally; abolishing the requirement that foreign corporations have to submit certified copies of their articles of incorporation and amendments as part of their application for a

certificate of authority; and abolishing the requirement that foreign corporations record copies of their articles of incorporation and amendments in county clerks' offices.

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

That sections fifty-three and fifty-four, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.**

§31-1-53. Application for certificate of authority by foreign corporation; contents; churches or religious denominations in corporate capacity prohibited.

§31-1-54. Application for certificate of authority; filing; issuance of certificate; recordation; penalty for failure to record.

**§31-1-53. Application for certificate of authority by foreign corporation; contents; churches or religious denominations in corporate capacity prohibited.**

1 (a) A foreign corporation, in order to procure a  
2 certificate of authority to conduct affairs, or do or  
3 transact business in this state, shall make application  
4 therefor to the secretary of state, which application shall  
5 set forth:

6 (1) The name of the corporation and the state or  
7 country under the laws of which it is incorporated.

8 (2) If the name of the corporation does not contain the  
9 word "corporation," "company," "incorporated" or  
10 "limited," or does not contain an abbreviation of one of  
11 such words, then the name of the corporation with the  
12 word or abbreviation which it elects to add thereto for  
13 use in this state.

14 (3) The date of incorporation and the period of  
15 duration of the corporation.

16 (4) The address of the principal office of the corpora-  
17 tion.

18 (5) The name and address of the person to whom shall  
19 be sent notice or process served upon, or service of which

20 is accepted by, the secretary of state, if one has been  
21 designated.

22 (6) The purpose or purposes of the corporation which  
23 it proposes to pursue in conducting its affairs or doing  
24 or transacting its business in this state.

25 (7) The names and respective addresses of the direc-  
26 tors and officers of the corporation.

27 (8) Such additional information as may be necessary  
28 or appropriate in order to enable the secretary of state  
29 to determine whether such corporation is entitled to a  
30 certificate of authority to conduct its affairs or do or  
31 transact business in this state and to determine and  
32 assess the fees payable as prescribed by law.

33 (9) The county wherein the corporation intends to  
34 record its certificate of authority.

35 (b) In the case of a business corporation, in addition  
36 to those matters required to be set forth under the  
37 provisions of subsection (a) of this section, such appli-  
38 cation shall set forth:

39 (1) A statement of the aggregate number of shares  
40 which the corporation has authority to issue, itemized  
41 by classes, par value of shares, shares without par value,  
42 and series, if any, within a class.

43 (2) A statement of the aggregate number of issued  
44 shares itemized by classes, par value of shares, shares  
45 without par value, and series, if any, within a class.

46 (3) A statement, expressed in dollars, of the amount  
47 of stated capital of the corporation, as defined in this  
48 article.

49 (4) An estimate, expressed in dollars, of the value of  
50 all property to be owned by the corporation, for the  
51 following year, wherever located, and an estimate of the  
52 value of the property of the corporation to be located  
53 within this state during such year, and an estimate,  
54 expressed in dollars, of the gross amount of business  
55 which will be done or transacted by the corporation  
56 during such year, and an estimate of the gross amount  
57 thereof which will be done or transacted by the

58 corporation at or from places of business in this state  
59 during such year.

60 (c) Such application shall be made on forms pres-  
61 cribed and furnished by the secretary of state and shall  
62 be executed in duplicate by the corporation by its  
63 president or vice president and by its secretary or an  
64 assistant secretary, and verified by one of the officers  
65 signing such application.

66 (d) No church, religious sect or denomination incor-  
67 porated by the laws of any other state or territory of the  
68 United States, the District of Columbia or of any foreign  
69 country shall be qualified to conduct affairs or do or  
70 transact business in this state in a corporate capacity.

**§31-1-54. Application for certificate of authority; filing;  
issuance of certificate; recordation; penalty  
for failure to record.**

1 (a) Duplicate originals of the application of a foreign  
2 corporation for a certificate of authority shall be  
3 delivered to the secretary of state together with a  
4 statement or certificate from the proper officer of the  
5 state or country under the laws of which it is incorpo-  
6 rated that the corporation is in good standing with the  
7 state or country under the laws of which it is  
8 incorporated.

9 If the secretary of state finds that such application  
10 conforms to law, he shall, when all fees have been paid  
11 as prescribed by law, (i) endorse on each of such  
12 originals the word "Filed," and the month, day and year  
13 of the filing thereof; (ii) file one of such duplicate  
14 originals of the application and (iii) issue a certificate  
15 of authority to conduct affairs or to do or transact  
16 business in this state, to which he shall affix the other  
17 duplicate original application.

18 (b) The certificate of authority, together with the  
19 duplicate original of the application affixed thereto by  
20 the secretary of state, shall be returned to the corpora-  
21 tion or its representative.

22 (c) The certificate of authority, shall be recorded in  
23 the office of the county commission of the county where

24 the principal office of the corporation in this state is  
25 located. If such corporation does not maintain a  
26 principal office in this state, such recordation may be  
27 completed in any county in which it is conducting its  
28 affairs or doing or transacting business. A failure to  
29 comply with the provisions of this subsection within six  
30 months from the date of issuance of a certificate of  
31 authority shall subject such corporation to a fine of not  
32 more than one thousand dollars.

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## CHAPTER 37

(H. B. 2258—By Delegates Warner and Jones)

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[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seventy-three, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to actions by shareholders, members or directors of a corporation without a meeting; allowing same to conference by telephone or other electronic equipment; allowing action by electronic conference when action is later reduced to writing; and the manner of approval of such action.

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

That section seventy-three, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

#### §31-1-73. Action by shareholders, members or directors without a meeting.

1 (a) Whenever the vote of shareholders or members at  
2 a meeting thereof is required or permitted to be taken  
3 in connection with any corporate action, the meeting and  
4 vote of the shareholders or members may be dispensed  
5 with if all of the shareholders or members who would  
6 have been entitled to vote upon the action agree in  
7 writing to the corporate action being taken. The

8 agreement shall have like effect and validity as though  
9 the action were duly taken by the unanimous action of  
10 all shareholders or members entitled to vote at a  
11 meeting of the shareholders or members duly called and  
12 legally held.

13 (b) Unless otherwise provided in the articles of  
14 incorporation or the bylaws, whenever the vote of  
15 directors at a meeting thereof is required or permitted  
16 to be taken in connection with any corporate action, the  
17 meeting and vote of the directors may be dispensed with  
18 if all the directors agree in writing to the corporate  
19 action being taken. The agreement shall have like effect  
20 and validity as though the action were duly taken by the  
21 unanimous action of all directors at a meeting of the  
22 directors duly called and legally held.

23 (c) If the articles of incorporation or the bylaws so  
24 provide, one or more directors or shareholders may  
25 participate in a meeting of the board, a committee of  
26 the board or of the shareholders by means of conference  
27 telephone or similar electronic communications equip-  
28 ment by means of which all persons participating in the  
29 meeting can hear each other.

30 Whenever a vote of the shareholders or directors is  
31 required or permitted in connection with any corporate  
32 action this vote may be taken orally during this  
33 electronic conference. The agreement thus reached shall  
34 have like effect and validity as though the action were  
35 duly taken by the action of the shareholders or directors  
36 at a meeting of shareholders or directors if the agree-  
37 ment is reduced to writing and approved by the  
38 shareholders or directors at the next regular meeting of  
39 the shareholders or directors after the conference.

40 (d) In the event that the action which is agreed to, as  
41 provided for in subsection (a), (b) or (c) of this section,  
42 is an action which would have required the filing of any  
43 articles, documents or certificates with the secretary of  
44 state under any provision of this article if the action had  
45 been voted upon by the shareholders or members or by  
46 the directors at a meeting, the articles, documents or  
47 certificates so filed shall state that a written agreement

48 has been executed in lieu of stating that the share-  
49 holders, members or directors voted upon the corporate  
50 action in question. The articles, documents or certifi-  
51 cates shall have the same force and effect under all  
52 provisions of law as if the action had been taken by the  
53 unanimous vote of all shareholders or members entitled  
54 to vote, or of all the directors, at a meeting duly called  
55 and legally held.

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## CHAPTER 38

(S. B. 439—By Senators Tucker, Mr. President, and Jackson)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections two, three, six, twenty-a, twenty-one and twenty-four, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article eighteen by adding thereto two new sections, designated sections twenty-six and twenty-seven, all relating to the West Virginia housing development fund; providing additional legislative findings; adding, amending and clarifying certain definitions; expanding and clarifying the powers of the fund; providing additional purposes for the fund; authorizing fund to finance or otherwise participate in certain nonresidential projects under certain conditions; adding certain provisions relating to conflict of interest involving officers or directors of the fund; prohibiting certain transactions involving such officers and directors except in certain circumstances; permitting annual audits to be performed by a nonresident as well as resident independent certified public accountant; declaring that projects shall not be deemed public improvements; and providing for confidentiality of documentary materials and other data received or made by fund.

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

That sections two, three, six, twenty-a, twenty-one and

twenty-four, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article eighteen be further amended by adding thereto two new sections, designated sections twenty-six and twenty-seven, all to read as follows:

**ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.**

- §31-18-2. Legislative findings and purpose.
- §31-18-3. Definitions.
- §31-18-6. Corporate powers.
- §31-18-20a. Land development fund.
- §31-18-21. Prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons; transactions between the housing development fund and directors or officers having certain interests in such transactions.
- §31-18-24. Annual audit; reports to joint committee on government and finance; information to joint committee or legislative auditor.
- §31-18-26. Projects not to be deemed public improvements.
- §31-18-27. Documentary materials concerning trade secrets; commercial, financial or personal information; confidentiality.

**§31-18-2. Legislative findings and purpose.**

1 (a) The Legislature hereby finds and declares that as  
 2 a result of public actions involving highways, public  
 3 facilities, flood-control projects and urban renewal  
 4 activities, and as a result of the spread of slum  
 5 conditions and blight to formerly sound urban and rural  
 6 neighborhoods, there exists in the state of West Virginia  
 7 a serious shortage of sanitary, decent and safe residen-  
 8 tial housing available at low prices or rentals to persons  
 9 and families of low and moderate income. This shortage  
 10 is severe in certain urban areas of the state, is especially  
 11 critical in the rural areas of West Virginia, and is  
 12 inimical to the health, welfare and prosperity of all  
 13 residents of the state and to the sound growth of West  
 14 Virginia communities.

15 (b) The Legislature hereby finds and declares further  
 16 that private enterprise and investment have not been  
 17 able to produce, without assistance, the needed construc-  
 18 tion of sanitary, decent and safe residential housing at  
 19 low prices or rentals which persons and families of low  
 20 and moderate income can afford, to provide sufficient  
 21 long-term mortgage financing for residential housing



22 for occupancy by persons and families of low and  
23 moderate income or to achieve the urgently needed  
24 rehabilitation of much of the present low and moderate  
25 income housing stock. It is imperative that the supply  
26 of residential housing for persons and families displaced  
27 by public actions or natural disaster be increased; that  
28 private enterprise and investment be encouraged both  
29 to sponsor land development for residential housing for  
30 such persons and families and to sponsor, build and  
31 rehabilitate residential housing for such persons and  
32 families; and that private financing be supplemented by  
33 financing as in this article provided, to help prevent the  
34 recurrence of slum conditions and blight and assist in  
35 their permanent elimination throughout West Virginia.

36 (c) The Legislature hereby finds and declares further  
37 that experience has demonstrated that concentration in  
38 residential housing developments, or residential housing  
39 areas, of only persons and families who, without some  
40 form of private or public assistance, do not have incomes  
41 sufficient to afford sanitary, decent and safe residential  
42 housing, frequently does not eliminate, or avoid,  
43 undesirable social conditions and frequently does not  
44 permanently eliminate, or avoid, slum conditions, and  
45 that in such instances occupancy of some of the  
46 residential housing units in such residential housing  
47 developments, or residential housing areas, by persons  
48 and families of higher income is desirable and beneficial  
49 in achieving the stated public purposes for enacting this  
50 legislation.

51 (d) The Legislature hereby finds and declares further  
52 that depressed economic conditions in this state and a  
53 related lack of employment and business opportunities  
54 caused thousands of people to leave this state to find  
55 employment elsewhere; that such depressed economic  
56 conditions and related exodus of population adversely  
57 affected the property tax base of this state, adversely  
58 affected the excise tax base of this state, diminished the  
59 manpower resources of this state necessary for modern  
60 mining, industrial and commercial operations and  
61 development in this state, caused the population of this  
62 state to include a disproportionately high number of

63 elderly, disabled and economically disadvantaged  
64 persons, resulted in the spread of slum conditions and  
65 blight to formerly sound urban and rural neighbor-  
66 hoods, retarded, and continue to retard, the repair and  
67 improvement of existing residential housing and the  
68 construction of new residential housing, adversely  
69 affected, and continue to adversely affect, land develop-  
70 ment, including the extension and construction of water  
71 systems, nonpolluting sewer systems, other utility  
72 facilities and off-highway streets and roads essential to  
73 new industrial, commercial and residential housing  
74 development, critically restricted, and continue to  
75 critically restrict, the construction of public housing for  
76 occupancy by persons and families at the lowest level of  
77 the low and moderate income segment of the population  
78 of this state, critically restricted, and continue to  
79 critically restrict, the opportunities of persons and  
80 families at all levels of the low and moderate income  
81 segment of the population of this state for improved  
82 residential housing, either newly constructed or which  
83 would normally become available to them when vacated  
84 by persons and families of higher income occupying  
85 newly constructed residential housing, and critically  
86 restricted, and continue to critically restrict, the  
87 construction of new residential housing, including, but  
88 not limited to, nursing homes and intermediate care  
89 facilities, of design and location suitable for occupancy  
90 by disabled and by elderly persons; that as a result of  
91 public actions involving highways, public facilities,  
92 flood-control projects and urban-renewal activities  
93 undertaken as a part of the programs of this state to  
94 improve economic conditions and increase employment  
95 opportunities in this state with a view to improving the  
96 health, welfare and prosperity of residents of this state  
97 and reversing the outward movement of population in  
98 this state, extensive areas which are suitable for  
99 industrial, commercial and residential housing uses  
100 have been, or in the near future will be, opened up for  
101 development for such purposes but in many instances  
102 will be without the land development, including water  
103 and nonpolluting sewer systems, other utility facilities  
104 and off-highway street and road improvements essential

105 to use of the same for such purposes; that as a result  
106 of the unique physical, economic, demographic and  
107 other characteristics of this state, including its rugged  
108 mountainous terrain, scarcity of land at low or moderate  
109 cost suitable for residential housing, low population  
110 density and cultural preferences which are not suited  
111 for the denser, larger-scale housing projects typical of  
112 more urban areas and high costs of land development  
113 and housing construction, the difficulties of providing  
114 land development, including water and nonpolluting  
115 sewer systems, other utility facilities and off-highway  
116 streets and roads, and of providing residential housing,  
117 are unusually severe within this state and have res-  
118 tricted and continue to restrict, land development and  
119 housing construction needed for the people of the state;  
120 that as a direct consequence of the foregoing there exists  
121 in this state a serious shortage of sanitary, decent and  
122 safe residential housing available for occupancy by  
123 persons and families of all but the highest income levels  
124 and there exists in this state a serious shortage of water  
125 and nonpolluting sewer systems, other utility facilities  
126 and off-highway street and road developments essential  
127 to utilization of land for industrial, commercial and  
128 residential housing purposes which, due to public  
129 actions involving highways, public facilities, flood-  
130 control projects and urban-renewal activities, is, or will  
131 soon become, available for needed industrial, commer-  
132 cial and residential housing purposes; that these  
133 shortages are severe in certain urban areas of this state,  
134 are especially critical in rural areas of this state and are  
135 inimical to the present and future health, welfare and  
136 prosperity of all residents of this state and to the sound  
137 growth and development of communities in this state;  
138 and that unless promptly remedied these shortages will  
139 continue to seriously retard the sound economic growth  
140 and development of this state, the related property tax  
141 and excise tax bases of this state and the availability in  
142 this state of manpower resources essential to modern  
143 mining, industrial and commercial operations and  
144 development which are essential to the health, welfare  
145 and prosperity of this state and its residents.

146 (e) The Legislature hereby finds and declares further

147 that private enterprise and investment have not been  
148 able to produce, or provide mortgage financing for,  
149 sufficient new sanitary, decent and safe residential  
150 housing at prices or rentals low enough to enable  
151 sufficient persons and families having incomes at or  
152 immediately above the higher level of the low and  
153 moderate income segment of the population of this state  
154 to occupy the same and thereby provide opportunities  
155 for persons and families of lesser income to occupy  
156 existing sanitary, decent and safe residential housing  
157 thereby vacated, have not been able to produce, or  
158 provide mortgage financing for, sufficient new residen-  
159 tial housing essential to retain and attract qualified  
160 manpower resources in and to many areas of this state  
161 where such resources are, or shortly will be, critically  
162 needed for existing, expanding and new mining,  
163 industrial and commercial operations and development,  
164 have not been able to produce, or provide mortgage  
165 financing for, sufficient new residential housing,  
166 including, but not limited to, nursing homes and  
167 intermediate care facilities, of design and location  
168 suitable for occupancy by elderly and by disabled  
169 persons, have not been able to finance sufficient land  
170 development, including extensions or construction of  
171 water and nonpolluting sewer systems, other utility  
172 facilities and off-highway streets and roads, essential to  
173 utilization of undeveloped areas of this state for  
174 industrial, commercial and residential housing pur-  
175 poses, and have not been able to achieve urgently needed  
176 rehabilitation of much of the present housing stock of  
177 this state; that it is imperative that the supply of  
178 residential housing necessary to retain and attract  
179 qualified manpower resources in and to many areas of  
180 this state where such resources are, or shortly will be,  
181 critically needed for existing, expanding and new  
182 mining, industrial and commercial operations and  
183 developments be provided, that sufficient new residen-  
184 tial housing, including, without limitation, nursing  
185 homes and intermediate care facilities, designed and  
186 located so as to be suitable for occupancy by elderly  
187 persons and by disabled persons be provided, that  
188 needed public housing for occupancy by persons and

189 families at the lowest level of the low and moderate  
190 income segment of the population of this state be  
191 provided, that land development, including water and  
192 nonpolluting sewer systems and other utilities and off-  
193 highway streets and roads in this state necessary or  
194 desirable for new commercial, industrial and residential  
195 housing uses be provided, and that the existing political  
196 subdivisions of this state, and private enterprise and  
197 investment resources in this state, be encouraged to  
198 sponsor and finance land development, including water  
199 and nonpolluting sewer systems, other utilities and off-  
200 highway streets and roads, and to finance, construct and  
201 rehabilitate such residential housing; and that it is  
202 necessary that such efforts be supplemented by this  
203 state as in this article provided.

204 (f) The Legislature hereby finds and declares further  
205 that political subdivisions in West Virginia which are  
206 presently authorized and empowered by law to acquire,  
207 construct, operate and manage public housing projects  
208 have not been able to acquire and construct, even with  
209 available federal and state assistance, public housing  
210 projects sufficient to fulfill the needs for sanitary, decent  
211 and safe residential housing for occupancy by persons  
212 and families at the lowest level of the low and moderate  
213 income segment of the population of this state who have  
214 been entitled to occupy public housing in many smaller  
215 municipalities in West Virginia and especially in the  
216 rural areas of West Virginia; that the primary cause of  
217 such shortage of needed public housing projects is the  
218 inability of such political subdivisions to remedy such  
219 shortages because the number of units of public housing  
220 needed within its territorial jurisdiction is not sufficient  
221 to generate, and justify the expenditure of, adequate  
222 funds to provide the requisite arranging of financing  
223 for, and planning, development, acquisition, construc-  
224 tion, operation and management of such public housing;  
225 and that the acquisition, construction, planning, devel-  
226 opment, financing and management of public housing  
227 projects in this state by a governmental instrumentality  
228 and public body corporate with statewide jurisdiction as  
229 authorized herein will permit or facilitate the arranging  
230 of financing for, and planning, development, acquisition,

231 construction, operation or management of public  
232 housing units, even though such units are included in  
233 several projects each of which contains a relatively small  
234 number of such units, sufficient in the aggregate to  
235 generate, and justify the expenditure of, sufficient funds  
236 to provide the requisite arranging of financing for, and  
237 planning, development, acquisition, construction, opera-  
238 tion and management of such public housing, thereby  
239 providing the means to alleviate the existing shortages  
240 of public housing in many municipalities in West  
241 Virginia and in the rural areas of West Virginia.

242 (g) The Legislature hereby finds and declares further  
243 that its intention by enacting this legislation is to  
244 provide for the continuation of the West Virginia  
245 housing development fund, the corporate purpose of  
246 which is to provide financing for development costs and  
247 land development to public and private sponsors of land  
248 development in this state; further to provide federally  
249 insured construction loans to public and private spon-  
250 sors of land development or to public and private  
251 sponsors of residential housing for occupancy by eligible  
252 persons and families; further to provide uninsured  
253 construction loans to public and private sponsors of land  
254 development or to public and private sponsors of  
255 residential housing for occupancy by eligible persons  
256 and families or to eligible persons and families who may  
257 construct such housing; further to provide long term  
258 federally insured mortgage loans to public and private  
259 sponsors of residential housing for occupancy by eligible  
260 persons and families and to eligible persons and families  
261 who may purchase or construct such housing; further to  
262 provide long-term uninsured mortgage loans to public  
263 and private sponsors of residential housing for occu-  
264 pancy by eligible persons and families and to eligible  
265 persons and families who may purchase or construct  
266 such housing; further to provide technical, consultative  
267 and project assistance service to public and private  
268 sponsors of such land development or residential  
269 housing; further to increase the construction of residen-  
270 tial housing for occupancy by eligible persons and  
271 families through participating in the making of, or the  
272 making of, loans to mortgagees approved by the housing

273 development fund, and taking as collateral security  
274 therefor, or purchasing, or investing in long-term  
275 federal mortgages or federally insured mortgages, or  
276 uninsured mortgages, on residential housing con-  
277 structed in this state, thereby increasing the supply of  
278 funds for long-term mortgage financing of residential  
279 housing for occupancy by eligible persons and families  
280 and freeing funds for use in short-term construction  
281 financing of residential housing for occupancy by  
282 eligible persons and families; further to plan, develop,  
283 finance, acquire, construct, mortgage or otherwise  
284 encumber, operate, manage, sell, lease or otherwise  
285 dispose of public housing projects; and finally to assist  
286 in coordinating federal, state, regional and local public  
287 and private efforts and resources to otherwise increase  
288 the supply of such residential housing.

289 (h) The Legislature hereby finds and declares further  
290 that in accomplishing this purpose, the West Virginia  
291 housing development fund, heretofore created and  
292 established by this article, is acting in all respects for  
293 the benefit of the people of the state of West Virginia  
294 to serve a public purpose in improving and otherwise  
295 promoting their health, welfare and prosperity, and that  
296 the West Virginia housing development fund, heretofore  
297 created and established, is empowered, hereby, to act on  
298 behalf of the state of West Virginia and its people in  
299 serving this public purpose for the benefit of the general  
300 public.

301 (i) The Legislature hereby finds and declares further  
302 that during a period of national growth this state has  
303 experienced a lack of employment and business oppor-  
304 tunities, which have caused a reduction in the tax base  
305 of the state, diminishing the resources available to this  
306 state to provide for the health, safety and welfare of its  
307 citizens; that there has been and continues to be a need  
308 for economic development and improvement and capital  
309 investment in this state, including, but not limited to,  
310 the real estate and construction industries, both residen-  
311 tial and nonresidential; that there exists in this state a  
312 shortage of the capital needed to finance general  
313 economic development through investment in enter-

314 prises which have the potential to create new employ-  
315 ment opportunities in this state and that there also  
316 exists a shortage of construction and real estate  
317 development financing, underwriting and construction  
318 expertise, which shortage can be alleviated by utilizing  
319 the expertise of the housing development fund and its  
320 staff, which are hereby determined to be suited to  
321 facilitate, implement and undertake the general eco-  
322 nomic development and real estate construction and  
323 development projects, both residential and nonresiden-  
324 tial, which are necessary to support the capital base and  
325 employment levels and remedy many of the underlying  
326 causes of the current economic difficulties existing in  
327 this state; that many other states have facilitated the  
328 development of capital and the growth of employment  
329 opportunities through state programs which provide  
330 combined technical and financial assistance for business  
331 and real estate development in such states; and the  
332 Legislature hereby finds and declares further in support  
333 of the foregoing that it shall be a corporate purpose of  
334 the housing development fund to provide assistance by  
335 loans, grants or otherwise for the costs, including  
336 development and direct and indirect costs, and financ-  
337 ing for public and private sponsors of land development,  
338 residential housing and nonresidential projects in this  
339 state, and further to provide construction loans and  
340 mortgage loans (including privately insured and unin-  
341 sured) to public and private sponsors of land develop-  
342 ment and residential housing and nonresidential pro-  
343 jects in this state, to make grants and provide technical,  
344 consultative and project assistance services to public and  
345 private sponsors of land development and residential  
346 housing and nonresidential projects in this state, and to  
347 plan, develop, finance, acquire, construct, renovate,  
348 improve, mortgage or otherwise encumber, operate,  
349 manage, sell, lease or otherwise dispose of general  
350 economic development and land development projects  
351 and residential projects and nonresidential projects in  
352 this state.

353 (j) The Legislature hereby finds and declares further  
354 that the housing development fund and its staff have  
355 extensive expertise in real estate development financing,



356 underwriting and construction activities, and further  
357 that there is a need on behalf of public and educational  
358 bodies to facilitate the construction of new facilities or  
359 renovation of existing facilities, which need can best be  
360 met by making available to such public agencies and  
361 bodies the real estate and construction development  
362 services and consultative expertise of the housing  
363 development fund at such cost and fees as the housing  
364 development fund would normally impose, subject to the  
365 provisions of this article relating to the powers of the  
366 housing development fund.

### §31-18-3. Definitions.

1 As used in this article, unless the context otherwise  
2 requires:

3 (1) "Annual sinking fund payment" means the amount  
4 of money specified in the resolution or resolutions  
5 authorizing term bonds as payable into a sinking fund  
6 during a particular calendar year for the retirement of  
7 term bonds at maturity after such calendar year, but  
8 shall not include any amount payable by reason only of  
9 the maturity of a bond.

10 (2) "Development costs" means the costs approved by  
11 the housing development fund as appropriate expendi-  
12 tures by the housing development fund or by sponsors,  
13 for land development, residential housing, or nonresi-  
14 dential projects within this state, including, but not  
15 limited to:

16 (a) Payments for options to purchase proposed sites,  
17 necessary easements and other related property rights,  
18 deposits on contracts of purchase, or, with prior  
19 approval of the housing development fund, payments for  
20 the purchase of such properties;

21 (b) Legal and organizational expenses, including  
22 payments of attorneys' fees, utility and governmental  
23 application and filing fees and expenses, project  
24 manager and clerical staff salaries, office rent and other  
25 incidental expenses;

26 (c) Payment of fees and expenses for preliminary  
27 feasibility studies and costs estimates and advances for  
28 planning, engineering and architectural work;

29 (d) Expenses for tenant surveys and market analyses;  
30 and

31 (e) Necessary application, approval and other fees.

32 (3) "Eligible persons and families" means:

33 (a) Persons and families of low and moderate income;  
34 or

35 (b) Persons or families of higher income to the extent  
36 the housing development fund shall find and determine,  
37 by resolution, that construction of new or rehabilitated  
38 residential housing for occupancy by them will cause to  
39 be vacated existing sanitary, decent and safe residential  
40 housing available at prices or rentals which persons and  
41 families of low and moderate income can afford; or

42 (c) Persons or families of higher income to the extent  
43 the housing development fund shall find and determine,  
44 by resolution, that construction of new or rehabilitated  
45 multi-family rental housing or new, rehabilitated or  
46 existing home ownership housing in the state for  
47 occupancy by them will further economic growth,  
48 increase the housing stock in the state by eliminating  
49 substandard or deteriorating housing conditions, or  
50 provide additional housing opportunities in the state; or

51 (d) Persons who because of age or physical disability  
52 are found and determined by the housing development  
53 fund, by resolution, to require residential housing of a  
54 special location or design in order to provide them with  
55 sanitary, decent and safe residential housing; or

56 (e) Persons and families for whom, as found and  
57 determined by the housing development fund by  
58 resolution, construction of new or rehabilitated residen-  
59 tial housing in some designated area or areas of the state  
60 is necessary for the purpose of retaining in, or attracting  
61 to, such area or areas qualified manpower resources  
62 essential to modern mining, industrial and commercial  
63 operations and development in such area or areas.

64 (4) "Federally insured construction loan" means a  
65 construction loan for land development, residential  
66 housing or nonresidential projects, which are either

67 secured or guaranteed, in whole or in part, by a  
68 federally insured mortgage or a federal mortgage, or  
69 which are insured or guaranteed, in whole or in part,  
70 by the United States or an instrumentality thereof, or  
71 a commitment by the United States or an instrumentality  
72 thereof to insure such loan;

73 (5) "Federally insured mortgage" means a mortgage  
74 loan for land development, residential housing or  
75 nonresidential projects with a commitment by the  
76 United States or an instrumentality thereof to insure or  
77 guarantee such a mortgage.

78 (6) "Federal mortgage" means a mortgage loan for  
79 land development, residential housing or nonresidential  
80 projects made by the United States or an instrumentality  
81 thereof, or a commitment by the United States or an  
82 instrumentality thereof to make such a mortgage loan.

83 (7) "Housing development fund" means the West  
84 Virginia housing development fund heretofore created  
85 and established by section four of this article.

86 (8) "Land development" means the process of acquiring  
87 land for residential housing construction or nonresidential  
88 projects or of making, installing or constructing  
89 improvements, including waterlines and water  
90 supply installations, sewer lines and sewage disposal  
91 installations, steam, gas, telephone and telecommunications  
92 and electric lines and installations, roads, railroad  
93 spurs, docking and shipping facilities, streets, curbs,  
94 gutters, sidewalks, drainage and flood control facilities,  
95 whether on or off the site, which the housing development  
96 fund deems necessary or desirable to prepare such  
97 land for construction within this state.

98 (9) "Land development fund" means the land development  
99 fund which may be created and established by the  
100 housing development fund in accordance with section  
101 twenty-a of this article.

102 (10) "Minimum bond insurance requirement" means,  
103 as of any particular date of computation, an amount of  
104 money equal to the greatest of the respective amounts,  
105 for the then current or any future calendar year, of

106 annual debt service of the housing development fund on  
107 all outstanding mortgage finance bonds, such annual  
108 debt service for any calendar year being the amount of  
109 money equal to the aggregate of (a) all interest payable  
110 during such calendar year on such mortgage finance  
111 bonds on said date of computation, plus (b) the principal  
112 amount of such mortgage finance bonds outstanding  
113 which matures during such calendar year, other than  
114 mortgage finance bonds for which annual sinking fund  
115 payments have been or are to be made in accordance  
116 with the resolution authorizing such bonds, plus (c) the  
117 amount of all annual sinking fund payments payable  
118 during such calendar year with respect to any such  
119 mortgage finance bonds, all calculated on the assump-  
120 tion that bonds will after said date of computation cease  
121 to be outstanding by reason, but only by reason, of the  
122 payment of bonds when due, and the payment when due  
123 and application in accordance with the resolution  
124 authorizing such bonds of all such sinking fund pay-  
125 ments payable at or after said date of computation.

126 (11) "Mortgage finance bonds" means bonds issued or  
127 to be issued by the housing development fund and  
128 secured by a pledge of amounts payable from the  
129 mortgage finance bond insurance fund in the manner  
130 and to the extent provided in section twenty-b of this  
131 article.

132 (12) "Mortgage finance bond insurance fund" means  
133 the special trust fund created and established in the  
134 state treasury in accordance with section twenty-b of  
135 this article.

136 (13) "Nonresidential project" means a project in the  
137 state, whether or not directly related to the providing  
138 of residential housing, determined by the housing  
139 development fund as likely to foster and enhance  
140 economic growth and development in the area of the  
141 state in which such project is developed, for retail,  
142 commercial, industrial, community improvement or  
143 preservation or other proper purpose, including tourism  
144 and recreational housing, land, air or water transpor-  
145 tation facilities, facilities for vocational or other training  
146 or to provide medical care and other special needs of

147 persons residing in the state, sports complexes and  
148 cultural, artistic and other exhibition centers, industrial  
149 or commercial projects and facilities, mail order,  
150 wholesale and retail sales facilities and other real or  
151 personal properties including facilities which are owned  
152 or leased by this state, any county or municipality or  
153 other public body within the state, and includes, without  
154 limitation, the process of acquiring, holding, operating,  
155 planning, financing, demolition, construction, renova-  
156 tion, leasing or otherwise disposing of such project or  
157 any part thereof or interest therein. Any such project  
158 may include appurtenant machinery and equipment.

159 (14) "Operating loan fund" means the operating loan  
160 fund which may be created and established by the  
161 housing development fund in accordance with section  
162 nineteen of this article.

163 (15) "Persons and families of low and moderate  
164 income" means persons and families, irrespective of  
165 race, creed, national origin or sex, determined by the  
166 housing development fund to require such assistance as  
167 is made available by this article on account of personal  
168 or family income not sufficient to afford sanitary, decent  
169 and safe housing, and to be eligible or potentially  
170 eligible to occupy residential housing constructed and  
171 financed, wholly or in part, with federally insured  
172 construction loans, federally insured mortgages, federal  
173 mortgages or with other public or private assistance, or  
174 with uninsured construction loans, or uninsured mort-  
175 gage loans, and in making such determination the fund  
176 shall take into account the following: (a) The amount of  
177 the total income of such persons and families available  
178 for housing needs, (b) the size of the family, (c) the cost  
179 and condition of housing facilities available, (d) the  
180 eligibility of such persons and families for federal  
181 housing assistance of any type predicated upon low or  
182 moderate income basis, and (e) the ability of such  
183 persons and families to compete successfully in the  
184 normal housing market and to pay the amounts at which  
185 private enterprise is providing sanitary, decent and safe  
186 housing: *Provided*, That to the extent found and  
187 determined by the housing development fund, by

188 resolution, to be necessary or appropriate for the  
189 purposes of eliminating undesirable social conditions  
190 and permanently eliminating slum conditions, the  
191 income limitation requirements of this article may be  
192 waived as to any persons or families who are eligible to  
193 occupy residential housing constructed in whole, or in  
194 part, with federally insured construction loans, federally  
195 insured mortgages or federal mortgages under housing  
196 assistance or mortgage insurance programs of the  
197 United States, or an instrumentality thereof, predicated  
198 upon any low or moderate income basis.

199 (16) "Residential housing" means a specific work or  
200 improvement within this state undertaken primarily to  
201 provide dwelling accommodations, including the acqui-  
202 sition, construction or rehabilitation of land, buildings  
203 and improvements thereto, for residential housing for  
204 occupancy by eligible persons and families, including,  
205 but not limited to, facilities for temporary housing and  
206 emergency housing, nursing homes and intermediate  
207 care facilities, and such other nonhousing facilities as  
208 may be incidental or appurtenant thereto.

209 (17) "Special bond insurance commitment fee" means  
210 a fee in the amount of one per centum of the total  
211 principal amount of each loan which is to be temporarily  
212 or permanently financed from the proceeds of mortgage  
213 finance bonds, other than a federally insured construc-  
214 tion loan, a federally insured mortgage or a federal  
215 mortgage, or an amount equal to an equivalent discount  
216 on each loan purchased or invested in by the housing  
217 development fund from the proceeds of mortgage  
218 finance bonds, other than a federally insured construc-  
219 tion loan, a federally insured mortgage or a federal  
220 mortgage, and which may be payable from the proceeds  
221 of such bonds or any other source available to the  
222 housing development fund for such use: *Provided*, That  
223 if the period of time between the first disbursement of  
224 proceeds of such loan and the date upon which it is  
225 specified that the first repayment of principal of such  
226 a loan shall be payable exceeds twelve months, an  
227 additional amount computed on the basis of one twelfth  
228 of one per centum per month on the total principal

229 amount of such loan over the number of months of such  
230 period of time in excess of twelve months shall be  
231 included in such fee.

232 (18) "Special bond insurance premium" means (i) a  
233 fee at the rate of one half of one percent per annum on  
234 the outstanding principal balance which the housing  
235 development fund shall charge the borrower of a  
236 mortgage loan, or of a loan secured by a mortgage,  
237 financed from the proceeds of mortgage finance bonds,  
238 other than a federally insured construction loan, a  
239 federally insured mortgage or a federal mortgage,  
240 which shall accrue from a date which is one month prior  
241 to the date on which the first installment payment of  
242 principal of such a loan is payable and which shall be  
243 payable thereafter in monthly installments on the same  
244 day of each successive month that installment payments  
245 of principal of such a loan are payable, and (ii) with  
246 respect to any loan, other than a federally insured  
247 construction loan, a federally insured mortgage or a  
248 federal mortgage, purchased, or invested in with such  
249 proceeds, an equivalent amount which the housing  
250 development fund shall set aside from payments it  
251 receives on such loan or from any other source available  
252 to the housing development fund for such use.

253 (19) "State sinking fund commission" means the  
254 commission known as such and continued in existence  
255 pursuant to article three, chapter thirteen of this code  
256 and any body, board, person or commission which shall,  
257 by law, hereafter succeed to the powers and duties of  
258 such commission.

259 (20) "Temporary housing" means a specific work or  
260 improvement within this state undertaken primarily to  
261 provide dwelling accommodations, including the acqui-  
262 sition, construction or rehabilitation of land, buildings  
263 and improvements thereto, for temporary residential  
264 housing, including, but not limited to, shelters for  
265 homeless people, housing for victims of floods and other  
266 disasters, shelters for abused or battered persons and  
267 their children, housing for families with hospitalized  
268 family members, housing for students and student  
269 families, and housing for the handicapped and such

270 other nonhousing facilities as may be incidental or  
271 appurtenant thereto.

272 (21) "Uninsured construction loans" means a construc-  
273 tion loan for land development, residential housing or  
274 nonresidential projects which is not secured by either a  
275 federally insured mortgage or a federal mortgage, and  
276 which is not insured by the United States or an  
277 instrumentality thereof, and as to which there is no  
278 commitment by the United States or an instrumentality  
279 thereof to provide insurance.

280 (22) "Uninsured mortgage" and "uninsured mortgage  
281 loan" means mortgage loans for land development,  
282 residential housing or nonresidential projects which are  
283 not insured or guaranteed by the United States or an  
284 instrumentality thereof, and as to which there is no  
285 commitment by the United States or an instrumentality  
286 thereof to provide insurance.

#### §31-18-6. Corporate powers.

1 The housing development fund is hereby granted, has  
2 and may exercise all powers necessary or appropriate  
3 to carry out and effectuate its corporate purpose,  
4 including, but not limited to, the following, except that  
5 notwithstanding any other provision of this article, the  
6 housing development fund shall not directly or indi-  
7 rectly make a loan for or otherwise finance or review  
8 any nonresidential project unless (a) the governor's  
9 office of community and industrial development, in  
10 writing, has referred the nonresidential project under  
11 consideration to the housing development fund, and (b)  
12 the board of directors of the housing development fund  
13 shall have by resolution first found and determined (i)  
14 that such loan or other financing is not available upon  
15 reasonably equivalent terms and conditions from  
16 financial institutions, based upon, among other perti-  
17 nent factors, that at least three financial institutions  
18 have had at least forty-five days to make a loan to or  
19 otherwise finance such project, but have failed to act  
20 upon or declined or refused opportunity within such  
21 forty-five day period; and (ii) that such loan or other  
22 financing is not available on reasonably equivalent



23 terms and conditions from the United States, this state,  
24 any county or municipality in this state or any board,  
25 agency, department or commission of any thereof:

26 (1) To make or participate in the making of federally  
27 insured construction loans to sponsors of land develop-  
28 ment, residential housing or nonresidential projects.  
29 Such loans shall be made only upon determination by  
30 the housing development fund that construction loans  
31 are not otherwise available, wholly or in part, from  
32 private lenders upon reasonably equivalent terms and  
33 conditions;

34 (2) To make temporary loans, with or without inter-  
35 est, but with such security for repayment as the housing  
36 development fund determines reasonably necessary and  
37 practicable, from the operating loan fund, if created,  
38 established, organized and operated in accordance with  
39 the provisions of section nineteen of this article, to  
40 defray development costs to sponsors of land develop-  
41 ment, residential housing or nonresidential projects  
42 which are eligible or potentially eligible for federally  
43 insured construction loans, federally insured mortgages,  
44 federal mortgages, or uninsured construction loans or  
45 uninsured mortgage loans;

46 (3) To make or participate in the making of long-term  
47 federally insured mortgage loans to sponsors of land  
48 development, residential housing or nonresidential  
49 projects. Such loans shall be made only upon determi-  
50 nation by the housing development fund that long-term  
51 mortgage loans are not otherwise available, wholly or in  
52 part, from private lenders upon reasonably equivalent  
53 terms and conditions;

54 (4) To establish residential housing and nonresidential  
55 and land development projects for counties declared to  
56 be in a disaster area by the Federal Emergency  
57 Management Agency or other agency or instrumentality  
58 of the United States or this state;

59 (5) To accept appropriations, gifts, grants, bequests  
60 and devises, and to utilize or dispose of the same to carry  
61 out its corporate purpose;

62 (6) To make and execute contracts, releases, com-  
63 promises, compositions and other instruments necessary  
64 or convenient for the exercise of its powers, or to carry  
65 out its corporate purpose;

66 (7) To collect reasonable fees and charges in connec-  
67 tion with making and servicing loans, notes, bonds,  
68 obligations, commitments and other evidences of  
69 indebtedness, and in connection with providing techni-  
70 cal, consultative and project assistance services;

71 (8) To invest any funds not required for immediate  
72 disbursement in any of the following securities:

73 (i) Direct obligations of or obligations guaranteed by  
74 the United States of America or for the payment of the  
75 principal and interest on which the full faith and credit  
76 of the United States of America is pledged;

77 (ii) Bonds, debentures, notes or other evidences of  
78 indebtedness issued by any of the following agencies:  
79 Banks for cooperatives; federal intermediate credit  
80 banks; federal home loan bank system; Export-Import  
81 Bank of the United States; federal land banks; Tennes-  
82 see Valley Authority; United States Postal Service;  
83 Inter-American Development Bank; International Bank  
84 for Reconstruction and Development; Small Business  
85 Administration; Washington Metropolitan Area Transit  
86 Authority; General Services Administration; Federal  
87 Financing Bank; Federal Home Loan Mortgage Corpo-  
88 ration; Student Loan Marketing Association; Farmer's  
89 Home Administration; the Federal National Mortgage  
90 Association or the Government National Mortgage  
91 Association; or any bond, debenture, note, participation  
92 certificate or other similar obligation to the extent such  
93 obligations are guaranteed by the Government National  
94 Mortgage Association or Federal National Mortgage  
95 Association or are issued by any other federal agency  
96 and backed by the full faith and credit of the United  
97 States of America;

98 (iii) Public housing bonds issued by public agencies or  
99 municipalities and fully secured as to the payment of  
100 both principal and interest by a pledge of annual  
101 contributions under an annual contributions contract or

102 contracts with the United States of America; or  
103 temporary notes, preliminary loan notes, or project notes  
104 issued by public agencies or municipalities, in each case,  
105 fully secured as to the payment of both principal and  
106 interest by a requisition or payment agreement with the  
107 United States of America;

108 (iv) Certificates of deposit, time deposits, investment  
109 agreements, repurchase agreements or similar banking  
110 arrangements with a member bank or banks of the  
111 federal reserve system or a bank the deposits of which  
112 are insured by the Federal Deposit Insurance Corpora-  
113 tion, or its successor, or a savings and loan association  
114 or savings bank the deposits of which are insured by the  
115 Federal Savings and Loan Insurance Corporation, or its  
116 successor, or government bond dealers reporting to,  
117 trading with and recognized as primary dealers by a  
118 Federal Reserve Bank: *Provided*, That such investments  
119 shall only be made to the extent insured by the Federal  
120 Deposit Insurance Corporation or the Federal Savings  
121 and Loan Insurance Corporation or to the extent that the  
122 principal amount thereof shall be fully collateralized by  
123 obligations which are authorized investments for the  
124 housing development fund pursuant to this section;

125 (v) Direct obligations of or obligations guaranteed by  
126 the state of West Virginia;

127 (vi) Direct and general obligations of any other state,  
128 municipality or other political subdivision within the  
129 territorial United States: *Provided*, That at the time of  
130 their purchase, such obligations are rated in either of  
131 the two highest rating categories by a nationally  
132 recognized bond-rating agency;

133 (vii) Any bond, note, debenture or annuity issued by  
134 any corporation organized and operating within the  
135 United States: *Provided*, That such corporation shall  
136 have a minimum net worth of fifteen million dollars and  
137 its securities or its parent corporation's securities are  
138 listed on one or more of the national stock exchanges:  
139 *Provided, however*, That (1) such corporation has earned  
140 a profit in eight of the preceding ten fiscal years as  
141 reflected in its statements, and (2) such corporation has

142 not defaulted in the payment of principal or interest on  
143 any of its outstanding funded indebtedness during its  
144 preceding ten fiscal years, and (3) the bonds, notes or  
145 debentures of such corporation to be purchased are  
146 rated "AA" or the equivalent thereof or better than  
147 "AA" or the equivalent thereof by at least two or more  
148 nationally recognized rating services such as Standard  
149 and Poor's, Dun & Bradstreet, Best's or Moody's;

150 (viii) If entered into solely for the purpose of reducing  
151 investment, interest rate, liquidity or other market risks  
152 in relation to obligations issued or to be issued or owned  
153 or to be owned by the housing development fund,  
154 options, futures contracts (including index futures but  
155 exclusive of commodities futures, options or other  
156 contracts), standby purchase agreements or similar  
157 hedging arrangements listed by a nationally recognized  
158 securities exchange or a corporation described in (vii)  
159 above;

160 (ix) Certificates, shares or other interests in mutual  
161 funds, unit trusts or other entities registered under  
162 section eight of the United States investment company  
163 act of 1940, but only to the extent that the terms on  
164 which the underlying investments are to be made  
165 prevent any more than a minor portion of the pool which  
166 is being invested in to consist of obligations other than  
167 investments permitted pursuant to this section; and

168 (x) To the extent not inconsistent with the express  
169 provisions of this section, obligations of the West  
170 Virginia state board of investments or any other  
171 obligation authorized as an investment for the West  
172 Virginia state board of investments under article six,  
173 chapter twelve of this code or for a public housing  
174 authority under article fifteen, chapter sixteen of this  
175 code;

176 (9) To sue and be sued;

177 (10) To have a seal and alter the same at will;

178 (11) To make, and from time to time, amend and  
179 repeal bylaws and rules and regulations not inconsistent  
180 with the provisions of this article;

181 (12) To appoint such officers, employees and consul-  
182 tants as it deems advisable and to fix their compensation  
183 and prescribe their duties;

184 (13) To acquire, hold and dispose of real and personal  
185 property for its corporate purposes;

186 (14) To enter into agreements or other transactions  
187 with any federal or state agency, any person and any  
188 domestic or foreign partnership, corporation, association  
189 or organization;

190 (15) To acquire real property, or an interest therein,  
191 in its own name, by purchase or foreclosure, where such  
192 acquisition is necessary or appropriate to protect any  
193 loan in which the housing development fund has an  
194 interest and to sell, transfer and convey any such  
195 property to a buyer and, in the event of such sale,  
196 transfer or conveyance cannot be effected with reason-  
197 able promptness or at a reasonable price, to lease such  
198 property to a tenant;

199 (16) To purchase or sell, at public or private sale, any  
200 mortgage or other negotiable instrument or obligation  
201 securing a construction, rehabilitation, improvement,  
202 land development, mortgage or temporary loan;

203 (17) To procure insurance against any loss in connec-  
204 tion with its property in such amounts, and from such  
205 insurers, as may be necessary or desirable;

206 (18) To consent, whenever it deems it necessary or  
207 desirable in the fulfillment of its corporate purpose, to  
208 the modification of the rate of interest, time of payment  
209 or any installment of principal or interest, or any other  
210 terms, of mortgage loan, mortgage loan commitment,  
211 construction loan, rehabilitation loan, improvement  
212 loan, temporary loan, contract or agreement of any kind  
213 to which the housing development fund is a party;

214 (19) To make and publish rules and regulations  
215 respecting its federally insured mortgage lending,  
216 uninsured mortgage lending, construction lending,  
217 rehabilitation lending, improvement lending and lend-  
218 ing to defray development costs and any such other rules  
219 and regulations as are necessary to effectuate its  
220 corporate purpose;

221 (20) To borrow money to carry out and effectuate its  
222 corporate purpose and to issue its bonds or notes as  
223 evidence of any such borrowing in such principal  
224 amounts and upon such terms as shall be necessary to  
225 provide sufficient funds for achieving its corporate  
226 purpose, except that no notes shall be issued to mature  
227 more than ten years from date of issuance and no bonds  
228 shall be issued to mature more than fifty years from  
229 date of issuance;

230 (21) To issue renewal notes, to issue bonds to pay notes  
231 and, whenever it deems refunding expedient, to refund  
232 any bonds by the issuance of new bonds, whether the  
233 bonds to be refunded have or have not matured except  
234 that no such renewal notes shall be issued to mature  
235 more than ten years from date of issuance of the notes  
236 renewed and no such refunding bonds shall be issued to  
237 mature more than fifty years from the date of issuance;

238 (22) To apply the proceeds from the sale of renewal  
239 notes or refunding bonds to the purchase, redemption or  
240 payment of the notes or bonds to be refunded;

241 (23) To make grants and provide technical services to  
242 assist in the purchase or other acquisition, planning,  
243 processing, design, construction, or rehabilitation,  
244 improvement or operation of residential housing,  
245 nonresidential projects or land development: *Provided,*  
246 That no such grant or other financial assistance shall be  
247 provided except upon a finding by the housing develop-  
248 ment fund that such assistance and the manner in which  
249 it will be provided will preserve and promote residential  
250 housing in this state or the interests of this state in  
251 maintaining or increasing employment or the tax base;

252 (24) To provide project assistance services for residen-  
253 tial housing, nonresidential projects and land develop-  
254 ment, including, but not limited to, management,  
255 training and social and other services;

256 (25) To promote research and development in scien-  
257 tific methods of constructing low cost land development,  
258 residential housing or nonresidential projects of high

259 durability including grants, loans or equity contribu-  
260 tions for research and development purposes: *Provided*,  
261 That no such grant or other financial assistance shall be  
262 provided except upon a finding by the housing develop-  
263 ment fund that such assistance and the manner in which  
264 it will be provided will preserve and promote residential  
265 housing in this state or the interests of this state in  
266 maintaining and increasing employment and the tax  
267 base;

268 (26) With the proceeds from the issuance of notes or  
269 bonds of the housing development fund, including, but  
270 not limited to, mortgage finance bonds, or with other  
271 funds available to the housing development fund for  
272 such purpose, to participate in the making of or to make  
273 loans to mortgagees approved by the housing develop-  
274 ment fund and take such collateral security therefor as  
275 is approved by the housing development fund and to  
276 invest in, purchase, acquire, sell or participate in the  
277 sale of, or take assignments of, notes and mortgages,  
278 evidencing loans for the construction, rehabilitation,  
279 improvement, purchase or refinancing of land develop-  
280 ment, residential housing or nonresidential projects in  
281 this state: *Provided*, That the housing development fund  
282 shall obtain such written assurances as shall be  
283 satisfactory to it that the proceeds of such loans,  
284 investments or purchases will be used, as nearly as  
285 practicable, for the making of or investment in long-  
286 term federally insured mortgage loans or federally  
287 insured construction loans, uninsured mortgage loans or  
288 uninsured construction loans, for land development,  
289 residential housing or nonresidential projects or that  
290 other moneys in an amount approximately equal to such  
291 proceeds shall be committed and used for such purpose;

292 (27) To make or participate in the making of unin-  
293 insured construction loans for land development, residen-  
294 tial housing or nonresidential projects. Such loans shall  
295 be made only upon determination by the housing  
296 development fund that construction loans are not  
297 otherwise available, wholly or in part, from private  
298 lenders upon reasonably equivalent terms and  
299 conditions;

300       (28) To make or participate in the making of long-  
301 term uninsured mortgage loans for land development,  
302 residential housing or nonresidential projects. Such  
303 loans shall be made only upon determination by the  
304 housing development fund that long-term mortgage  
305 loans are not otherwise available, wholly or in part, from  
306 private lenders upon reasonably equivalent terms and  
307 conditions;

308       (29) To obtain options to acquire real property, or any  
309 interest therein, in its own name, by purchase, or lease,  
310 or otherwise, which is found by the housing development  
311 fund to be suitable, or potentially suitable, as a site, or  
312 as part of a site, for land development or the construc-  
313 tion of residential housing or nonresidential projects; to  
314 hold such real property or to acquire by purchase or  
315 otherwise and to transfer by sale or otherwise any  
316 ownership or equity interests in any other legal entity  
317 which holds such real property; to finance the perfor-  
318 mance of land development, residential housing or  
319 nonresidential projects on or in connection with any such  
320 real property or to perform land development, residen-  
321 tial housing or nonresidential projects on or in connec-  
322 tion with any such real property; to own, operate and  
323 sponsor or participate in the sponsorship of land  
324 development, residential housing or nonresidential  
325 projects; or to sell, transfer and convey, lease or  
326 otherwise dispose of such real property, or lots, tracts  
327 or parcels of such real property, for such prices, upon  
328 such terms, conditions and limitations, and at such time  
329 or times as the housing development fund shall  
330 determine;

331       (30) To make loans, with or without interest, but with  
332 such security for repayment as the housing development  
333 fund determines reasonably necessary and practicable  
334 from the land development fund, if created, established,  
335 organized and operated in accordance with the provi-  
336 sions of section twenty-a of this article, to sponsors of  
337 land development, to defray development costs and other  
338 costs of land development;

339       (31) To exercise all of the rights, powers and author-  
340 ities of a public housing authority as set forth and



341 provided in article fifteen, chapter sixteen of this code,  
342 in any area or areas of the state which the housing  
343 development fund shall determine by resolution to be  
344 necessary or appropriate;

345 (32) To provide assistance to urban renewal projects  
346 in accordance with the provisions of section twenty-  
347 eight, article eighteen, chapter sixteen of this code and  
348 in so doing to exercise all of the rights, powers and  
349 authorities granted in this article or in article eighteen,  
350 chapter sixteen of this code, in and for any communities  
351 of the state which the housing development fund shall  
352 determine by resolution to be necessary or appropriate;

353 (33) To make or participate in the making of loans for  
354 the purpose of rehabilitating or improving existing  
355 residential and temporary housing or nonresidential  
356 projects, or to owners of existing residential or tempor-  
357 ary housing for occupancy by eligible persons and  
358 families for the purpose of rehabilitating or improving  
359 such residential or temporary housing or nonresidential  
360 projects and, in connection therewith, to refinance  
361 existing loans involving the same property. Such loans  
362 shall be made only upon determination by the housing  
363 development fund that rehabilitation or improvement  
364 loans are not otherwise available, wholly or in part, from  
365 private lenders upon reasonably equivalent terms and  
366 conditions;

367 (34) Whenever the housing development fund deems  
368 it necessary in order to exercise any of its powers set  
369 forth in subdivision (28) of this section, and upon being  
370 unable to agree with the owner or owners of real  
371 property or interest therein sought to be acquired by the  
372 fund upon a price for acquisition of private property not  
373 being used or operated by the owner in the production  
374 of agricultural products, to exercise the powers of  
375 eminent domain in the acquisition of such real property  
376 or interest therein in the manner provided under  
377 chapter fifty-four of this code, and the purposes set forth  
378 in subdivision (28) of this section are hereby declared to  
379 be public purposes for which private property may be  
380 taken. For the purposes of this section, the determina-  
381 tion of "use or operation by the owner in the production

382 of agricultural products” means that the principal use  
383 of such real estate is for the production of food and fiber  
384 by agricultural production other than forestry, and the  
385 fund shall not initiate or exercise any powers of eminent  
386 domain without first receiving an opinion in writing  
387 from both the governor and the commissioner of  
388 agriculture of this state that at the time the fund had  
389 first attempted to acquire such real estate or interest  
390 therein, such real estate or interest therein was not in  
391 fact being used or operated by the owner in the  
392 production of agricultural products; and

393 (35) To acquire, by purchase or otherwise, and to hold,  
394 transfer, sell, assign, pool or syndicate, or participate in  
395 the syndication of, any loans, notes, mortgages, securi-  
396 ties or debt instruments collateralized by mortgages or  
397 interests in mortgages or other instruments evidencing  
398 loans or equity interests in or for the construction,  
399 rehabilitation, improvement, renovation, purchase or  
400 refinancing of land development, residential housing  
401 and nonresidential projects in this state.

**§31-18-20a. Land development fund.**

1 (a) The board of directors of the housing development  
2 fund may create and establish a special revolving fund  
3 of moneys made available by appropriation, grant,  
4 contribution or loan, to be known as the land develop-  
5 ment fund and to be governed, administered and  
6 accounted for by the directors, officers and managerial  
7 staff of the housing development fund as a special  
8 purpose account separate and distinct from any other  
9 moneys, fund or funds owned and managed by the  
10 housing development fund.

11 (b) The purpose of the land development fund shall be  
12 to provide a source from which the housing development  
13 fund may finance development costs and land develop-  
14 ment in this state by making loans or grants therefrom,  
15 such loans to be with or without interest and with such  
16 security for repayment as the housing development fund  
17 deems reasonably necessary and practicable, or by  
18 expending moneys therefrom, for development costs and  
19 land development in this state.

20 (c) The housing development fund may invest and  
21 reinvest all moneys in the land development fund in any  
22 investments authorized under section six of this article,  
23 pending the disbursement thereof in connection with the  
24 financing of development costs and land development in  
25 this state.

26 (d) No loans shall be made by the housing develop-  
27 ment fund from the land development fund except in  
28 accordance with a written loan agreement which shall  
29 include, but not be limited to, the following terms and  
30 conditions:

31 (1) The proceeds of all such loans shall be used only  
32 for development costs and land development;

33 (2) All such loans shall be repaid in full, with or  
34 without interest, as provided in the agreement;

35 (3) All repayments shall be made concurrent with  
36 receipt by the borrower of the proceeds of a construction  
37 loan or mortgage, as the case may be, or at such other  
38 times as the housing development fund deems reason-  
39 ably necessary or practicable; and

40 (4) Specification of such security for repayments upon  
41 such terms and conditions as the housing development  
42 fund deems reasonably necessary or practicable.

43 (e) No grants shall be made by the housing develop-  
44 ment fund from the land development fund except in  
45 accordance with a written grant agreement which shall  
46 require that the proceeds of all such grants shall be used  
47 only for development costs or land development and  
48 containing such other terms and provisions as the  
49 housing development fund may require to ensure that  
50 the public purposes of this article are furthered by such  
51 grant.

52 (f) The housing development fund may expend any  
53 income from the financing of development costs and  
54 land development with moneys in the land development  
55 fund, and from investment of such moneys, in payment,  
56 or reimbursement, of all expenses of the housing  
57 development fund which, as determined in accordance  
58 with procedures approved by the board of directors of

59 the housing development fund, are fairly allocable to  
60 such financing or its land-development activities:  
61 *Provided*, That no funds from the land development  
62 fund shall be used to carry on propaganda, or otherwise  
63 attempt to influence legislation.

**§31-18-21. Prohibition on funds inuring to the benefit of  
or being distributable to directors, officers  
or private persons; transactions between  
the housing development fund and direc-  
tors or officers having certain interests in  
such transactions.**

1 (a) No part of the funds of the housing development  
2 fund, or of the operating loan fund, or of the land  
3 development fund, shall inure to the benefit of or be  
4 distributable to its directors or officers or other private  
5 persons except that the housing development fund shall  
6 be authorized and empowered to pay reasonable com-  
7 pensation, other than to the directors, including the  
8 chairman, vice chairman and treasurer of the board of  
9 directors and the secretary of the board of directors, for  
10 services rendered and to make loans and exercise its  
11 other powers as previously specified in furtherance of  
12 its corporate purpose: *Provided*, That no such loans shall  
13 be made, and no property shall be purchased or leased  
14 from, or sold, leased or otherwise disposed of, to any  
15 director or officer of the housing development fund.

16 (b) Notwithstanding any provision contained in  
17 paragraph (a) of this section, no loans shall be made by  
18 the housing development fund to, and no property shall  
19 be purchased or leased from, or sold, leased or otherwise  
20 disposed of to, any corporation or other entity in which  
21 any officer or director is a stockholder or is otherwise  
22 financially interested, unless:

23 (1) The interest of such director or officer in such  
24 transaction is specifically and fully disclosed to the  
25 board of directors of the housing development fund at  
26 the time it authorizes, approves or ratifies such  
27 transaction and the fact and nature of such interest are  
28 stated in the minutes of each meeting of the board of  
29 directors at which such transaction is considered;

30 (2) Such transaction is fair and reasonable to the  
31 housing development fund; and

32 (3) In the case of a director, such director abstains  
33 from voting or written consent as to the authorization,  
34 approval or ratification of such transaction by the board  
35 of directors of the housing development fund.

**§31-18-24. Annual audit; reports to joint committee on  
government and finance; information to  
joint committee or legislative auditor.**

1 The housing development fund shall cause an annual  
2 audit to be made by an independent certified public  
3 accountant of its books, accounts and records, with  
4 respect to its receipts, disbursements, contracts, mort-  
5 gages, leases, assignments, loans and all other matters  
6 relating to its financial operations, including those of the  
7 operating loan fund, the land development fund, and the  
8 mortgage finance bond insurance fund. The person  
9 performing such audit shall furnish copies of the audit  
10 report to the commissioner of finance and administra-  
11 tion, where they shall be placed on file and made  
12 available for inspection by the general public. The  
13 person performing such audit shall also furnish copies  
14 of the audit report to the speaker of the House of  
15 Delegates, the president of the Senate and the majority  
16 and minority leaders of both houses.

17 In addition to the foregoing annual audit report, the  
18 housing development fund shall also render every six  
19 months to the joint committee on government and  
20 finance a report setting forth in detail a complete  
21 analysis of the activities, indebtedness, receipts and  
22 financial affairs of such fund and the operating loan  
23 fund, the land development fund, and the mortgage  
24 finance bond insurance fund. Upon demand, the housing  
25 development fund shall also submit to the joint commit-  
26 tee on government and finance or the legislative auditor  
27 any other information requested by such committee or  
28 the legislative auditor.

**§31-18-26. Projects not to be deemed public  
improvements.**

1 No project or business facility acquired, constructed,

2 maintained, or financed in whole or in part by the  
 3 housing development fund shall be deemed to be a  
 4 "public improvement" within the meaning of the  
 5 provisions of article five-a, chapter twenty-one of this  
 6 code, as a result of such financing.

**§31-18-27. Documentary materials concerning trade  
 secrets; commercial, financial, or personal  
 information; confidentiality.**

1 Any documentary material or data made or received  
 2 by the housing development fund for the purpose of  
 3 furnishing assistance, to the extent that such material  
 4 or data consists of trade secrets, commercial, financial  
 5 or personal information regarding the financial position  
 6 or business operation of such business or person, shall  
 7 not be considered public records and shall be exempt  
 8 from disclosure pursuant to the provisions of chapter  
 9 twenty-nine-b of this code. Any discussion or consider-  
 10 ation of such trade secrets, commercial, financial or  
 11 personal information may be held by the housing  
 12 development fund in executive session closed to the  
 13 public, notwithstanding the provisions of article nine-a,  
 14 chapter six of this code: *Provided*, That the housing  
 15 development fund shall make publicly available the  
 16 following information regarding executed loans: (1) the  
 17 name of the debtor, (2) location(s) of the project, (3)  
 18 amount of the loan or financial assistance provided by  
 19 the fund, (4) the purpose of the loan or financial  
 20 assistance, (5) the term, rate, and interest of the loan,  
 21 and (6) the fixed assets which serve as security for the  
 22 loan.

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## CHAPTER 39

(H. B. 2046—By Delegate Faircloth)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three-a, article one,  
 chapter seven of the code of West Virginia, one thousand  
 nine hundred thirty-one, as amended, relating to county

commissions generally; construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; and providing for the assessment of cost of sanitary sewers, and maintenance of roads not in the state road system.

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

That section three-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

**§7-1-3a. Construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; assessment of cost of sanitary sewers, improved streets and maintenance of roads not in the state road system.**

1 In addition to all other powers and duties now  
2 conferred by law upon county commissions, such  
3 commissions are hereby authorized and empowered to  
4 install, construct, repair, maintain and operate water-  
5 works, water mains, sewer lines and sewage disposal  
6 plants in connection therewith within their respective  
7 counties: *Provided*, That the county commission of  
8 Webster County is authorized to expend county funds in  
9 the opening of, and upkeep of a sulphur well now situate  
10 on county property: *Provided, however*, That such  
11 authority and power herein conferred upon county  
12 commissions shall not extend into the territory within  
13 any municipal corporation: *Provided further*, That any  
14 county commission is hereby authorized to enter into  
15 contracts or agreements with any municipality within  
16 the county, or with a municipality in an adjoining  
17 county, with reference to the exercise of the powers  
18 vested in such commissions by this section.

19 In addition to the foregoing, the county commission  
20 shall have the power to improve streets, sidewalks and  
21 alleys and lay sewers and enter into contracts for  
22 maintenance of county roads and subdivision roads used  
23 by the public but not in the state road system as follows:  
24 Upon petition in writing duly verified, of the persons,

25 firms or corporations owning not less than sixty percent  
26 of the frontage of the lots abutting on both sides of any  
27 street or alley, between any two cross-streets, or between  
28 a cross-street and an alley in any unincorporated  
29 community, requesting the county commission so to do  
30 according to plans and specifications submitted with  
31 such petition and offering to have their property so  
32 abutting assessed not only with their portion of the cost  
33 of such improvement abutting upon their respective  
34 properties, but also offering to have their said properties  
35 proportionately assessed with the total cost of paving,  
36 grading and curbing the intersections of such streets  
37 and alleys, or the total cost of maintenance of county  
38 roads or subdivision roads used by the public but not  
39 in the state road system, the county commission may  
40 cause any such street or alley to be improved or paved  
41 or repaved substantially with the materials and accord-  
42 ing to such plans and specifications as hereinafter  
43 provided: *Provided*, That the county commission is  
44 further authorized, if the said county commission so  
45 determines by a unanimous vote of its constituted  
46 membership, that two or more intersecting streets,  
47 sidewalks, alleys and sewers, should be improved as one  
48 project, in order to satisfy peculiar problems resulting  
49 from access as well as drainage problems, then, in that  
50 event, the said county commission may order such  
51 improvements as one single unit and project, upon  
52 petition in writing duly verified of the persons, firms or  
53 corporations owning not less than sixty percent of the  
54 frontage of the lots abutting on both sides of all streets  
55 or alleys, or portions thereof included by said county  
56 commission in said unit and project.

57 The total cost including labor and materials, engineer-  
58 ing, and legal service of grading and paving, curbing,  
59 improving any such road, street or alley (including the  
60 cost of the intersections) and assessing the cost thereof  
61 shall be borne by the owners of the land abutting upon  
62 such road, street or alley when the work is completed  
63 and accepted according to the following plan, that is to  
64 say, payment is to be made by all landowners on either  
65 side of such road, street or alley so paved or improved  
66 in such proportion of the total cost as the frontage in



67 feet of each owner's land so abutting bears to the total  
68 frontage of all the land so abutting on such road, street  
69 or alley, so paved or improved as aforesaid, which  
70 computation shall be made by the county engineer or  
71 surveyor and certified by him to the clerk of said  
72 commission.

73 Upon petition in writing duly verified, of the persons,  
74 firms or corporations owning not less than sixty percent  
75 of the frontage of the lots abutting on one side of any  
76 county or subdivision road or roads between any two  
77 cross-roads, all used by the public but not in the state  
78 road system or street between any two cross-streets or  
79 between a cross-street and an alley in any unincorporated  
80 community requesting the county commission so  
81 to do according to plans and specifications submitted  
82 with such petition and offering to have their property  
83 so abutting assessed with the total cost thereof, the  
84 county commission may cause any sidewalk to be  
85 improved, or paved, or repaved, substantially with such  
86 materials according to such plans and specifications and  
87 the total cost including labor and materials, engineering  
88 and legal service of improving, grading, paving or  
89 repaving such sidewalk and assessing the cost thereof  
90 shall, when the work is completed and accepted, be  
91 assessed against the owners of the lots or fractional part  
92 of lots abutting on such sidewalk, in such portion of the  
93 total cost as the frontage in feet of each owner's land  
94 so abutting bears to the total frontage of all lots so  
95 abutting on such sidewalk so paved or improved, as  
96 aforesaid, which computation shall be made by the  
97 county engineer or surveyor and certified by him to the  
98 clerk of said commission.

99 Upon petition in writing duly verified, of the persons,  
100 firms or corporations owning not less than sixty percent  
101 of the frontage of the lots abutting on both sides of any  
102 street or alley, in any unincorporated community  
103 requesting the county commission so to do according to  
104 plans and specifications submitted with such petition  
105 and offering to have their property so abutting assessed  
106 with the cost, as hereinafter provided, the county  
107 commission may lay and construct sanitary sewers in

108 any street or alley with such materials and substantially  
109 according to such plans and specifications and when  
110 such sewer is completed and accepted, the county  
111 engineer or surveyor shall report to the county commis-  
112 sion, in writing, the total cost of such sewer and a  
113 description of the lots and lands, as to the location,  
114 frontage, depth and ownership liable for such sewer  
115 assessment, so far as the same may be ascertained,  
116 together with the amount chargeable against each lot  
117 and owner, calculated in the following manner: The total  
118 cost of constructing and laying the sewer including  
119 labor, materials, legal and engineering services shall be  
120 borne by the owners of the land abutting upon the  
121 streets and alleys, in which the sewer is laid according  
122 to the following plan: Payment is to be made by each  
123 landowner on either side of such portion of a street or  
124 alley in which such sewer is laid, in such proportions  
125 as the frontage of his land upon said street or alley bears  
126 to the total frontage of all lots so abutting on such street  
127 or alley. In case of a corner lot, frontage is to be  
128 measured along the longest dimensions thereof abutting  
129 on such street or alley in which such sewer is laid. Any  
130 lot having a depth of two hundred feet or more, and  
131 fronting on two streets or alleys, one in the front and  
132 one in the rear of said lot, shall be assessed on both of  
133 said streets or alleys if a sewer is laid in both such  
134 streets and alleys. Where a corner lot has been assessed  
135 on the end it shall not be assessed on the side for the  
136 same sewer and where it has been assessed on the side  
137 it shall not be assessed on the end for the same sewer.

138 If the petitioners request the improvement of any such  
139 county road or subdivision road, street, alley or sidewalk  
140 in a manner which does not require the permanent  
141 paving or repaving thereof, the county commission shall  
142 likewise have authority to improve such county road or  
143 subdivision road, street, alley or sidewalk, substantially  
144 as requested in such petition, and the total cost thereof  
145 including labor, materials, engineering and legal  
146 services shall be assessed against the abutting owners  
147 in the proportion which the frontage of their lots  
148 abutting upon such county road or subdivision road,  
149 street, alley or sidewalk bears to the total frontage of

150 all lots abutting upon such street, alley or sidewalk so  
151 improved.

152 Upon the filing of such petition and before work is  
153 begun, or let to contract, the county commission shall  
154 fix a time and place for hearing protests and shall  
155 require the petitioners to post notice of such hearing in  
156 at least two conspicuous places on the county road or  
157 subdivision road, street, alley or sidewalk affected, and  
158 to give notice thereof by publication of such notice as  
159 a Class I legal advertisement in compliance with the  
160 provisions of article three, chapter fifty-nine of this code,  
161 and the publication area for such publication shall be  
162 the county in which the improvement is to be made. The  
163 hearing shall be held not less than ten nor more than  
164 thirty days after the filing of such petition.

165 At the time and place set for hearing protests the  
166 county commission may examine witnesses and consider  
167 other evidence to show that said petition was filed in  
168 good faith; that the signatures thereto are genuine; and  
169 that the proposed improvement, paving, repaving or  
170 sewerage will result in special benefits to all owners of  
171 property abutting on said county road or subdivision  
172 road, street, alley or sidewalk in an amount at least  
173 equal in value to the cost thereof. The commission shall  
174 within ten days thereafter enter a formal order stating  
175 its decision and if the petition be granted shall proceed  
176 after due advertisement, reserving the right to reject  
177 any or all bids, to let a contract for such work and  
178 materials to the lowest responsible bidder.

179 Any owner of property abutting upon said county road  
180 or subdivision road, street, alley or sidewalk aggrieved  
181 by such order shall have the right to review the same  
182 on the record made before the county commission by  
183 filing within ten days after the entry of such order a  
184 petition with the clerk of the circuit court assigning  
185 errors and giving bond in a penalty to be fixed by the  
186 circuit court to pay any costs or expenses incurred upon  
187 such appeal should the order of the county commission  
188 be affirmed. The circuit court shall proceed to review  
189 the matter as in other cases of appeal from the county  
190 commission.

191 All assessments made under this section shall be  
192 certified to the county clerk and recorded in a proper  
193 trust deed book and indexed in the name of the owner  
194 of any lot or fractional part of a lot so assessed. The  
195 assessment so made shall be a lien on the property liable  
196 therefor, and shall have priority over all other liens  
197 except those for taxes, and may be enforced by a civil  
198 action in the name of the contractor performing the  
199 work in the same manner as provided for other liens for  
200 permanent improvements. Such assessment shall be  
201 paid in not more than ten equal annual installments,  
202 bearing interest at a rate not to exceed twelve percent  
203 per annum, as follows: The first installment, together  
204 with interest on the whole assessment, shall be paid not  
205 later than one year from the date of such assessment,  
206 and a like installment with interest on the whole amount  
207 remaining unpaid each year thereafter until the  
208 principal and all interest shall have been paid in full.

209 The county commission may issue coupon-bearing  
210 certificates payable in not more than ten equal annual  
211 installments for the amount of such assessment and the  
212 interest thereon, to be paid by the owner of any lot or  
213 fractional part thereof, fronting on such county road or  
214 subdivision road, street, alley or sidewalk which has  
215 been improved, paved, or repaved or in which a sewer  
216 has been laid, as aforesaid, and the holder of said  
217 certificate shall have a lien having priority over all other  
218 liens except those for taxes upon the lot or part of lot  
219 fronting on such county road or subdivision road, street,  
220 alley or sidewalk, and such certificate shall likewise  
221 draw interest from the date of assessment at a rate not  
222 to exceed twelve percent per annum, and payment  
223 thereof may be enforced in the name of the holder of  
224 said certificate by proper civil action in any court  
225 having jurisdiction to enforce such lien.

226 Certificates authorized under this section may be  
227 issued, sold or negotiated to the contractor doing the  
228 work, or to his assignee, or to any person, firm or  
229 corporation: *Provided*, That the county commission in  
230 issuing such certificates shall not be held as a guarantor,  
231 or in any way liable for the payment thereof.

232 Certificates so issued shall contain a provision to the  
233 effect that in the event of default in the payment of any  
234 one or more of said installments, when due, said default  
235 continuing for a period of sixty days, all unpaid  
236 installments shall thereupon become due and payable,  
237 and the owner of said certificates may proceed to collect  
238 the unpaid balance thereof in the manner hereinbefore  
239 provided.

240 In all cases where petitioners request paving or  
241 repaving, or the laying of sewers under the provisions  
242 of this section, the county commission shall let the work  
243 of grading, paving, curbing or sewerage to contract to  
244 the lowest responsible bidder. In each such case the  
245 county commission shall require a bond in the penalty  
246 of the contract price guaranteeing the faithful perfor-  
247 mance of the work and each such contract shall require  
248 the contractor to repair any defects due to defective  
249 workmanship or materials discovered within one year  
250 after the completion of the work.

251 Upon presentation to the clerk of the county commis-  
252 sion of the certificates evidencing the lien, duly canceled  
253 and marked paid by the holder thereof, or evidence of  
254 payment of the assessment if no certificates have been  
255 issued, said clerk shall execute and acknowledge a  
256 release of the lien which release may be recorded, as  
257 other releases in the office of the clerk of the county  
258 commission.

259 The owner of any lot or fractional part of a lot  
260 abutting upon such county road or subdivision road,  
261 street, alley or sidewalk so improved, paved, repaved, or  
262 sewerage shall have the right to anticipate the payment  
263 of any such assessment or certificate by paying the  
264 principal amount due, with interest accrued thereon to  
265 date of payment, and also to pay the entire amount,  
266 without interest at any time, within thirty days follow-  
267 ing the date of the assessment.

268 Nothing in this section contained shall be construed  
269 to authorize the county commissions of the various  
270 counties to acquire any road construction, ditching or  
271 paving equipment. The county commissions are hereby

272 authorized to rent from the state road commissioner or  
273 any other person, firm or corporation such equipment  
274 as may be necessary from time to time, to improve any  
275 county road or subdivision road used by the public but  
276 not in the state road system, street or sidewalk which  
277 petitioners do not desire to have paved in a permanent  
278 manner, and for such purpose to employ such labor as  
279 may be necessary but no expense connected therewith  
280 shall be charged to any county funds.

281 No county commission shall be under any duty after  
282 the paving, repaving or improvement of any county road  
283 or subdivision road used by the public but not in the  
284 state road system, street, alley or sidewalk or the laying  
285 of any sanitary sewer under the provisions of this  
286 section, to maintain or repair the same, but any such  
287 commission shall have authority upon petition duly  
288 verified, signed by at least sixty percent of the owners  
289 of property abutting upon any improvement made under  
290 this section, to maintain or repair such improvement or  
291 sewer and to assess the cost thereof against the owners  
292 of such abutting property in the same manner as the  
293 cost of the original improvement.

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## CHAPTER 40

(S. B. 151—By Senators Hawse and J. Manchin)

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[Passed March 14, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-ee; to amend article thirteen, chapter eight of said code by adding thereto a new section, designated section fifteen-a; and to amend article one, chapter eleven-a of said code by adding thereto a new section, designated section eight-a, all relating to authorizing county commissions, sheriffs and municipalities to enter into contracts with banking institutions to receive payment of service fees, assessments, fines, property taxes and other taxes.

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

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-ee; that article thirteen, chapter eight of said code be amended by adding thereto a new section, designated section fifteen-a; and that article one, chapter eleven-a of said code be amended by adding thereto a new section, designated section eight-a, all to read as follows:

### **Chapter**

7. County Commissions and Officers.

8. Municipal Corporations.

11A. Collection and Enforcement of Property Taxes.

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

#### **§7-1-3ee. Providing for payment of service fees at banking institutions.**

1 Notwithstanding any other provision of this code the  
2 county commission may enter into a contract with one  
3 or more banking institutions, as defined in section two,  
4 article one, chapter thirty-one-a of this code, doing  
5 business in the county for the purpose of receiving  
6 payment of any service fee authorized in this article or  
7 elsewhere in this code.

8 Any such contract shall specify the manner in which  
9 the fees received shall be paid over to the county and  
10 a method for verification by the county commission of  
11 all amounts received pursuant to the contract. The  
12 contract may provide for the payment of a reasonable  
13 fee for the provision of such services by the banking  
14 institution.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 13. TAXATION AND FINANCE.**

#### **§8-13-15a. Providing for payment at banking institutions.**

1 Notwithstanding any other provision of this code the  
2 treasurer of the municipality, or other individual who

3 may be designated by general law, by charter provision  
4 or by the governing body, to collect and promptly pay  
5 into the municipal treasury all taxes, fines, special  
6 assessments and other moneys due the municipality,  
7 may enter into a contract with one or more banking  
8 institutions, as defined in section two, article one,  
9 chapter thirty-one-a of this code, doing business in the  
10 municipality for the purpose of receiving payment of  
11 municipal taxes, fines, assessments and other moneys.

12 Any such contract shall specify the manner in which  
13 the taxes, fines, assessments and other moneys received  
14 shall be paid over to the municipalilty and a method for  
15 verification by the treasurer of the municipality of all  
16 amounts received pursuant to the contract. The contract  
17 may provide for the payment of a reasonable fee for the  
18 provision of such services by the banking institutions.

## CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

### ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

#### §11A-1-8a. Providing for payment at banking institutions.

1 Notwithstanding any other provision of this code the  
2 sheriff, with the consent of the county commission, may  
3 enter into a contract with one or more banking institu-  
4 tions, as defined in section two, article one, chapter  
5 thirty-one-a of this code, doing business in the county for  
6 the purpose of receiving payment of property taxes.

7 Any such contract shall specify the manner in which  
8 all taxes received shall be paid to the sheriff and a  
9 method for verification by the sheriff and the county  
10 commission of all amounts received pursuant to the  
11 contract. The contract may provide for the payment of  
12 a reasonable fee for the provision of such services by the  
13 banking institution.

14 Nothing herein may be construed to affect the amount  
15 of the commission due the sheriff provided for in section  
16 seventeen of this article.



## CHAPTER 41

(Com. Sub. for S. B. 222—By Senators Jackson, Tomblin and Jones)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-ff; and to amend and reenact section five, article twelve, chapter eight of said code, all relating to county commissions' and county health officers' duties to require clearance of refuse and debris on private lands; notice of demand and the contents thereof to be sent to private landowners requiring them to clear their lands of refuse and debris; the proper procedure to contest a demand to clear private land; and municipalities' authorization to require the clearance of private land of refuse and debris.

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

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-ff; and that section five, article twelve, chapter eight of said code be amended and reenacted, all to read as follows:

### Chapter

7. County Commissions and Officers.
8. Municipal Corporations.

### CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

#### ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

#### §7-1-3ff. Duty to require clearance of refuse and debris from private lands; notice of demand thereof; procedure to contest demand.

- 1 In addition to all other powers and duties conferred
- 2 by law upon county commissions, as set forth in this
- 3 article, and county health officers, as set forth in section
- 4 two, article two, chapter sixteen of this code, such
- 5 commissions and health officers are hereby authorized

6 and obliged to require clearance of any refuse or debris  
7 consisting of remnants or remains of any unused or  
8 unoccupied dwelling, nonfarm building, structure or  
9 manmade appurtenance on all private lands within their  
10 respective scopes of authority by the owners thereof that  
11 has accumulated as the result of any natural or  
12 manmade force or effect which presents a safety or  
13 health hazard or which has deteriorated to such a  
14 degree as to be unsightly, visually offensive and be  
15 depressive of the value of the adjacent properties or uses  
16 of such properties.

17 Upon a determination by a county commission or  
18 county health officer that substantial accumulations of  
19 refuse or the presence of debris, as described above,  
20 exist on any such private lands, notice shall be for-  
21 warded to the owner thereof informing the landowner  
22 of the following:

23 (a) Of the commission's or health officer's demand to  
24 remove all refuse and debris within ninety days of the  
25 receipt of such notice unless an extension be granted by  
26 said commission or health officer;

27 (b) Of the landowner's right to contest such demand  
28 and of the proper procedure in which to do so;

29 (c) That if the landowner fails to both properly contest  
30 and comply with the commission's or health officer's  
31 demand, that removal will be achieved otherwise and  
32 that the reasonable costs incurred thereto will become  
33 a civil debt owed by the landowner to the county;

34 (d) That if the county incurs costs of removal and the  
35 landowner fails to pay such costs within two months of  
36 such removal that a judgment lien on the subject  
37 property will be filed in the county clerk's office wherein  
38 the subject property exists.

39 The commission or health officer shall send notice as  
40 described herein by certified mail. If, for any reason,  
41 such certified mail is returned without evidence of  
42 proper receipt thereof, then in such event, a Class III-  
43 0 legal advertisement shall be published in a newspaper  
44 of general circulation in the county wherein such land

45 is situated, in order to render proper notice in accor-  
46 dance with this section: *Provided*, That if the commis-  
47 sion or health officer determines, after notice and  
48 inquiry as provided herein, that such refuse or debris  
49 was created by someone other than the present lan-  
50 downer, without such landowner's expressed or implied  
51 permission, the commission or health officer shall  
52 remove any such refuse or debris and shall apply to and  
53 be eligible to receive from the solid waste reclamation  
54 and environmental response fund created under section  
55 five-a, article five-f, chapter twenty of this code for  
56 reimbursement for all reasonable costs incurred for  
57 such removal.

58 In the event any landowner desires to contest any  
59 demand brought forth pursuant to this section, the  
60 landowner shall do so in accordance with article three,  
61 chapter fifty-eight of this code.

## CHAPTER 8. MUNICIPAL CORPORATIONS.

### ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFIC- ERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

#### PART III. GENERAL POWERS OF MUNICIPALITIES AND GOVERNING BODIES.

#### §8-12-5. General powers of every municipality and the governing body thereof.

1 In addition to the powers and authority granted by (i)  
2 the constitution of this state, (ii) other provisions of this  
3 chapter, (iii) other general law, and (iv) any charter, and  
4 to the extent not inconsistent or in conflict with any of  
5 the foregoing except special legislative charters, every  
6 municipality and the governing body thereof shall have  
7 plenary power and authority therein by ordinance or  
8 resolution, as the case may require, and by appropriate  
9 action based thereon:

10 (1) To lay off, establish, construct, open, alter, curb,  
11 recurb, pave or repave and keep in good repair, or  
12 vacate, discontinue and close, streets, avenues, roads,

13 alleys, ways, sidewalks, drains and gutters, for the use  
14 of the public, and to improve and light the same, and  
15 have them kept free from obstructions on or over them  
16 which have not been authorized pursuant to the  
17 succeeding provisions of this subdivision (1); and, subject  
18 to such terms and conditions as the governing body shall  
19 prescribe, to permit, without in any way limiting the  
20 power and authority granted by the provisions of article  
21 sixteen of this chapter, any person to construct and  
22 maintain a passageway, building or other structure  
23 overhanging or crossing the airspace above a public  
24 street, avenue, road, alley, way, sidewalk or crosswalk,  
25 but before any such permission for any person to  
26 construct and maintain a passageway, building or other  
27 structure overhanging or crossing any such airspace is  
28 granted, a public hearing thereon shall be held by the  
29 governing body after publication of a notice of the date,  
30 time, place and purpose of such public hearing has been  
31 published as a Class I legal advertisement in compliance  
32 with the provisions of article three, chapter fifty-nine of  
33 this code, and the publication area for such publication  
34 shall be the municipality: *Provided*, That any such  
35 permit so granted shall automatically cease and termi-  
36 nate in the event of abandonment and nonuse thereof for  
37 the purposes intended for a period of ninety days, and  
38 all rights therein or thereto shall revert to such  
39 municipality for its use and benefit;

40 (2) To provide for the opening and excavation of  
41 streets, avenues, roads, alleys, ways, sidewalks, cross-  
42 walks and public places belonging to the municipality  
43 and regulate the conditions under which any such  
44 opening may be made;

45 (3) To prevent by proper penalties the throwing,  
46 depositing or permitting to remain on any street,  
47 avenue, road, alley, way, sidewalk, square or other  
48 public place any glass, scrap iron, nails, tacks, wire,  
49 other litter, or any offensive matter or anything likely  
50 to injure the feet of individuals or animals or the tires  
51 of vehicles;

52 (4) To regulate the use of streets, avenues, roads,

53 alleys, ways, sidewalks, crosswalks and public places  
54 belonging to the municipality;

55 (5) To regulate the width of streets, avenues and  
56 roads, and, subject to the provisions of article eighteen  
57 of this chapter, to order the sidewalks, footways and  
58 crosswalks to be paved, repaved, curbed or recurbed  
59 and kept in good order, free and clean, by the owners  
60 or occupants thereof or of the real property next  
61 adjacent thereto;

62 (6) To establish, construct, alter, operate and main-  
63 tain, or discontinue, bridges, tunnels and ferries and  
64 approaches thereto;

65 (7) To provide for the construction and maintenance  
66 of water drains, the drainage of swamps or marshlands  
67 and drainage systems;

68 (8) To provide for the construction, maintenance and  
69 covering over of watercourses;

70 (9) To control and administer the waterfront and  
71 waterways of the municipality, and to acquire, establish,  
72 construct, operate and maintain and regulate flood  
73 control works, wharves and public landings, warehouses  
74 and all adjuncts and facilities for navigation and  
75 commerce and the utilization of the waterfront and  
76 waterways and adjacent property;

77 (10) To prohibit the accumulation and require the  
78 disposal of garbage, refuse, debris, wastes, ashes, trash  
79 and other similar accumulations whether on private or  
80 public property;

81 (11) To construct, establish, acquire, equip, maintain  
82 and operate incinerator plants and equipment and all  
83 other facilities for the efficient removal and destruction  
84 of garbage, refuse, wastes, ashes, trash and other  
85 similar matters;

86 (12) To regulate or prohibit the purchase or sale of  
87 articles intended for human use or consumption which  
88 are unfit for such use or consumption, or which may be  
89 contaminated or otherwise unsanitary;

90 (13) To prevent injury or annoyance to the public or  
91 individuals from anything dangerous, offensive or  
92 unwholesome;

93 (14) To regulate the keeping of gunpowder and other  
94 combustibles;

95 (15) To make regulations guarding against danger or  
96 damage by fire;

97 (16) To arrest, convict and punish any individual for  
98 carrying about his person any revolver or other pistol,  
99 dirk, bowie knife, razor, slungshot, billy, metallic or  
100 other false knuckles, or any other dangerous or other  
101 deadly weapon of like kind or character;

102 (17) To arrest, convict and punish any person for  
103 importing, printing, publishing, selling or distributing  
104 any pornographic publications;

105 (18) To arrest, convict and punish any person for  
106 keeping a house of ill fame, or for letting to another  
107 person any house or other building for the purpose of  
108 being used or kept as a house of ill fame, or for  
109 knowingly permitting any house owned by him or under  
110 his control to be kept or used as a house of ill fame, or  
111 for loafing, boarding or loitering in a house of ill fame,  
112 or frequenting same;

113 (19) To prevent and suppress conduct and practices  
114 which are immoral, disorderly, lewd, obscene and  
115 indecent;

116 (20) To prevent the illegal sale of intoxicating liquors,  
117 drinks, mixtures and preparations;

118 (21) To arrest, convict and punish any individual for  
119 driving or operating a motor vehicle while intoxicated  
120 or under the influence of liquor, drugs or narcotics;

121 (22) To arrest, convict and punish any person for  
122 gambling or keeping any gaming tables, commonly  
123 called "A, B, C," or "E, O," table or faro bank or keno  
124 table, or table of like kind, under any denomination,  
125 whether the gaming table be played with cards, dice or  
126 otherwise, or any person who shall be a partner or  
127 concerned in interest, in keeping or exhibiting such

128 table or bank, or keeping or maintaining any gaming  
129 house or place, or betting or gambling for money or  
130 anything of value;

131 (23) To provide for the elimination of hazards to  
132 public health and safety and to abate or cause to be  
133 abated anything which in the opinion of a majority of  
134 the governing body is a public nuisance;

135 (24) To license, or for good cause to refuse to license  
136 in a particular case, or in its discretion to prohibit in  
137 all cases, the operation of pool and billiard rooms and  
138 the maintaining for hire of pool and billiard tables  
139 notwithstanding the general law as to state licenses for  
140 any such business and the provisions of section four,  
141 article thirteen of this chapter; and when the municipi-  
142 lity, in the exercise of its discretion, shall have refused  
143 to grant a license to operate a pool or billiard room,  
144 mandamus shall not lie to compel such municipality to  
145 grant such license unless it shall clearly appear that the  
146 refusal of the municipality to grant such license is  
147 discriminatory or arbitrary; and in the event that the  
148 municipality determines to license any such business,  
149 the municipality shall have plenary power and author-  
150 ity, and it shall be the duty of its governing body to  
151 make and enforce reasonable ordinances regulating the  
152 licensing and operation of such businesses;

153 (25) To protect places of divine worship and to  
154 preserve peace and order in and about the premises  
155 where held;

156 (26) To regulate or prohibit the keeping of animals or  
157 fowls and to provide for the impounding, sale or  
158 destruction of animals or fowls kept contrary to law or  
159 found running at large;

160 (27) To arrest, convict and punish any person for  
161 cruelly, unnecessarily or needlessly beating, torturing,  
162 mutilating, killing or overloading or overdriving, or  
163 willfully depriving of necessary sustenance, any domes-  
164 tic animal;

165 (28) To provide for the regular building of houses or  
166 other structures, for the making of division fences by the

167 owners of adjacent premises and for the drainage of lots  
168 by proper drains and ditches;

169 (29) To provide for the protection and conservation of  
170 shade or ornamental trees, whether on public or private  
171 property, and for the removal of trees or limbs of trees  
172 in a dangerous condition;

173 (30) To prohibit with or without zoning the location  
174 of occupied house trailers or mobile homes in certain  
175 residential areas;

176 (31) To regulate the location and placing of signs,  
177 billboards, posters, and similar advertising;

178 (32) To erect, establish, construct, acquire, improve,  
179 maintain and operate a gas system, a waterworks  
180 system, an electric system, or sewer system and sewage  
181 treatment and disposal system, or any combination of  
182 the foregoing (subject to all of the pertinent provisions  
183 of articles nineteen and twenty of this chapter and  
184 particularly to the limitations or qualifications on the  
185 right of eminent domain set forth in said articles  
186 nineteen and twenty), within or without the corporate  
187 limits of the municipality, except that the municipality  
188 shall not erect any such system partly without the  
189 corporate limits of the municipality to serve persons  
190 already obtaining service from an existing system of the  
191 character proposed, and where such system is by the  
192 municipality erected, or has heretofore been so erected,  
193 partly within and partly without the corporate limits of  
194 the municipality, the municipality shall have the right  
195 to lay and collect charges for service rendered to those  
196 served within and those served without the corporate  
197 limits of the municipality, and to prevent injury to such  
198 system or the pollution of the water thereof and its  
199 maintenance in a healthful condition for public use  
200 within the corporate limits of the municipality;

201 (33) To acquire watersheds, water and riparian  
202 rights, plant sites, rights-of-way and any and all other  
203 property and appurtenances necessary, appropriate,  
204 useful, convenient or incidental to any such system,  
205 waterworks or sewage treatment and disposal works, as



- 206 aforesaid, subject to all of the pertinent provisions of  
207 articles nineteen and twenty of this chapter;
- 208 (34) To establish, construct, acquire, maintain and  
209 operate and regulate markets, and prescribe the time of  
210 holding the same;
- 211 (35) To regulate and provide for the weighing of  
212 articles sold or for sale;
- 213 (36) To establish, construct, acquire, maintain and  
214 operate public buildings, municipal buildings or city  
215 halls, auditoriums, arenas, jails, juvenile detention  
216 centers or homes, motor vehicle parking lots, or any  
217 other public works;
- 218 (37) To establish, construct, acquire, provide, equip,  
219 maintain and operate recreational parks, playgrounds  
220 and other recreational facilities for public use, and in  
221 this connection also to proceed in accordance with the  
222 provisions of article two, chapter ten of this code;
- 223 (38) To establish, construct, acquire, maintain and  
224 operate a public library or museum or both for public  
225 use;
- 226 (39) To provide for the appointment and financial  
227 support of a library board in accordance with the  
228 provisions of article one, chapter ten of this code;
- 229 (40) To establish and maintain a public health unit in  
230 accordance with the provisions of section two, article  
231 two, chapter sixteen of this code, which unit shall  
232 exercise its powers and perform its duties subject to the  
233 supervision and control of the West Virginia board of  
234 health and state department of health;
- 235 (41) To establish, construct, acquire, maintain and  
236 operate hospitals, sanitarium and dispensaries;
- 237 (42) To acquire, by purchase, condemnation or other-  
238 wise, land within or near the corporate limits of the  
239 municipality for providing and maintaining proper  
240 places for the burial of the dead and to maintain and  
241 operate the same and regulate interments therein upon  
242 such terms and conditions as to price and otherwise as  
243 may be determined by the governing body, and, in order

244 to carry into effect such authority the governing body  
245 may acquire any cemetery or cemeteries already  
246 established;

247 (43) To exercise general police jurisdiction over any  
248 territory without the corporate limits owned by the  
249 municipality or over which it has a right-of-way;

250 (44) To protect and promote the public morals, safety,  
251 health, welfare and good order;

252 (45) To adopt rules for the transaction of business and  
253 the government and regulation of its governing body;

254 (46) Except as otherwise provided, to require and  
255 take such bonds from such officers, when deemed  
256 necessary, payable to the municipality, in its corporate  
257 name, with such sureties and in such penalty as the  
258 governing body may see fit, conditioned upon the  
259 faithful discharge of their duties;

260 (47) To require and take from such employees and  
261 contractors such bonds in such penalty, with such  
262 sureties and with such conditions, as the governing body  
263 may see fit;

264 (48) To investigate and inquire into all matters of  
265 concern to the municipality or its inhabitants;

266 (49) To establish, construct, require, maintain and  
267 operate such instrumentalities, other than free public  
268 schools, for the instruction, enlightenment, improve-  
269 ment, entertainment, recreation and welfare of the  
270 municipality's inhabitants as the governing body may  
271 deem necessary or appropriate for the public interest;

272 (50) To create, maintain and operate a system for the  
273 enumeration, identification and registration, or either,  
274 of the inhabitants of the municipality and visitors  
275 thereto, or such classes thereof as may be deemed  
276 advisable;

277 (51) To appropriate and expend not exceeding twenty-  
278 five cents per capita per annum for advertising the  
279 municipality and the entertainment of visitors;

280 (52) To conduct programs to improve community

281 relations and public relations generally and to expend  
282 municipal revenue for such purposes;

283 (53) To reimburse applicants for employment by the  
284 municipality for travel and other reasonable and  
285 necessary expenses actually incurred by such applicants  
286 in traveling to and from such municipality to be  
287 interviewed;

288 (54) To provide revenue for the municipality and  
289 appropriate the same to its expenses;

290 (55) To create and maintain an employee benefits  
291 fund, which shall not exceed one tenth of one percent  
292 of the annual payroll budget for general employee  
293 benefits and which shall be set up for the purpose of  
294 stimulating and encouraging employees to develop and  
295 implement cost-saving ideas and programs, and to  
296 expend moneys from such fund for such purposes;

297 (56) To enter into reciprocal agreements with govern-  
298 mental subdivisions or agencies of any state sharing a  
299 common border for the protection of people and  
300 property from fire and for emergency medical services  
301 and for the reciprocal use of equipment and personnel  
302 for such purposes; and

303 (57) To provide penalties for the offenses and viola-  
304 tions of law mentioned in this section, subject to the  
305 provisions of section one, article eleven of this chapter,  
306 and such penalties shall not exceed any penalties  
307 provided in this chapter and chapter sixty-one of this  
308 code for like offenses and violations.

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## CHAPTER 42

(Com. Sub. for S. B. 1—By Senators Tucker, Mr. President, and Hawse)

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[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including volunteer fire departments and volunteer

ambulance services as eligible to receive county or district property.

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

That section three, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. COUNTY PROPERTY.**

**§7-3-3. Sale of county or district property.**

1 In all instances where the county commission of a  
2 county is authorized by law to sell or dispose of any  
3 property, either real or personal, belonging to the county  
4 or held by it for the use of any district thereof, the same  
5 shall be sold at public auction, at the front door of the  
6 courthouse of the county, and such sale shall be  
7 conducted by the president of the county commission,  
8 but before making any such sale, notice of the time,  
9 terms and place of sale, together with a brief description  
10 of the property to be sold, shall be published as a Class  
11 II legal advertisement in compliance with the provisions  
12 of article three, chapter fifty-nine of this code, and the  
13 publication area for such publication shall be the county:  
14 *Provided*, That this section shall not apply to the sale  
15 of any one item of property of less value than one  
16 thousand dollars: *Provided, however*, That the provisions  
17 of this section concerning sale at public auction shall not  
18 apply to a county commission selling or disposing of its  
19 property for a public use to the United States of  
20 America, its instrumentalities, agencies or political  
21 subdivisions or to the state of West Virginia, or its  
22 political subdivisions, including county boards of  
23 education, volunteer fire departments and volunteer  
24 ambulance services, for an adequate consideration  
25 without considering alone the present commercial or  
26 market value of the property: *Provided further*, That all  
27 real property conveyed or sold by a county commission  
28 to a volunteer fire department or volunteer ambulance  
29 service under this provision shall revert back to the  
30 county commission if the volunteer fire department or  
31 volunteer ambulance service ceases to use it for the  
32 purpose for which the real property was conveyed or  
33 sold.

## CHAPTER 43

(H. B. 2043—By Delegates Phillips and Damron)

[Passed March 22, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three; and to amend article thirteen, chapter eight of said code by adding thereto a new section, designated section twenty-two-b, all relating to authorizing county and municipal treasurers to make direct deposits of salaries of employees to banks or other financial institutions when so authorized by the employees.

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

That article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-three; and that article thirteen, chapter eight of said code be amended by adding thereto a new section, designated section twenty-two-b, all to read as follows:

### Chapter

7. County Commissions and Officers.
8. Municipal Corporations.

### CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

#### ARTICLE 5. FISCAL AFFAIRS.

#### §7-5-23. Voluntary direct deposits by county treasurer of salaries of employees to banks or other financial institutions.

1 Any officer or employee of a county of West Virginia  
2 may authorize that his net wages be deposited directly  
3 to his account in any bank or other financial institution  
4 within this state. The direct deposits may be authorized  
5 on a form provided by the county. Upon execution of  
6 such authorization and its receipt by the county  
7 treasurer, the direct deposits shall be made in the

8 manner specified on the form and remitted to the  
 9 designated bank or other financial institution on or  
 10 before the day or days the officer or employee is due his  
 11 net wages. Direct deposit authorizations may be revoked  
 12 at any time thirty days prior to the date on which the  
 13 direct deposit is regularly made and on a form to be  
 14 provided by the county treasurer.

## CHAPTER 8. MUNICIPAL CORPORATIONS.

### ARTICLE 13. TAXATION AND FINANCE.

#### §8-13-22b. Voluntary direct deposits by municipal treasurer of salaries of employees to banks or other financial institutions.

1 Any officer or employee of a municipality of West  
 2 Virginia may authorize that his net wages be deposited  
 3 directly to his account in any bank or other financial  
 4 institution within this state. The direct deposits may be  
 5 authorized on a form provided by the municipality.  
 6 Upon execution of such authorization and its receipt by  
 7 the municipal treasurer, the direct deposits shall be  
 8 made in the manner specified on the form and remitted  
 9 to the designated bank or other financial institution on  
 10 or before the day or days the officer or employee is due  
 11 his net wages. Direct deposit authorizations may be  
 12 revoked at any time thirty days prior to the date on  
 13 which the direct deposit is regularly made and on a  
 14 form to be provided by the municipal treasurer.

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## CHAPTER 44

(H. B. 2287—By Delegate Love)

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[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of deputy sheriffs or dog wardens as humane officers.

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

That section one, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. HUMANE OFFICERS.**

**§7-10-1. Deputy sheriffs as humane officers.**

1 The sheriff of each county of this state shall annually  
2 designate, by a record made in the office of the clerk  
3 of the county commission, one of his deputies to  
4 act as humane officer of such county: *Provided*, That, if  
5 the county commission and sheriff agree, they may in  
6 the alternative designate the county dog warden to act  
7 as the humane officer; and it shall be the duty of the  
8 person so designated to act as humane officer as well  
9 as all peace officers as designated by law, to investigate  
10 all complaints made to him of cruel or inhuman  
11 treatment of animals within his county, and to person-  
12 ally see that the law relating to the prevention of cruelty  
13 to animals is enforced; and failure to investigate any  
14 complaint made to him and to take proper measures in  
15 such case or to perform his duty in any other respect  
16 shall constitute good cause for removal from office.

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## CHAPTER 45

(H. B. 2432—By Delegates Seacrist and Ashcraft)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article eighteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hotel occupancy tax; proceeds of tax, application of proceeds; and making historic sites an eligible purpose for expenditures.

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

That section fourteen, article eighteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 18. HOTEL OCCUPANCY TAX.****§7-18-14. Proceeds of tax; application of proceeds.**

1 (a) *Application of proceeds.*—The net proceeds of the  
2 tax collected and remitted to the taxing authority  
3 pursuant to this article shall be deposited into the  
4 general revenue fund of such municipality or county  
5 commission, and after appropriation thereof shall be  
6 expended only as provided in subsections (b) and (c) of  
7 this section.

8 (b) *Required expenditures.*—At least fifty percent of  
9 the net revenue receivable during the fiscal year by a  
10 county, or a municipality, pursuant to this article shall  
11 be expended in the following manner for the promotion  
12 of conventions and tourism:

13 (1) *Municipalities.*—If a convention and visitor's  
14 bureau is located within the municipality, the governing  
15 body of such municipality shall appropriate the percent-  
16 age required by this subsection (b) to that bureau. If a  
17 convention and visitor's bureau is not located within the  
18 municipality, but such a bureau is located within the  
19 county in which the municipality is located, then the  
20 percentage appropriation required by this subsection (b)  
21 shall be appropriated to such convention and visitor's  
22 bureau located within such county. If a convention and  
23 visitor's bureau is not located within such county, then  
24 the percentage appropriation required by this subsec-  
25 tion (b) shall be appropriated as follows:

26 (i) Any hotel located within such municipality may  
27 apply to such municipality for an appropriation to such  
28 hotel of a portion of the tax authorized by this article  
29 and collected by such hotel and remitted to such  
30 municipality, for uses directly related to the promotion  
31 of tourism and travel, including advertising, salaries,  
32 travel, office expenses, publications and similar ex-  
33 penses. The portion of such tax allocable to such hotel  
34 shall not exceed seventy-five percent of that portion of  
35 such tax collected and remitted by such hotel which is  
36 required to be expended pursuant to subsection (b) of  
37 this section: *Provided*, That prior to appropriating any  
38 moneys to such hotel such municipality shall require the



39 submission of, and give approval to, a budget setting  
40 forth the proposed uses of such moneys.

41 (ii) The balance of net revenue required to be ex-  
42 pended by subsection (b) of this section shall be  
43 appropriated to the regional travel council serving the  
44 area in which the municipality is located.

45 (2) *Counties.*—If a convention and visitor's bureau is  
46 located within a county, the county commission shall  
47 appropriate the percentage required by this subsection  
48 (b) to that convention and visitor's bureau. If a conven-  
49 tion and visitor's bureau is not located with in such  
50 county, then the percentage appropriation required by  
51 this subsection (b) shall be appropriated as follows:

52 (i) Any hotel located within such county may apply to  
53 such county for an appropriation to such hotel of a  
54 portion of the tax authorized by this article and collected  
55 by such hotel and remitted to such county, for uses  
56 directly related to the promotion of tourism and travel,  
57 including advertising, salaries, travel, office expenses,  
58 publications and similar expenses. The portion of such  
59 tax allocable to such hotel shall not exceed seventy-five  
60 percent of that portion of such tax collected and  
61 remitted by such hotel which is required to be expended  
62 pursuant to subsection (b) of this section: *Provided*, That  
63 prior to appropriating any moneys to such hotel such  
64 county shall require the submission of, and give  
65 approval to, a budget setting forth the proposed uses of  
66 such moneys.

67 (ii) The balance of net revenue required to be ex-  
68 pended by subsection (b) of this section shall be  
69 appropriated to the regional travel council serving the  
70 area in which the county is located.

71 (3) *Legislative finding.*—The Legislature hereby finds  
72 that the support of convention and visitor's bureaus,  
73 hotels and regional travel councils is a public purpose  
74 for which funds may be expended. Local convention and  
75 visitor's bureaus, hotels and regional travel councils  
76 receiving funds under this subsection (b) may expend  
77 such funds for the payment of administrative expenses,  
78 and for the direct or indirect promotion of conventions

79 and tourism, and for any other uses and purposes  
80 authorized by subdivisions one and two of this subsec-  
81 tion (b).

82 (c) *Permissible expenditures.*—After making the  
83 appropriation required by subsection (b) of this section,  
84 the remaining portion of the net revenues receivable  
85 during the fiscal year by such county or municipality,  
86 pursuant to this article, may be expended for one or  
87 more of the purposes set forth in this subsection, but for  
88 no other purpose. The purposes for which expenditures  
89 may be made pursuant to this subsection are as follows:

90 (1) The planning, construction, reconstruction, estab-  
91 lishment, acquisition, improvement, renovation, exten-  
92 sion, enlargement, equipment, maintenance, repair and  
93 operation of publicly owned convention facilities includ-  
94 ing, but not limited to, arenas, auditoriums, civic centers  
95 and convention centers;

96 (2) The payment of principal or interest or both on  
97 revenue bonds issued to finance such convention  
98 facilities;

99 (3) The promotion of conventions;

100 (4) The construction or maintenance of public parks,  
101 tourist information centers and recreation facilities  
102 (including land acquisition);

103 (5) The promotion of the arts; or

104 (6) Historic sites.

105 (d) *Definitions.*—For purposes of this section, the  
106 following terms are defined:

107 (1) *Convention and visitor's bureau and visitor's and*  
108 *convention bureau.*—“Convention and visitor's bureau”  
109 and “visitor's and convention bureau” are interchange-  
110 able, and either shall mean a nonstock, nonprofit  
111 corporation with a full-time staff working exclusively to  
112 promote tourism and to attract conventions, conferences  
113 and visitors to the municipality or county in which such  
114 convention and visitor's bureau or visitor's and conven-  
115 tion bureau is located.

116       (2) *Convention center*.—"Convention center" means a  
117 convention facility owned by the state, a county, a  
118 municipality or other public entity or instrumentality  
119 and shall include all facilities, including armories,  
120 commercial, office, community service and parking  
121 facilities, and publicly owned facilities constructed or  
122 used for the accommodation and entertainment of  
123 tourist and visitors, constructed in conjunction with the  
124 convention center and forming reasonable appurtenan-  
125 ces thereto.

126       (3) *Fiscal year*.—"Fiscal year" means the year begin-  
127 ning July first and ending June thirtieth of the next  
128 calendar year.

129       (4) *Net proceeds*.—"Net proceeds" means the gross  
130 amount of tax collections less the amount of tax lawfully  
131 refunded.

132       (5) *Promotion of the arts*.—"Promotion of the arts"  
133 means activity to promote public appreciation and  
134 interest in one or more of the arts. It includes the  
135 promotion of music for all types, the dramatic arts,  
136 dancing, painting and the creative arts through shows,  
137 exhibits, festivals, concerts, musicals and plays.

138       (6) *Recreational facilities*.—"Recreational facilities"  
139 means and includes any public park, parkway, play-  
140 ground, public recreation center, athletic field, sports  
141 arena, stadium, skating rink or arena, golf course,  
142 tennis courts and other park and recreation facilities,  
143 whether of a like or different nature, that are owned by  
144 a county or municipality.

145       (7) *Regional travel council*.—"Regional travel council"  
146 means a nonstock, nonprofit corporation, with a full-  
147 time staff working exclusively to promote tourism and  
148 to attract conventions, conferences and visitors to the  
149 region of this state served by the regional travel council.

150       (8) *Historic site*.—"Historic site" means any site listed  
151 on the United States national register of historic places,  
152 or listed by a local historical landmarks commission,  
153 established under state law, when such sites are owned  
154 by a city, a county or a nonprofit historical association,  
155 and are open from time to time to accommodate visitors.

## CHAPTER 46

(Com. Sub. for H. B. 2089—By Delegates Manuel and Murphy)

[Passed March 20, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four hundred six, article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing mandatory period of incarceration prior to parole eligibility for distribution of certain controlled substances to persons under the age of eighteen by persons over the age of twenty-one and increasing mandatory period of incarceration prior to parole eligibility for distribution of certain controlled substances by persons eighteen or older in or on, or within one thousand feet of, the real property comprising an educational facility.

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

That section four hundred six, article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 4. OFFENSES AND PENALTIES.

**§60A-4-406. Distribution to persons under the age of eighteen by persons over the age of twenty-one; distribution by persons eighteen or over in or on, or within one thousand feet of, school or college; increasing mandatory period of incarceration prior to parole eligibility.**

1 (a) Notwithstanding any provision of this code, a  
2 person convicted of a felony violation of the provisions  
3 of section four hundred one of this article for distribu-  
4 tion of a controlled substance who:

5 (1) Is twenty-one years of age or older at the time of  
6 the distribution upon which the conviction is based, and  
7 the person to whom the controlled substance was  
8 distributed was under the age of eighteen years at the  
9 time of the distribution; or

10 (2) Is eighteen years of age or older and the distribu-  
11 tion upon which the conviction is based occurred in or  
12 on, or within one thousand feet of, the real property  
13 comprising a public or private elementary, vocational or  
14 secondary school or a public or private college, junior  
15 college or university in this state, shall, if sentenced to  
16 the custody of the commissioner of corrections for  
17 service of a sentence of incarceration, be ineligible for  
18 parole for a period of two years.

19 (b) The existence of any fact which would make any  
20 person subject to the provisions of this section shall not  
21 be considered unless such fact is clearly stated and  
22 included in the indictment or presentment by which  
23 such person is charged and is either:

24 (1) Found by the court upon a plea of guilty or nolo  
25 contendere;

26 (2) Found by the jury, if the matter be tried before  
27 a jury, upon submission to the jury of a special  
28 interrogatory for such purpose; or

29 (3) Found by the court, if the matter be tried by the  
30 court without a jury.

31 (c) Nothing in this section shall be construed to limit  
32 the sentencing alternatives made available to circuit  
33 court judges under other provisions of this code.

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## CHAPTER 47

(Com. Sub. for S. B. 92—By Senators Warner, Boettner and J. Manchin)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-c, relating to computer crimes; defining offenses generally; penalties; venue; civil cause of action established; and general provisions.

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

That chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-c, to read as follows:

**ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

- §61-3C-1. Short title.
- §61-3C-2. Legislative findings.
- §61-3C-3. Definitions.
- §61-3C-4. Computer fraud; penalties.
- §61-3C-5. Unauthorized access to computer services.
- §61-3C-6. Unauthorized possession of computer data or programs.
- §61-3C-7. Alteration, destruction, etc., of computer equipment.
- §61-3C-8. Disruption of computer services.
- §61-3C-9. Unauthorized possession of computer information, etc.
- §61-3C-10. Disclosure of computer security information.
- §61-3C-11. Obtaining confidential public information.
- §61-3C-12. Computer invasion of privacy.
- §61-3C-13. Fraud and related activity in connection with access devices.
- §61-3C-14. Endangering public safety.
- §61-3C-15. Computer as instrument of forgery.
- §61-3C-16. Civil relief; damages.
- §61-3C-17. Defenses to criminal prosecution.
- §61-3C-18. Venue.
- §61-3C-19. Prosecution under other criminal statutes not prohibited.
- §61-3C-20. Personal jurisdiction.
- §61-3C-21. Severability.

**§§61-3C-1. Short title.**

- 1 This act shall be known and may be cited as the "West
- 2 Virginia Computer Crime and Abuse Act."

**§61-3C-2. Legislative findings.**

- 1 The Legislature finds that:
- 2 (a) The computer and related industries play an
- 3 essential role in the commerce and welfare of this state.
- 4 (b) Computer-related crime is a growing problem in
- 5 business and government.
- 6 (c) Computer-related crime has a direct effect on state
- 7 commerce and can result in serious economic and, in
- 8 some cases, physical harm to the public.
- 9 (d) Because of the pervasiveness of computers in
- 10 today's society, opportunities are great for computer

11 related crimes through the introduction of false records  
12 into a computer or computer system, the unauthorized  
13 use of computers and computer facilities, the alteration  
14 and destruction of computers, computer programs and  
15 computer data, and the theft of computer resources,  
16 computer software and computer data.

17 (e) Because computers have now become an integral  
18 part of society, the Legislature recognizes the need to  
19 protect the rights of owners and legitimate users of  
20 computers and computer systems, as well as the privacy  
21 interest of the general public, from those who abuse  
22 computers and computer systems.

23 (f) While various forms of computer crime or abuse  
24 might possibly be the subject of criminal charges or civil  
25 suit based on other provisions of law, it is appropriate  
26 and desirable that a supplemental and additional statute  
27 be provided which specifically proscribes various forms  
28 of computer crime and abuse and provides criminal  
29 penalties and civil remedies therefor.

### §61-3C-3. Definitions.

1 As used in this article, unless the context clearly  
2 indicates otherwise:

3 (a) "Access" means to instruct, communicate with,  
4 store data in, retrieve data from, intercept data from,  
5 or otherwise make use of any computer, computer  
6 network, computer program, computer software, com-  
7 puter data or other computer resources.

8 (b) "Authorization" means the express or implied  
9 consent given by a person to another to access or use said  
10 person's computer, computer network, computer pro-  
11 gram, computer software, computer system, password,  
12 identifying code or personal identification number.

13 (c) "Computer" means an electronic, magnetic, opti-  
14 cal, electrochemical, or other high speed data processing  
15 device performing logical, arithmetic, or storage  
16 functions, and includes any data storage facility or  
17 communication facility directly related to or operating  
18 in conjunction with such device. The term "computer"  
19 includes any connected or directly related device,

20 equipment or facility which enables the computer to  
21 store, retrieve or communicate computer programs,  
22 computer data or the results of computer operations to  
23 or from a person, another computer or another device,  
24 but such term does not include an automated typewriter  
25 or typesetter, a portable hand-held calculator or other  
26 similar device.

27 (d) "Computer data" means any representation of  
28 knowledge, facts, concepts, instruction, or other infor-  
29 mation computed, classified, processed, transmitted,  
30 received, retrieved, originated, stored, manifested,  
31 measured, detected, recorded, reproduced, handled or  
32 utilized by a computer, computer network, computer  
33 program or computer software, and may be in any  
34 medium, including, but not limited to, computer print-  
35 outs, microfilm, microfiche, magnetic storage media,  
36 optical storage media, punch paper tape or punch cards,  
37 or it may be stored internally in read-only memory or  
38 random access memory of a computer or any other  
39 peripheral device.

40 (e) "Computer network" means a set of connected  
41 devices and communication facilities, including more  
42 than one computer, with the capability to transmit  
43 computer data among them through such communica-  
44 tion facilities.

45 (f) "Computer operations" means arithmetic, logical,  
46 storage, display, monitoring or retrieval functions or  
47 any combination thereof, and includes, but is not limited  
48 to, communication with, storage of data in or to, or  
49 retrieval of data from any device and the human manual  
50 manipulation of electronic magnetic impulses. A  
51 "computer operation" for a particular computer shall  
52 also mean any function for which that computer was  
53 designed.

54 (g) "Computer program" means an ordered set of  
55 computer data representing instructions or statements,  
56 in a form readable by a computer, which controls,  
57 directs, or otherwise influences the functioning of a  
58 computer or computer network.

59 (h) "Computer software" means a set of computer



60 programs, procedures and associated documentation  
61 concerned with computer data or with the operation of  
62 a computer, computer program, or computer network.

63 (i) "Computer services" means computer access time,  
64 computer data processing, or computer data storage,  
65 and the computer data processed or stored in connection  
66 therewith.

67 (j) "Computer supplies" means punchcards, paper  
68 tape, magnetic tape, magnetic disks or diskettes, optical  
69 disks or diskettes, disk or diskette packs, paper,  
70 microfilm, and any other tangible input, output or  
71 storage medium used in connection with a computer,  
72 computer network, computer data, computer software  
73 or computer program.

74 (k) "Computer resources" includes, but is not limited  
75 to, information retrieval; computer data processing,  
76 transmission and storage; and any other functions  
77 performed, in whole or in part, by the use of a computer,  
78 computer network, computer software, or computer  
79 program.

80 (l) "Owner" means any person who owns or leases or  
81 is a licensee of a computer, computer network, computer  
82 data, computer program, computer software, computer  
83 resources or computer supplies.

84 (m) "Person" means any natural person, general  
85 partnership, limited partnership, trust, association,  
86 corporation, joint venture, or any state, county or  
87 municipal government and any subdivision, branch,  
88 department or agency thereof.

89 (n) "Property" includes:

90 (1) Real property;

91 (2) Computers and computer networks;

92 (3) Financial instruments, computer data, computer  
93 programs, computer software and all other personal  
94 property regardless of whether they are:

95 (i) Tangible or intangible;

96 (ii) In a format readable by humans or by a computer;

97 (iii) In transit between computers or within a compu-  
98 ter network or between any devices which comprise a  
99 computer; or

100 (iv) Located on any paper or in any device on which  
101 it is stored by a computer or by a human; and

102 (4) Computer services.

103 (o) "Value" means having any potential to provide any  
104 direct or indirect gain or advantage to any person.

105 (p) "Financial instrument" includes, but is not limited  
106 to, any check, draft, warrant, money order, note,  
107 certificate of deposit, letter of credit, bill of exchange,  
108 credit or debit card, transaction authorization mecha-  
109 nism, marketable security or any computerized repres-  
110 entation thereof.

111 (q) "Value of property or computer services" shall be  
112 (1) the market value of the property or computer  
113 services at the time of a violation of this article; or (2)  
114 if the property or computer services are unrecoverable,  
115 damaged, or destroyed as a result of a violation of  
116 section three or four of this article, the cost of reproduc-  
117 ing or replacing the property or computer services at  
118 the time of the violation.

#### **§61-3C-4. Computer fraud; penalties.**

1 Any person who, knowingly and willfully, directly or  
2 indirectly, accesses or causes to be accessed any  
3 computer, computer services or computer network for  
4 the purpose of (1) executing any scheme or artifice to  
5 defraud or (2) obtaining money, property or services by  
6 means of fraudulent pretenses, representations or  
7 promises shall be guilty of a felony, and, upon conviction  
8 thereof, shall be fined not more than ten thousand  
9 dollars or imprisoned in the penitentiary for not more  
10 than ten years, or both.

#### **§61-3C-5. Unauthorized access to computer services.**

1 Any person who knowingly, willfully and without  
2 authorization, directly or indirectly, accesses or causes  
3 to be accessed a computer or computer network with the  
4 intent to obtain computer services shall be guilty of a

5 misdemeanor, and, upon conviction thereof, shall be  
6 fined not less than two hundred dollars nor more than  
7 one thousand dollars or confined in the county jail not  
8 more than one year, or both.

**§61-3C-6. Unauthorized possession of computer data or programs.**

1 (a) Any person who knowingly, willfully and without  
2 authorization possesses any computer data or computer  
3 program belonging to another and having a value of five  
4 thousand dollars or more shall be guilty of a felony, and,  
5 upon conviction thereof, shall be fined not more than ten  
6 thousand dollars or imprisoned in the penitentiary for  
7 not more than ten years, or both.

8 (b) Any person who knowingly, willfully and without  
9 authorization possesses any computer data or computer  
10 program belonging to another and having a value of less  
11 than five thousand dollars shall be guilty of a misdemea-  
12 nor, and, upon conviction thereof, shall be fined not  
13 more than one thousand dollars or confined in the county  
14 jail for not more than one year, or both.

**§61-3C-7. Alteration, destruction, etc., of computer equipment.**

1 Any person who knowingly, willfully and without  
2 authorization, directly or indirectly, tampers with,  
3 deletes, alters, damages or destroys or attempts to  
4 tamper with, delete, alter, damage or destroy any  
5 computer, computer network, computer software,  
6 computer resources, computer program or computer  
7 data shall be guilty of a felony, and, upon conviction  
8 thereof, shall be fined not more than ten thousand  
9 dollars or confined in the penitentiary not more than ten  
10 years, or both, or, in the discretion of the court, be fined  
11 not less than two hundred nor more than one thousand  
12 dollars and confined in the county jail not more than one  
13 year.

**§61-3C-8. Disruption of computer services.**

1 Any person who knowingly, willfully and without  
2 authorization, directly or indirectly, disrupts or de-  
3 grades or causes the disruption or degradation of

4 computer services or denies or causes the denial of  
5 computer services to an authorized recipient or user of  
6 such computer services, shall be guilty of a misdemea-  
7 nor, and, upon conviction thereof, shall be fined not less  
8 than two hundred nor more than one thousand dollars  
9 or confined in the county jail not more than one year,  
10 or both.

**§61-3C-9. Unauthorized possession of computer information, etc.**

1 Any person who knowingly, willfully and without  
2 authorization possesses any computer data, computer  
3 software, computer supplies or a computer program  
4 which he knows or reasonably should know was obtained  
5 in violation of any section of this article shall be guilty  
6 of a misdemeanor, and, upon conviction thereof, shall be  
7 fined not less than two hundred nor more than one  
8 thousand dollars or confined in the county jail for not  
9 more than one year, or both.

**§61-3C-10. Disclosure of computer security information.**

1 Any person who knowingly, willfully and without  
2 authorization discloses a password, identifying code,  
3 personal identification number or other confidential  
4 information about a computer security system to  
5 another person shall be guilty of a misdemeanor, and,  
6 upon conviction thereof, shall be fined not more than  
7 five hundred dollars or confined in the county jail for  
8 not more than six months, or both.

**§61-3C-11. Obtaining confidential public information.**

1 Any person who knowingly, willfully and without  
2 authorization accesses or causes to be accessed any  
3 computer or computer network and thereby obtains  
4 information filed by any person with the state or any  
5 county or municipality which is required by law to be  
6 kept confidential shall be guilty of a misdemeanor, and,  
7 upon conviction thereof, shall be fined not more than  
8 five hundred dollars or confined in the county jail not  
9 more than six months, or both.

**§61-3C-12. Computer invasion of privacy.**

1 Any person who knowingly, willfully and without  
2 authorization accesses a computer or computer network  
3 and examines any employment, salary, credit or any  
4 other financial or personal information relating to any  
5 other person, after the time at which the offender knows  
6 or reasonably should know that he is without authori-  
7 zation to view the information displayed, shall be guilty  
8 of a misdemeanor, and, upon conviction thereof, shall be  
9 fined not more than five hundred dollars or confined in  
10 the county jail for not more than six months, or both.

**§61-3C-13. Fraud and related activity in connection with access devices.**

1 (a) As used in this section, the following terms shall  
2 have the following meanings:

3 (1) "Access device" means any card, plate, code,  
4 account number, or other means of account access that  
5 can be used, alone or in conjunction with another access  
6 device, to obtain money, goods, services, or any other  
7 thing of value, or that can be used to initiate a transfer  
8 of funds (other than a transfer originated solely by  
9 paper instrument);

10 (2) "Counterfeit access device" means any access  
11 device that is counterfeit, fictitious, altered, or forged,  
12 or an identifiable component of an access device or a  
13 counterfeit access device;

14 (3) "Unauthorized access device" means any access  
15 device that is lost, stolen, expired, revoked, canceled, or  
16 obtained without authority;

17 (4) "Produce" includes design, alter, authenticate,  
18 duplicate, or assemble;

19 (5) "Traffic" means transfer, or otherwise dispose of,  
20 to another, or obtain control of with intent to transfer  
21 or dispose of.

22 (b) Any person who knowingly and willfully possesses  
23 any counterfeit or unauthorized access device shall be  
24 guilty of a misdemeanor, and, upon conviction thereof,  
25 shall be fined not more than one thousand dollars or

26 confined in the county jail for not more than six months,  
27 or both.

28 (c) Any person who knowingly, willfully and with  
29 intent to defraud possesses a counterfeit or unauthorized  
30 access device or who knowingly, willfully and with  
31 intent to defraud, uses, produces or traffics in any  
32 counterfeit or unauthorized access device shall be guilty  
33 of a felony, and, upon conviction thereof, shall be fined  
34 not more than ten thousand dollars or imprisoned in the  
35 penitentiary not more than ten years, or both.

36 (d) This section shall not prohibit any lawfully  
37 authorized investigative or protective activity of any  
38 state, county or municipal law-enforcement agency.

#### §61-3C-14. Endangering public safety.

1 Any person who accesses a computer or computer  
2 network and knowingly, willfully and without authori-  
3 zation (a) interrupts or impairs the providing of services  
4 by any private or public utility; (b) interrupts or impairs  
5 the providing of any medical services; (c) interrupts or  
6 impairs the providing of services by any state, county  
7 or local government agency, public carrier or public  
8 communication service; or otherwise endangers public  
9 safety shall be guilty of a felony, and, upon conviction  
10 thereof, shall be fined not more than fifty thousand  
11 dollars or imprisoned not more than twenty years, or  
12 both.

#### §61-3C-15. Computer as instrument of forgery.

1 The creation, alteration or deletion of any computer  
2 data contained in any computer or computer network,  
3 which if done on a tangible document or instrument  
4 would constitute forgery under section five, article four,  
5 chapter sixty-one of this code will also be deemed to be  
6 forgery. The absence of a tangible writing directly  
7 created or altered by the offender shall not be a defense  
8 to any crime set forth in section five, article four,  
9 chapter sixty-one if a creation, alteration or deletion of  
10 computer data was involved in lieu of a tangible  
11 document or instrument.

**§61-3C-16. Civil relief; damages.**

1 (a) Any person whose property or person is injured by  
2 reason of a violation of any provision of this article may  
3 sue therefor in circuit court and may be entitled to  
4 recover for each violation:

5 (1) Compensatory damages;

6 (2) Punitive damages; and

7 (3) Such other relief, including injunctive relief, as  
8 the court may deem appropriate.

9 Without limiting the generality of the term, "dam-  
10 ages" shall include loss of profits.

11 (b) At the request of any party to an action brought  
12 pursuant to this section, the court may, in its discretion,  
13 conduct all legal proceedings in such a manner as to  
14 protect the secrecy and security of the computer  
15 network, computer data, computer program or compu-  
16 ter software involved in order to prevent any possible  
17 recurrence of the same or a similar act by another  
18 person or to protect any trade secret or confidential  
19 information of any person. For the purposes of this  
20 section "trade secret" means the whole or any portion  
21 or phase of any scientific or technological information,  
22 design, process, procedure or formula or improvement  
23 which is secret and of value. A trade secret shall be  
24 presumed to be secret when the owner thereof takes  
25 measures to prevent it from becoming available to  
26 persons other than those authorized by the owner to  
27 have access thereto for a limited purpose.

28 (c) The provisions of this section shall not be  
29 construed to limit any person's right to pursue any  
30 additional civil remedy otherwise allowed by law.

31 (d) A civil action under this section must be com-  
32 menced before the earlier of: (1) five years after the last  
33 act in the course of conduct constituting a violation of  
34 this article; or (2) two years after the plaintiff discovers  
35 or reasonably should have discovered the last act in the  
36 course of conduct constituting a violation of this article.

**§61-3C-17. Defenses to criminal prosecution.**

1 (a) In any criminal prosecution under this article, it  
2 shall be a defense that:

3 (1) The defendant had reasonable grounds to believe  
4 that he had authority to access or could not have  
5 reasonably known he did not have authority to access the  
6 computer, computer network, computer data, computer  
7 program or computer software in question; or,

8 (2) The defendant had reasonable grounds to believe  
9 that he had the right to alter or destroy the computer  
10 data, computer software or computer program in  
11 question; or,

12 (3) The defendant had reasonable grounds to believe  
13 that he had the right to copy, reproduce, duplicate or  
14 disclose the computer data, computer program, compu-  
15 ter security system information or computer software in  
16 question.

17 (b) Nothing in this section shall be construed to limit  
18 any defense available to a person charged with a  
19 violation of this article.

**§61-3C-18. Venue.**

1 For the purpose of criminal and civil venue under this  
2 article, any violation of this article shall be considered  
3 to have been committed:

4 (1) In any county in which any act was performed in  
5 furtherance of any course of conduct which violates this  
6 article;

7 (2) In the county of the principal place of business in  
8 this state of the aggrieved owner of the computer,  
9 computer data, computer program, computer software  
10 or computer network, or any part thereof;

11 (3) In any county in which any violator had control or  
12 possession of any proceeds of the violation or any books,  
13 records, documentation, property, financial instrument,  
14 computer data, computer software, computer program,  
15 or other material or objects which were used in  
16 furtherance of or obtained as a result of the violation;



17 (4) In any county from which, to which, or through  
18 which any access to a computer or computer network  
19 was made, whether by wires, electromagnetic waves,  
20 microwaves or any other means of communication; and

21 (5) In the county in which the aggrieved owner or the  
22 defendant resides or either of them maintains a place  
23 of business.

**§61-3C-19. Prosecution under other criminal statutes not prohibited.**

1 Criminal prosecution pursuant to this article shall not  
2 prevent prosecution pursuant to any other provision of  
3 law.

**§61-3C-20. Personal jurisdiction.**

1 Any person who violates any provision of this article  
2 and, in doing so, accesses, permits access to, causes  
3 access to or attempts to access a computer, computer  
4 network, computer data, computer resources, computer  
5 software or computer program which is located, in  
6 whole or in part, within this state, or passes through this  
7 state in transit, shall be subject to criminal prosecution  
8 and punishment in this state and to the civil jurisdiction  
9 of the courts of this state.

**§61-3C-21. Severability.**

1 If any provision of this article or the application  
2 thereof to any person or circumstance is held invalid,  
3 such invalidity shall not affect any other provisions or  
4 applications of this article which can be given effect  
5 without the invalid provision or application, and to that  
6 end the provisions of this article are declared to be  
7 severable.

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## CHAPTER 48

(S. B. 624—Originating in the Committee on the Judiciary)

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[Passed April 8, 1989: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article seven, chapter sixty-

one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deadly weapons generally, defining certain terms; carrying deadly weapon without license or other authorization, penalties; license to carry deadly weapons, how obtained; revocation of license; exceptions as to prohibitions against carrying concealed deadly weapons; persons prohibited from possession of deadly weapons, penalties; possession of deadly weapons by minors, minor may be adjudged delinquent; possession of machine guns or automatic weapons, penalties; display of deadly weapons for sale or hire, sale to prohibited persons, penalties; brandishing or exposing deadly weapons, threatening or causing breach of the peace, penalties; exposing or brandishing firearm or deadly weapon on premises of school or court of law, penalties; negligent shooting, wounding or killing of human being or livestock while hunting, penalties; shooting across road or near building or crowd, penalties; right of certain persons to limit possession of firearms on premises; refusing to temporarily relinquish firearm or deadly weapon or to leave premises, penalties; and prohibition on possessing or carrying firearm or other deadly weapon on school premises.

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

That article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

#### ARTICLE 7. DANGEROUS WEAPONS.

- §61-7-1. Legislative findings.
- §61-7-2. Definitions.
- §61-7-3. Carrying deadly weapon without license or other authorization; penalties.
- §61-7-4. License to carry deadly weapons; how obtained.
- §61-7-5. Revocation of license.
- §61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.
- §61-7-7. Persons prohibited from possession of deadly weapons.
- §61-7-8. Possession of deadly weapons by minors; prohibition.
- §61-7-9. Possession of machine guns, penalties.
- §61-7-10. Display of deadly weapons for sale or hire; sale to prohibited persons; penalties.

§61-7-11. Brandishing deadly weapons; threatening or causing breach of the peace; brandishing deadly weapons on premises of educational facility or court; penalties.

§61-7-12. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.

§61-7-13. Shooting across road or near building or crowd; penalty.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

#### §61-7-1. Legislative findings.

1 The Legislature finds that the overwhelming support  
2 of the citizens of West Virginia for article three, section  
3 twenty-two of the constitution of this state, commonly  
4 known as the "Right to Keep and Bear Arms Amend-  
5 ment", combined with the obligation of the state to  
6 reasonably regulate the right of persons to keep and  
7 bear arms for self-defense requires the reenactment of  
8 this article.

#### §61-7-2. Definitions.

1 As used in this article, unless the context otherwise  
2 requires:

3 (1) "Blackjack" means a short bludgeon consisting, at  
4 the striking end, of an encased piece of lead or some  
5 other heavy substance and, at the handle end, a strap  
6 or springy shaft which increases the force of impact  
7 when a person or object is struck. The term "blackjack"  
8 shall include, but not be limited to, a billy, billy club,  
9 sand club, sandbag or slapjack.

10 (2) "Gravity knife" means any knife that has a blade  
11 released from the handle by the force of gravity or the  
12 application of centrifugal force, and when so released is  
13 locked in place by means of a button, spring, lever, or  
14 other locking or catching device.

15 (3) "Knife" means an instrument, intended to be used  
16 or readily adaptable to be used as a weapon, consisting  
17 of a sharp-edged or sharp-pointed blade, usually made  
18 of steel, attached to a handle, which is capable of  
19 inflicting cutting, stabbing or tearing wounds. The term  
20 "knife" shall include, but not be limited to, any dagger,  
21 dirk, poniard or stiletto with a blade over three and one-  
22 half inches in length, any switchblade knife or gravity  
23 knife, and any other instrument capable of inflicting  
24 cutting, stabbing, or tearing wounds. A pocket knife

25 with a blade three and one-half inches or less in length,  
26 a hunting or fishing knife carried for hunting, fishing,  
27 sports or other recreational uses, or a knife designed for  
28 use as a tool or household implement shall not be  
29 included within the term "knife" as defined herein,  
30 unless such knife is knowingly used or intended to be  
31 used to produce serious bodily injury or death.

32 (4) "Switchblade knife" means any knife having a  
33 spring-operated blade which opens automatically upon  
34 pressure being applied to a button, catch or other  
35 releasing device in its handle.

36 (5) "Nunchuka" means a flailing instrument consist-  
37 ing of two or more rigid parts, connected by a chain,  
38 cable, rope or other nonrigid, flexible or springy  
39 material, constructed in such a manner as to allow the  
40 rigid parts to swing freely, so that one rigid part may  
41 be used as a handle and the other rigid part may be used  
42 as the striking end.

43 (6) "Metallic or false knuckles" means a set of finger  
44 rings attached to a transverse piece, to be worn over the  
45 front of the hand for use as a weapon, and constructed  
46 in such a manner that, when striking another person  
47 with the fist or closed hand, considerable physical  
48 damage may be inflicted upon the person struck. The  
49 terms "metallic or false knuckles" shall include any such  
50 instrument, without reference to the metal or other  
51 substance or substances from which the metallic or false  
52 knuckles are made.

53 (7) "Pistol" means a short firearm having a chamber  
54 which is integral with the barrel, designed to be aimed  
55 and fired by the use of a single hand.

56 (8) "Revolver" means a short firearm having a  
57 cylinder of several chambers that are brought succes-  
58 sively into line with the barrel to be discharged,  
59 designed to be aimed and fired by the use of a single  
60 hand.

61 (9) "Deadly weapon" means an instrument which is  
62 designed to be used to produce serious bodily injury or  
63 death, or is readily adaptable to such use. The term

64 “deadly weapon” shall include, but not be limited to, the  
65 instruments defined in subdivisions (1) through (8) of  
66 this section, or other deadly weapons of like kind or  
67 character which may be easily concealed on or about the  
68 person.

69 (10) “Concealed” means hidden from ordinary obser-  
70 vation so as to prevent disclosure or recognition. A  
71 deadly weapon is concealed when it is carried on or  
72 about the person in such a manner that another person  
73 in the ordinary course of events would not be placed on  
74 notice that the deadly weapon was being carried.

75 (11) “Firearm” means any weapon which will expel a  
76 projectile by action of an explosion.

77 (12) “Controlled substance” shall have the same  
78 meaning as is ascribed to that term in subsection (d),  
79 section one hundred one, article one, chapter sixty-a of  
80 this code.

81 (13) “Drug” shall have the same meaning as is  
82 ascribed to that term in subsection (l), section one  
83 hundred one, article one, chapter sixty-a of this code.

**§61-7-3. Carrying deadly weapon without license or other  
authorization; penalties.**

1 (a) Any person who carries a concealed deadly  
2 weapon, without a state license or other lawful author-  
3 ization established under the provisions of this code,  
4 shall be guilty of a misdemeanor, and, upon conviction  
5 thereof, shall be fined not less than one hundred dollars  
6 nor more than one thousand dollars and may be  
7 imprisoned in the county jail for not more than twelve  
8 months for the first offense; but upon conviction of a  
9 second or subsequent offense, he or she shall be guilty  
10 of a felony, and, upon conviction thereof, shall be  
11 imprisoned in the penitentiary not less than one nor  
12 more than five years and fined not less than one  
13 thousand dollars nor more than five thousand dollars.

14 (b) It shall be the duty of the prosecuting attorney in  
15 all cases to ascertain whether or not the charge made  
16 by the grand jury is a first offense or is a second or  
17 subsequent offense and, if it shall be a second or

18 subsequent offense, it shall be so stated in the indict-  
19 ment returned, and the prosecuting attorney shall  
20 introduce the record evidence before the trial court of  
21 such second or subsequent offense and shall not be  
22 permitted to use discretion in introducing evidence to  
23 prove the same on the trial.

**§61-7-4. License to carry deadly weapons; how obtained.**

1 (a) Any person desiring to obtain a state license to  
2 carry a concealed deadly weapon shall apply to the  
3 circuit court of his or her county for such license, and  
4 shall pay to the clerk of the circuit court, at the time  
5 of application, a filing fee of twenty dollars. The  
6 applicant shall file with the clerk of the circuit court an  
7 application in writing, duly verified, which sets forth  
8 the following:

9 (1) That the applicant is a citizen of the United States  
10 of America or lawfully resides in the United States of  
11 America;

12 (2) That, on the date the application is made, the  
13 applicant is a bona fide resident of this state and of the  
14 county in which the application is made;

15 (3) That the applicant is eighteen years of age or  
16 older;

17 (4) That the applicant is not addicted to alcohol, a  
18 controlled substance or a drug, and is not an unlawful  
19 user thereof;

20 (5) That the applicant has not been convicted of a  
21 felony or of an act of violence involving the misuse of  
22 such deadly weapon;

23 (6) That the applicant desires to carry such deadly  
24 weapon for the defense of self, family, home or state, or  
25 other lawful purpose;

26 (7) That the applicant is physically and mentally  
27 competent to carry such weapon;

28 (8) That, in the case of a person applying for a license  
29 to carry a concealed pistol or revolver, the applicant has  
30 qualified under minimum requirements for handling

31 and firing such firearms. These minimum requirements  
32 are those promulgated by the department of natural  
33 resources and attained under the auspices of the  
34 department of natural resources: *Provided*, That the  
35 court shall waive this requirement in the case of a  
36 renewal applicant who has previously qualified: *Pro-*  
37 *vided, however*, That the following may be substituted  
38 for those minimum requirements promulgated by the  
39 department of natural resources:

40 (A) Successful completion of any official national rifle  
41 association firearms safety or training course;

42 (B) Successful completion of any firearms safety or  
43 training course or class available to the general public  
44 offered by an official law-enforcement organization,  
45 community college, junior college, college, or private or  
46 public institution or organization or firearms training  
47 school, utilizing instructors currently certified by the  
48 national rifle association;

49 (C) Successful completion of any firearms training or  
50 safety course or class conducted by a firearms instructor  
51 certified as such by the state or by the national rifle  
52 association.

53 A photocopy of a certificate of completion of any of  
54 the courses or classes or an affidavit from the instructor,  
55 school, club, organization, or group that conducted or  
56 taught said course or class attesting to the successful  
57 completion of the course or class by the applicant or a  
58 copy of any document which shows successful comple-  
59 tion of the course or class, shall constitute evidence of  
60 qualification under this section.

61 (b) The court shall issue or deny such license within  
62 thirty days after the application is filed with the circuit  
63 clerk. The court shall, if necessary, hear evidence upon  
64 all matters stated in such application and upon any  
65 other matter related to the eligibility of the applicant  
66 under subsection (a) of this section. If from such  
67 application or the proof it appears that the purpose for  
68 such person to carry such weapon is defense of self,  
69 family, home or state, or other lawful purpose, and all  
70 other conditions in subsection (a) are complied with, the

71 court, or the judge thereof in vacation, shall grant such  
72 license.

73 (c) In the event an application is denied, the specific  
74 reasons for the denial shall be stated in the order of the  
75 court denying the application. Upon denial of an  
76 application and at the request of the applicant made  
77 within ten days of such denial, the court shall schedule  
78 the matter for a hearing. The applicant may be  
79 represented by counsel, but in no case shall the court  
80 be required to appoint counsel for an applicant. The  
81 final order of the court shall include the court's findings  
82 of fact and conclusions of law.

83 (d) If an application is approved, the court shall  
84 require in its order granting the license that before any  
85 license shall be issued or become effective, the applicant  
86 shall pay to the sheriff a license fee in the amount of  
87 fifty dollars. Any such license shall be valid for five  
88 years, unless sooner revoked.

89 (e) All license fees collected hereunder shall be paid  
90 by the sheriff and accounted for to the auditor as other  
91 license taxes are collected and paid, and the state tax  
92 commissioner shall prepare all suitable forms for  
93 licenses and certificates showing that such license has  
94 been granted and shall do any other act required to be  
95 done to protect the state and see to the enforcement of  
96 this section.

97 (f) The clerk of the circuit court shall, immediately  
98 after the license is granted as aforesaid, furnish the  
99 superintendent of the department of public safety a  
100 certified copy of the order of the court granting such  
101 license, for which service the clerk shall be paid a fee  
102 of two dollars which shall be taxed as costs in the  
103 proceeding. It shall be the duty of the clerk of each  
104 circuit court to furnish to the superintendent of the  
105 department of public safety, at any time so requested,  
106 a certified list of all such licenses issued in the county.

107 (g) No person who is engaged in the receipt, review,  
108 or in the issuance of such license shall incur any civil  
109 liability as the result of the lawful performance of his  
110 or her duties under this article.



**§61-7-5. Revocation of license.**

1 A license to carry a deadly weapon shall be deemed  
2 revoked at such time as the person licensed becomes  
3 unable to meet the criteria for initial licensure set forth  
4 in section four of this article. Any person licensed under  
5 the provisions of this article shall immediately sur-  
6 render his or her license to the circuit court upon  
7 becoming ineligible for continued licensure.

**§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.**

1 The licensure provisions set forth in this article shall  
2 not apply to:

3 (1) Any person carrying a deadly weapon upon his  
4 own premises; nor shall anything herein prevent a  
5 person from carrying any firearm, unloaded, from the  
6 place of purchase to his or her home, residence or place  
7 of business or to a place of repair and back to his or  
8 her home, residence or place of business, nor shall  
9 anything herein prohibit a person from possessing a  
10 firearm while hunting in a lawful manner or while  
11 traveling from his or her home, residence or place of  
12 business to a hunting site, and returning to his or her  
13 home, residence or place of business;

14 (2) Any person who is a member of a properly  
15 organized target-shooting club authorized by law to  
16 obtain firearms by purchase or requisition from this  
17 state, or from the United States for the purpose of target  
18 practice, from carrying any pistol, as defined in this  
19 article, unloaded, from his home, residence or place of  
20 business to a place of target practice, and from any such  
21 place of target practice back to his home, residence or  
22 place of business, for using any such weapon at such  
23 place of target practice in training and improving his  
24 skill in the use of such weapons;

25 (3) Any law-enforcement officer or law-enforcement  
26 official as such are defined in section one, article twenty-  
27 nine, chapter thirty of this code;

28 (4) Any employee of the West Virginia department of  
29 corrections duly appointed pursuant to the provisions of

30 section five, article five, chapter twenty-eight of this  
31 code while such employee is on duty;

32 (5) Any member of the armed forces of the United  
33 States or the militia of this state while such member is  
34 on duty;

35 (6) Any circuit judge, prosecuting attorney, assistant  
36 prosecuting attorney or a duly appointed investigator  
37 employed by a prosecuting attorney.

**§61-7-7. Persons prohibited from possession of deadly  
weapons.**

1 Notwithstanding any provision of this code to the  
2 contrary, no person who: (1) Has been convicted of a  
3 felony in this state or in any other jurisdiction; (2) has  
4 been discharged under less than honorable conditions  
5 from the armed forces of the United States; (3) has been  
6 adjudicated as a mental incompetent or has been  
7 committed involuntarily to a mental institution; (4) is an  
8 alien illegally or unlawfully in the United States; or (5)  
9 is addicted to alcohol, a controlled substance or a drug,  
10 or is an unlawful user thereof shall have in his or her  
11 possession any firearm or other deadly weapon:  
12 *Provided*, That any person prohibited from possessing a  
13 firearm or other deadly weapon by the provisions of this  
14 section may petition the circuit court of the county in  
15 which he or she resides and if the court finds by clear  
16 and convincing evidence that such person is competent  
17 and capable of exercising the responsibility concomitant  
18 with the possession of a firearm or other deadly weapon  
19 the court may enter an order allowing such person to  
20 possess such weapon if such would not violate any  
21 federal statute.

22 Any person who violates the provisions of this section  
23 shall be guilty of a misdemeanor, and, upon conviction  
24 thereof, shall be fined not less than one hundred dollars  
25 nor more than one thousand dollars or confined in the  
26 county jail for not less than ninety days nor more than  
27 one year, or both.

**§61-7-8. Possession of deadly weapons by minors;  
prohibitions.**

1 Notwithstanding any other provision of this article to

2 the contrary, a person under the age of eighteen years  
3 who is not married or otherwise emancipated shall not  
4 possess or carry concealed or openly any deadly weapon:  
5 *Provided*, That a minor may possess a firearm upon  
6 premises owned by said minor or his family or on the  
7 premises of another with the permission of his or her  
8 parent or guardian and in the case of property other  
9 than his or her own or that of his family, with the  
10 permission of the owner or lessee of such property:  
11 *Provided, however*, That nothing in this section shall  
12 prohibit a minor from possessing a firearm while  
13 hunting in a lawful manner or while traveling from a  
14 place where he or she may lawfully possess a deadly  
15 weapon, to a hunting site, and returning to a place  
16 where he or she may lawfully possess such weapon.

17 A violation of this section by a person under the age  
18 of eighteen years shall subject the child to the jurisdic-  
19 tion of the circuit court under the provisions of article  
20 five, chapter forty-nine of this code, and such minor may  
21 be proceeded against in the same manner as if he or she  
22 had committed an act which if committed by an adult  
23 would be a crime, and may be adjudicated delinquent.

#### **§61-7-9. Possession of machine guns; penalties.**

1 It shall be unlawful for any person to carry, transport,  
2 or have in his possession, any machine gun, submachine  
3 gun, or any other fully automatic weapon unless he or  
4 she has fully complied with applicable federal statutes  
5 and all applicable rules and regulations of the secretary  
6 of the treasury of the United States relating to such  
7 firearms.

8 Any person who violates the provision of this section  
9 shall be guilty of a misdemeanor, and, upon conviction  
10 thereof, shall be fined not less than one thousand dollars  
11 nor more than five thousand dollars, or shall be confined  
12 in the county jail for not less than ninety days, nor more  
13 than one year, or both.

#### **§61-7-10. Display of deadly weapons for sale or hire; sale to prohibited persons; penalties.**

1 (a) It shall be unlawful for any person to publicly

2 display and offer for rent or sale, to passersby on any  
3 street, road or alley, any deadly weapon, machine gun,  
4 submachine gun or other fully automatic weapon, any  
5 rifle, shotgun or ammunition for same.

6 (b) It shall be unlawful for any person to knowingly  
7 sell, rent, give or lend any of the arms mentioned in this  
8 article to a person prohibited from possessing same by  
9 any provision of this article.

10 (c) Any person, partnership, corporation or firm  
11 violating the provisions of this section shall be guilty of  
12 a misdemeanor, and, upon conviction thereof, shall be  
13 fined not less than five hundred dollars nor more than  
14 five thousand dollars or shall be confined in the county  
15 jail for not more than one year, or both.

**§61-7-11. Brandishing deadly weapons; threatening or  
causing breach of the peace; brandishing  
deadly weapons on premises of educational  
facility or court; penalties.**

1 (a) It shall be unlawful for any person armed with a  
2 firearm or other deadly weapon, whether licensed to  
3 carry the same or not, to carry, brandish, or use such  
4 weapon in a way or manner to cause, or threaten, a  
5 breach of the peace. Any person violating this subsection  
6 shall be guilty of a misdemeanor, and, upon conviction  
7 thereof, shall be fined not less than fifty nor more than  
8 one thousand dollars, or shall be confined in the county  
9 jail not less than ninety days nor more than one year,  
10 or both.

11 (b) It shall be unlawful for any person armed with a  
12 firearm or deadly weapon, except for law-enforcement  
13 officers on duty, to expose, brandish, unholster or hold  
14 such firearm in his or her hand or expose, brandish or  
15 hold such deadly weapon in his or her hand (1) on the  
16 premises of any primary or secondary educational  
17 facility in this state, except for valid educational  
18 purposes by faculty or by individuals invited by faculty;  
19 or (2) on any premises housing a court of law. Any  
20 person violating this subsection shall be guilty of a  
21 misdemeanor, and, upon conviction thereof, shall be  
22 fined not less than two hundred dollars nor more than

23 one thousand dollars, or confined in the county jail not  
24 less than six months nor more than one year, or both.

**§61-7-12. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.**

1 It shall be unlawful for any person, while engaged in  
2 hunting or pursuing game animals, game birds or game  
3 fowl, carelessly or negligently to shoot, wound or kill any  
4 human being, or any livestock, or destroy or injure any  
5 other chattels or property, and any person violating this  
6 section shall be guilty of a misdemeanor, and, upon  
7 conviction thereof, shall be fined not less than one  
8 thousand dollars nor more than ten thousand dollars, or  
9 shall be confined in the county jail for a period not  
10 exceeding one year, or both.

**§61-7-13. Shooting across road or near building or crowd; penalty.**

1 (a) It shall be unlawful for any person to shoot or  
2 discharge any firearm across or in any public road in  
3 this state, at any time, or within four hundred feet of  
4 any schoolhouse or church, or within five hundred feet  
5 of any dwelling house by any person other than the  
6 owner and his or her family or guests, or on or near any  
7 park or other place where persons gather for purposes  
8 of pleasure, and any person violating this section shall  
9 be guilty of a misdemeanor, and, upon conviction  
10 thereof, shall be fined not less than one hundred dollars  
11 nor more than five hundred dollars, or shall be impris-  
12 soned in the county jail not more than one hundred days.

13 (b) Any person operating a gun repair shop, licensed  
14 to do business in the state of West Virginia and duly  
15 licensed under applicable federal statutes, is exempt  
16 from the prohibition established by this section and  
17 section fifty-eight, article two, chapter twenty of this  
18 code for the purpose of test-firing firearms.

**§61-7-14. Right of certain persons to limit possession of firearms on premises.**

1 Notwithstanding the provisions of this article, any  
2 owner, lessee or other person charged with the care,

3 custody and control of real property may prohibit the  
4 carrying openly or concealed of any firearm or deadly  
5 weapon on property under his or her domain: *Provided,*  
6 That for purposes of this section "person" means an  
7 individual or any entity which may acquire title to real  
8 property.

9 Any person carrying or possessing a firearm or other  
10 deadly weapon on the property of another who refuses  
11 to temporarily relinquish possession of such firearm or  
12 other deadly weapon, upon being requested to do so, or  
13 to leave such premises, while in possession of such  
14 firearm or other deadly weapon, shall be guilty of a  
15 misdemeanor, and, upon conviction thereof, shall be  
16 fined not more than one thousand dollars or confined in  
17 the county jail not more than six months, or both:  
18 *Provided,* That the provisions of this section shall not  
19 apply to those persons set forth in subsections (3)  
20 through (6), section six of this code while such persons  
21 are acting in an official capacity: *Provided, however,*  
22 That under no circumstances may any person possess or  
23 carry or cause the possession or carrying of any firearm  
24 or other deadly weapon on the premises of any primary  
25 or secondary educational facility in this state unless such  
26 person is a law-enforcement officer or he or she has the  
27 express written permission of the county school super-  
28 intendent.

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## CHAPTER 49

(Com. Sub. for H. B. 2010—By Mr. Speaker, Mr. Chambers, and Delegate Hatcher)

[Passed March 2, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-a, article one-c, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the court to make conditions of bond concerning contact with the victim as necessary to protect the victim.

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

That section seventeen-a, article one-c, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

## ARTICLE 1C. BAIL.

**§62-1C-17a. Bail in situations of alleged child abuse and alleged sexual offenses.**

1 When the offense charged is an assault or other  
2 offense against a child who is defined in chapter forty-  
3 nine of this code, it may be a condition of bond that the  
4 defendant shall not live in the same residence as the  
5 victim of the alleged offense, and the court may make  
6 such other conditions of bond with respect to contact  
7 with the victim as it deems necessary under the  
8 circumstances to protect the child.

9 In cases where the charge is a sexual offense, as  
10 defined in chapter sixty-one of this code, against any  
11 person, the court, upon a showing of cause, may make  
12 such conditions of bond on the defendant or on any  
13 witness bond issued under section fifteen of this article  
14 as it deems necessary with respect to contact with the  
15 victim.

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**CHAPTER 50**

(Com. Sub. for H. B. 2036—By Delegates Farley and Murensky)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to criminal penalties for failing to return to confinement in jails while on release for work or other purposes.

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

That article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four, to read as follows:

**ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.****§62-11A-4. Violations; penalties.**

1 (a) Any person lawfully confined in jail on conviction

2 of one or more felonies, or on conviction of one or more  
3 felonies and one or more misdemeanors, who has been  
4 granted release for work or other purposes under section  
5 one-a of this article, and who fails to return to jail at  
6 the times designated in the release order with the intent  
7 to evade lawful detention, shall be guilty of an additional  
8 felony, and, upon conviction, may be confined in the  
9 penitentiary for not less than one nor more than five  
10 years.

11 (b) Any person lawfully confined in jail on conviction  
12 of one or more misdemeanors, who has been granted  
13 release for work or other purposes under section one-a  
14 of this article, and who fails to return to jail at the times  
15 designated in the release order with the intent to evade  
16 lawful detention, shall be guilty of a misdemeanor, and,  
17 upon conviction, may be confined in jail for up to one  
18 year.

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## CHAPTER 51

(S. B. 564—By Senator Lucht)

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[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three; to amend and reenact section five, article ten, chapter seven of said code; and to amend and reenact section nineteen-a, article eight, chapter sixty-one of said code, all relating to removal of dog or cat from owner charged with cruelty; relating to the sale of impounded dogs or cats only for adoption as pets; sale or transfer of dogs or cats prohibited to any person or entity for use in education or scientific activities; humane disposition of dogs and cats; and effective date.

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

That article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated



section twenty-three; that section five, article ten, chapter seven of said code be amended and reenacted; and that section nineteen-a, article eight, chapter sixty-one of said code be amended and reenacted, all to read as follows:

### Chapter

- 7. County Commissions and Officers.
- 19. Agriculture.
- 61. Crimes and Their Punishment.

## CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

### ARTICLE 10. HUMANE OFFICERS.

#### §7-10-5. Destruction of animals.

1 Any such officer may lawfully destroy or cause to be  
2 destroyed any animal in his charge, when in the  
3 judgment of such humane officer, and by the written  
4 certificate of a regularly licensed veterinary surgeon,  
5 such animal appears to be injured, disabled, diseased  
6 past recovery, or the animal is unclaimed.

## CHAPTER 19. AGRICULTURE.

### ARTICLE 20. DOGS AND CATS.

#### §19-20-23. Prohibition of the use of impounded dogs and cats.

1 On and after the first day of September, one thousand  
2 nine hundred eighty-nine, any dog or cat impounded  
3 under the provisions of this article may not be sold,  
4 given, transferred or otherwise made available directly  
5 or indirectly to any person, institution, corporation or  
6 other entity for use in educational or scientific research  
7 or related activities. Disposition of impounded dogs or  
8 cats may only be by adoption as pets or humanely  
9 destroyed. Any person who violates the provisions of this  
10 section is guilty of a misdemeanor and, upon conviction  
11 thereof, shall be fined not less than four hundred fifty  
12 dollars nor more than two thousand dollars.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

**§61-8-19a. Cruelty to dogs and cats prohibited; putting such animals in fights against each other prohibited; penalties.**

1 If any person shall cruelly, or needlessly beat, torture,  
2 torment, mutilate, kill or willfully deprive necessary  
3 sustenance, to any dog or cat, irrespective of whether  
4 any such dog or cat be his or her own or that of another  
5 person, or if any such person shall impound or confine  
6 any such dog or cat in any place unprotected from the  
7 elements or fail to supply the same with a sufficient  
8 quantity of food and water, or shall abandon to die any  
9 maimed, sick, or diseased dog or cat or shall be engaged  
10 in or employed at dogfighting, or putting one dog or cat  
11 to fight against another dog or cat or any similar cruelty  
12 to any dog or cat, or shall receive money for the  
13 admission of any person, or shall use, train or possess  
14 a dog or cat for the purpose of seizing, detaining or  
15 maltreating any other dog or cat, he or she shall be  
16 guilty of a misdemeanor, and, upon conviction, shall be  
17 fined not less than one hundred nor more than one  
18 thousand dollars, and in addition thereto, in the  
19 discretion of the court or magistrate, may be imprisoned  
20 in the county jail not exceeding thirty days, and the  
21 county humane officer may remove the dog or cat  
22 involved and place said animal in the county pound, and  
23 said dog or cat shall not be returned to owner (or  
24 perpetrator of act of cruelty) but shall be put up for  
25 adoption to desirable home or given over into the care  
26 of a humane society, or upon the recommendation of a  
27 licensed veterinarian shall be humanely destroyed.

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## CHAPTER 52

(H. B. 2791—By Delegates Ashley and Rowe)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to restoring a former name of a party upon divorce.

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

That section twenty-three, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.**

**§48-2-23. Former name of party; restoration.**

- 1 The court upon granting an annulment or divorce,
- 2 shall, if requested to do so by either party, allow such
- 3 party to resume the name used prior to his or her first
- 4 marriage. The court shall, if requested to do so by either
- 5 party, allow such party to resume the name of a former
- 6 spouse if such party has any living child or children by
- 7 marriage to such former spouse.

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## CHAPTER 53

(Com. Sub. for H. B. 2103—By Delegate Hatfield)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the domestic violence act; licensure and funding of domestic violence shelters; definitions; establishing a family protection services board; duties; closure of shelters; provisional license waivers; establishing additional fee for filing of divorce actions to be collected by circuit clerk; funding application requirements; award provisions; referral to shelters; licenses; waiver; rules; and termination of board.

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

That article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2C. DOMESTIC VIOLENCE ACT.**

- §48-2C-1. Title.
- §48-2C-2. Definitions.
- §48-2C-3. Family protection services board.
- §48-2C-4. Duties of board.
- §48-2C-5. Closure of shelters; provisional licensee waivers.
- §48-2C-6. Additional fee to be collected for divorce filing.
- §48-2C-7. Funding application requirements.
- §48-2C-8. Award provisions.
- §48-2C-9. Annual reports of shelter and programs.
- §48-2C-10. Referral to shelters.
- §48-2C-11. Licenses.
- §48-2C-12. Waiver.
- §48-2C-13. Rules and regulations.
- §48-2C-14. Termination of board.

#### §48-2C-1. Title.

- 1 This article shall be known as the Domestic Violence
- 2 Act of 1989.

#### §48-2C-2. Definitions.

- 1 As used in this article, unless the context clearly
- 2 requires otherwise:
  - 3 (a) "Board" means the family protection services
  - 4 board created pursuant to section three of this article;
  - 5 (b) "Department" means the department of human
  - 6 services or any successor agency however so named;
  - 7 (c) "Shelter" or "Family Protection Shelter" means a
  - 8 family shelter created for the purpose of receiving, on
  - 9 a temporary basis, persons who are victims of domestic
  - 10 violence, abuse or rape as well as the children of such
  - 11 victims;
  - 12 (d) "Commissioner" shall mean the commissioner of
  - 13 the department of human services; and
  - 14 (e) "Family protection program" or "program" means
  - 15 a program offered by a locally controlled organization
  - 16 primarily for the purpose of providing services to
  - 17 victims of domestic violence or abuse and their children.

#### §48-2C-3. Family protection services board.

- 1 (a) There is hereby created a family protection
- 2 services board. The board shall consist of five persons.
- 3 The governor, with the advice and consent of the Senate,

4 shall appoint three members of the board. One such  
5 member shall be a director of a shelter. One member  
6 shall be a member of a major trade association which  
7 represents shelters across the state. The final gubernatorial  
8 appointee shall be a member of the public. The  
9 other two members shall be the commissioner of the  
10 department of human services, or his or her designee,  
11 and the chairman of the governor's committee on crime,  
12 delinquency and correction.

13 (b) The terms of the three members appointed by the  
14 governor shall be staggered terms of three years. In the  
15 case of the initial appointments, the director of the  
16 shelter shall serve a one-year term and the representa-  
17 tive of the trade association shall serve a two-year term.

18 (c) In the event that a member of the board shall cease  
19 to be qualified for appointment, then such appointment  
20 shall terminate.

#### §48-2C-4. Duties of board.

1 It is the duty of the board to:

2 (a) Regulate its procedural practice;

3 (b) Receive and consider applications for the develop-  
4 ment of shelters;

5 (c) Facilitate the formation and operation of shelters;

6 (d) Promulgate rules and regulations to implement  
7 the provisions of this article and any applicable federal  
8 guidelines;

9 (e) Advise the commissioner on matters of concern  
10 relative to his or her responsibilities under this article;

11 (f) Study issues pertinent to family protection shel-  
12 ters, programs for domestic violence victims, and report  
13 the results to the governor and the Legislature;

14 (g) Conduct hearings as necessary under this article;

15 (h) Delegate to the commissioner such powers and  
16 duties of the board as the board may deem appropriate  
17 to delegate, including, but not limited to, the authority  
18 to approve, disapprove, revoke or suspend licenses;

- 19 (i) Deliver funds to shelters within forty-five days of  
20 the approval of a proposal for such shelters;
- 21 (j) Establish a system of peer review which will  
22 ensure the safety, well being and health of the clients  
23 of all shelters operating in the state;
- 24 (k) Evaluate annually each funded shelter to deter-  
25 mine its compliance with the goals and objectives set out  
26 in its original application for funding or subsequent  
27 revisions;
- 28 (l) To award to shelters, for each fiscal year, ninety-  
29 five percent of the total funds collected and paid over  
30 during the fiscal year to the special revenue account  
31 established pursuant to section twenty-four, article one  
32 of this chapter and to expend, during said period a sum  
33 not in excess of five percent of said funds for cost of  
34 administering provisions of this article;
- 35 (m) Establish and enforce system of standards for  
36 annual licensure for all shelters and programs in the  
37 state;
- 38 (n) Enforce standards; and
- 39 (o) Review its rules and regulations biannually.

**§48-2C-5. Closure of shelters; provisional licensee  
waivers.**

- 1 (a) The board may close any shelter which violates the  
2 standards established under this article and which  
3 threatens the health, well being and safety of its clients:  
4 *Provided*, That the board shall establish a plan to place  
5 such clients in other shelters and to develop a method  
6 to continue serving the areas served by the shelter to be  
7 closed.
- 8 (b) The board may place a shelter, which violates  
9 standards established under this article and which  
10 threatens the health, well being and safety of its clients,  
11 under receivership and operate said shelter. The board  
12 shall have access and may use all assets of the shelter.
- 13 (c) In order to close or place a shelter in receivership,  
14 the board shall hold a public hearing within the confines

15 of municipality or county in which the shelter is located.  
16 The board, by the first day of September, one thousand  
17 nine hundred eighty-nine, shall establish rules and  
18 regulations to govern the conduct of such hearings:  
19 *Provided*, That four members of the board must vote in  
20 the affirmative before a shelter is closed or placed in  
21 receivership.

22 (d) If a shelter disagrees with the findings of the  
23 board, the shelter may appeal such ruling to the circuit  
24 court of Kanawha County or the circuit court of the  
25 county where the shelter is located pursuant to the  
26 provisions of section four, article five, chapter twenty-  
27 nine-a of this code.

**§48-2C-6. Additional fee to be collected for divorce filing.**

1 In addition to any fee heretofore established for the  
2 filing of a divorce action, the clerk of the circuit court  
3 shall collect an additional fee of thirty dollars. The fee  
4 shall be deposited in the special revenue fund estab-  
5 lished pursuant to section twenty-four, article one,  
6 chapter forty-eight of this code: *Provided*, That such  
7 additional fee shall not be collected by the clerk from  
8 persons complying with the provisions of section one,  
9 article two, chapter fifty-nine of this code pertaining to  
10 suits filed by poor persons.

**§48-2C-7. Funding application requirements.**

1 (a) A shelter or program may apply to the board for  
2 a grant of funds as provided by this article. The  
3 application shall include, but not be limited to, the  
4 following:

5 (1) Evidence that the organization submitting the  
6 application is incorporated in this state as a nonprofit  
7 corporation.

8 (2) A list of the incorporators of the corporation and  
9 a list of the officers and the board of directors;

10 (3) The proposed budget of the shelter or program for  
11 the following fiscal year;

12 (4) A summary of the services proposed to be offered  
13 in the following fiscal year by the shelter or program;

14 (5) An evaluation of local needs for a shelter or  
15 program;

16 (6) An estimate of the number of people to be served  
17 by the shelter or program during the following fiscal  
18 year; and,

19 (7) Any other information the board may feel is  
20 necessary.

21 (b) In order to qualify for a grant of funds under this  
22 article, each family protection shelter or program shall:

23 (1) Provide or propose to provide a facility which will  
24 serve as temporary shelter to receive, care and provide  
25 services for persons who are victims of domestic violence  
26 or abuse and their children;

27 (2) Be incorporated in this state as a nonprofit  
28 corporation;

29 (3) Have a board of directors which represents a  
30 broad spectrum of the community to be served, includ-  
31 ing at least one person who is or has been a victim of  
32 domestic violence or abuse;

33 (4) Receive at least fifty-five percent of its funds from  
34 sources other than funds distributed under this article.  
35 These sources may be public or private and may include  
36 contributions of goods or services; and

37 (5) Require persons employed by or volunteering  
38 services to the shelter or program to maintain the  
39 confidentiality of any information which may identify  
40 individuals served by it.

41 (c) A family protection shelter or program may not be  
42 funded initially if it is shown that it discriminates in its  
43 services on the basis of race, religion, age, sex, marital  
44 status, national origin or ancestry. If such discrimina-  
45 tion occurs after initial funding, the shelter or program  
46 may not be refunded until the discrimination ceases.

47 (d) A family protection shelter program may not be  
48 refunded if its original application projected the  
49 provision of residential services and such services were  
50 not provided in the first six months following disburse-



51 ment of the original funds under this article: *Provided,*  
52 That upon a subsequent showing that the funds were  
53 used in the manner proposed in the original application,  
54 the shelter or program is not barred from subsequent  
55 funding. A revision of the original application may be  
56 filed with the board.

**§48-2C-8. Award provisions.**

1 Grants made pursuant to this article shall be awarded  
2 on the basis of the following criteria:

3 (a) Demonstration of local need for proposed services;

4 (b) Merit of project as proposed;

5 (c) Demonstration of local control of the shelter or  
6 program;

7 (d) Administrative design and efficiency of the  
8 project; and

9 (e) The Board shall develop a formula for equal  
10 distribution of fifty percent of any money it awards.

**§48-2C-9. Annual reports of shelter and programs.**

1 A shelter or program receiving funds pursuant to this  
2 article shall file an annual report with the board by the  
3 thirty-first day of each October for the prior fiscal year.  
4 The report shall include statistics on the number of  
5 persons served, the relationship of the victim to the  
6 abuser, services provided to the abuser, the number of  
7 referrals made for medical, psychological, financial,  
8 educational, vocational, child care or legal services and  
9 the results of an independent audit. No information  
10 contained in the report may identify any person served  
11 by the shelter or enable any person to determine the  
12 identity of any such person.

**§48-2C-10. Referral to shelters.**

1 Where shelters are available, any law-enforcement  
2 officer or any public authority investigating an alleged  
3 incident of domestic violence shall advise the victim of  
4 such abuse of the availability of the family protection  
5 shelter to which such person may be admitted.

**§48-2C-11. Licenses.**

1 (a) The board shall establish an application for  
2 licensure for all shelters and programs.

3 (b) Licenses may be renewed on an annual basis with  
4 all such licenses having a term of one year commencing  
5 on the first day of July and terminating on the thirtieth  
6 day of June on the next year.

7 (c) The board shall grant or deny any license within  
8 forty-five days of the receipt of the application.

9 (d) The license granted by the board shall be conspic-  
10 uously displayed by the licensees.

**§48-2C-12. Waiver.**

1 The board may grant a provisional license or grant  
2 a waiver of licensure if the board deems such waiver or  
3 provisional license necessary for the shelter or program.  
4 All such waivers or provisional licenses shall be  
5 reviewed semiannually.

**§48-2C-13. Rules and regulations.**

1 The board shall promulgate rules and regulations to  
2 effectuate the provisions of this article. The rules and  
3 regulations shall not take effect until the first set of  
4 rules and regulations are approved by the Legislature.

**§48-2C-14. Termination of board.**

1 The family protection services board shall be termi-  
2 nated pursuant to the provisions of article ten, chapter  
3 four of this code, on the first day of July, one thousand  
4 nine hundred ninety-two, unless sooner terminated or  
5 unless sooner continued or reestablished pursuant to  
6 that article.

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## CHAPTER 54

(Com. Sub. for S. B. 575—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to repeal article one, chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article sixteen, chapter thirty-one of

said code; and to amend and reenact article fifteen, chapter thirty-one of said code, relating to the West Virginia Economic Development Authority Act; making certain legislative findings as to general economic condition of West Virginia and identifying segments of state economy requiring promotion and development and further identifying financing methods necessary to finance and promote economic and industrial development within state; recognizing that availability of financial assistance through creation of insurance fund will promote economic development of state; further recognizing public interest in establishing state instrumentality with powers to address economic development needs of the state including, but not limited to, furnishing money and credit to approved industrial development agencies and enterprises, promoting establishment of new commercial and industrial projects and retaining existing projects; setting forth and identifying purposes of act including, but not limited to, creation of economic development authority to develop and advance business prosperity and economic welfare of state, to borrow money and issue bonds, notes, commercial paper and other debt instruments, to furnish money and credit or credit enhancement to industrial development agencies and enterprises for the promotion of new commercial and industrial projects and to retain existing projects, to insure the financing of working capital or the refinancing of existing debt of an enterprise, and creation of an insurance fund for credit enhancement purposes, and declaring that all such purposes are public purposes; abolishing West Virginia industry and jobs development corporation and designating economic development authority as its successor; defining certain key terms; establishing composition of authority and setting forth appointment and terms of members thereof and voting by such members; stating general powers of authority, including, but not limited to, the issuance of bonds and notes, borrowing money, financing projects, insuring bonds and notes issued by the authority and others, and insuring loans made to various parties by financial institutions, and to apply for, develop, maintain and

operate foreign trade zones in accordance with applicable federal law; providing for loans to industrial development agencies and enterprises for certain projects; creating, as a credit enhancement vehicle, an insurance fund which may be used, among other purposes, to insure payment or repayment of all or any part of bonds and notes issued by the authority as well as by certain other public bodies, to insure payment or repayment of instruments executed, obtained or delivered in connection with issuance and sale of such bonds and notes, and to insure payment or repayment of other types of debt instruments entered into by an enterprise or a state public body or authority with a financial institution, and enabling authority to apply for, develop, maintain and operate foreign trade zones in accordance with applicable federal law; authorizing authority to issue bonds and notes and providing that such bonds and notes are special obligations of the authority, and specifying form of such bonds and notes; setting forth procedure for approval of projects, issuance of bonds and notes and other matters concerning authority; providing that bonds or notes may be secured by trust agreement and that trustee may be any bank or trust company located within or outside state, and providing for pledge or assignment of revenues; setting forth permitted uses of funds acquired by authority and restrictions thereon; providing for refunding bonds and notes; establishing that bonds and notes issued and other obligations undertaken by authority are not debts of state or any political subdivision thereof; providing that bonds and notes are negotiable instruments and constitute legal investments; exempting authority from payment of taxes or assessments upon any property acquired or used by authority or upon income therefrom; shielding various parties from personal liability with respect to bonds or notes issued by authority; declaring that powers granted under act cumulative; setting forth authority of board of investments; providing for loan and insurance application requirements; providing for confidentiality of certain documentary materials or data made or received by authority; establishing economic development fund and setting

forth uses thereof; authorizing governor to transfer state property to authority; providing for validity of certain pledges, mortgages and other security instruments; providing for collection of money accruing to authority and deposit thereof into state treasury; providing conflicts of interest clause; providing for agreements with federal agencies; requiring annual audits; enabling public corporations to apply for foreign trade zone status in accordance with applicable federal law; providing severability and construction clauses; and declaring that projects shall not be deemed public improvements.

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

That article one, chapter five-c, and article sixteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article fifteen, chapter thirty-one of said code be amended and reenacted, all to read as follows:

**ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT  
AUTHORITY.**

- §31-15-1. Short title.
- §31-15-2. Legislative findings.
- §31-15-3. Purposes of article.
- §31-15-3a. West Virginia Industry and Jobs Development Corporation abolished; establishment of economic development authority as successor to corporation.
- §31-15-4. Definitions.
- §31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by chairman; voting; compensation and expenses.
- §31-15-6. General powers of authority.
- §31-15-7. Loans to industrial development agencies or enterprises for projects.
- §31-15-8. Insurance fund.
- §31-15-9. Bonds and notes issued pursuant to this article.
- §31-15-10. Approval by authority.
- §31-15-11. Trustee for bondholders; contents of trust agreement; pledge or assignment of revenues.
- §31-15-12. Use of funds by authority; restrictions thereon relating to projects.
- §31-15-13. Refunding bonds or notes.
- §31-15-14. Obligations of authority undertaken pursuant to this article not debt of state, county, municipality or any political subdivision.
- §31-15-15. Negotiability of bonds and notes issued pursuant to this article.
- §31-15-16. Bonds and notes issued pursuant to this article; legal investments.
- §31-15-17. Exemption from taxation.

- §31-15-18. Personal liability; persons executing bonds or notes issued pursuant to this article.
- §31-15-19. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds and notes issued pursuant to this article.
- §31-15-20. Authority of the board of investments.
- §31-15-21. Loans and insurance application requirements.
- §31-15-22. Documentary materials concerning trade secrets; commercial or financial information; or confidentiality.
- §31-15-23. Economic development fund.
- §31-15-24. Transfer of state property to the authority.
- §31-15-25. Validity of any pledge, mortgage, deed of trust or security instrument.
- §31-15-26. Money of the authority.
- §31-15-27. Conflict of interest; when contracts void.
- §31-15-28. Agreement with federal agencies not to alter or limit powers of authority.
- §31-15-29. Audits.
- §31-15-30. Projects not to be considered public improvements.
- §31-15-31. Foreign trade zones; authority approval.
- §31-15-32. Severability.
- §31-15-33. Construction.

#### §31-15-1. Short title.

- 1 This article shall be known and may be cited as "The
- 2 West Virginia Economic Development Authority Act."

#### §31-15-2. Legislative findings.

- 1 It is hereby determined and declared as a matter of
- 2 legislative finding: (a) That unemployment exists in
- 3 many areas of the state and may well come about, from
- 4 time to time, in other areas of the state; (b) that in some
- 5 areas of the state, unemployment is a serious problem
- 6 and has been for so long a period of time that, without
- 7 remedial measures, it may become so in other areas of
- 8 the state; (c) that economic insecurity due to unemploy-
- 9 ment is a serious menace to the health, safety, morals
- 10 and general welfare of the people of the entire state; (d)
- 11 that widespread industry unemployment produces
- 12 indigency which falls with crushing force upon all
- 13 unemployed workers and ultimately upon the state in
- 14 the form of welfare and unemployment compensation;
- 15 (e) that the absence of employment and business
- 16 opportunities for youth is a serious threat to the strength
- 17 and permanence of their faith in our American political
- 18 and economic institutions and the philosophy of freedom
- 19 on which those institutions are based; (f) that lack of

20 employment and business opportunities has resulted in  
21 thousands of workers and their families leaving the state  
22 to find such opportunities elsewhere, and that this  
23 exodus has adversely affected the tax base of counties  
24 and municipalities resulting in an impairment of their  
25 financial ability to support education and other local  
26 government services; (g) that security against unemploy-  
27 ment and the spread of indigency and economic stagna-  
28 tion can best be provided by the promotion, attraction,  
29 stimulation, rehabilitation and revitalization of com-  
30 merce, tourism, industry and manufacturing; (h) that  
31 the present and future health, safety, morals, right to  
32 gainful employment and general welfare of the people  
33 of the state require as a public purpose the promotion  
34 and development of new and expanded coal and other  
35 energy production, industrial, commercial, tourist and  
36 manufacturing enterprises within this state; (i) that the  
37 means and measures being authorized for the financing  
38 of projects, including the insuring of loans or other debt  
39 issued for working capital or the refinancing of existing  
40 debt of an enterprise, are, as a matter of public policy,  
41 for the public purposes of the several counties, munic-  
42 ipalities and the state; (j) that the device under which  
43 private community industrial development organiza-  
44 tions in the state acquire or build industrial buildings  
45 or sites and equip the same with funds raised through  
46 popular subscription, loans or otherwise for lease and  
47 sale to new or expanding industries has proven effective  
48 in creating new employment and business opportunities  
49 locally, is in accord with the American tradition of  
50 community initiative and enterprise, and requires and  
51 deserves encouragement and support from the state, as  
52 a means toward alleviation of unemployment and  
53 economic distress; (k) that community industrial  
54 development corporations in the state have invested  
55 substantial funds in successful coal production, indus-  
56 trial projects and are experiencing difficulty in under-  
57 taking additional projects by reason of the partial  
58 inadequacy of their own funds potentially available from  
59 local subscription sources and by reason of limitations  
60 of local financial institutions in providing additional and  
61 sufficiently sizable first deed of trust or mortgage loans

62 or letters of credit and other forms of credit enhance-  
63 ment; (l) that an urgent need exists to stimulate a larger  
64 flow of private investment funds from banks, investment  
65 houses, insurance companies and other financial institu-  
66 tions into projects; (m) that by increasing the number  
67 of projects presenting attractive opportunities for  
68 private investment, a larger portion of the private  
69 capital available in this state for investment can be put  
70 to use for the general economic development of the state;  
71 (n) that the availability of financial assistance through  
72 the creation of an insurance fund will promote the  
73 economic development of the state; and that it is in the  
74 public interest, in order to address the needs aforesaid,  
75 that a state instrumentality be created as a public body  
76 corporate with full powers to accept grants, gifts and  
77 appropriations, to generate revenues, to borrow money  
78 and issue its bonds, notes, commercial paper, other debt  
79 instruments and security interests to the end that funds  
80 obtained thereby may be used to furnish money and  
81 credit to approved industrial development agencies or  
82 enterprises or to promote the establishment of new  
83 projects or to retain existing projects.

**§31-15-3. Purposes of article.**

1 The purposes of this article shall be to provide for the  
2 formation of a public economic development authority  
3 to promote, assist, encourage and, in conjunction with  
4 such banking corporations or institutions, trust compan-  
5 ies, savings banks, building and loan associations,  
6 insurance companies or related corporations, partner-  
7 ships, foundations or other institutions, to develop and  
8 advance the business prosperity and economic welfare  
9 of the state of West Virginia; to encourage and assist in  
10 the location of new business and industry; to stimulate  
11 and assist in the expansion of all kinds of business  
12 activity which will tend to promote the business  
13 development and maintain the economic stability of this  
14 state, provide maximum opportunities for employment,  
15 encourage thrift and improve the standard of living of  
16 the citizens of this state; to cooperate and act in  
17 conjunction with other organizations, public or private,  
18 the objects of which are the promotion and advancement



19 of industrial, commercial, tourist or manufacturing  
20 developments in this state; to borrow moneys and to  
21 issue its bonds, notes, commercial paper, other debt  
22 instruments and security interests as well as creating an  
23 insurance fund for credit enhancement purposes; to  
24 furnish money and credit or credit enhancement to  
25 approved industrial development agencies or enterprises  
26 in this state or for the promotion of new projects or to  
27 retain existing projects or to financially assist projects  
28 by insuring bonds, notes, loans and other instruments,  
29 including, but not limited to, the insuring of financing  
30 of working capital or the refinancing of existing debt  
31 of an enterprise, thereby establishing a source of credit  
32 and credit enhancement not otherwise available there-  
33 for. Such purposes are hereby declared to be public  
34 purposes for which public money may be spent and are  
35 purposes which will promote the health, safety, morals,  
36 right to gainful employment, business opportunities and  
37 general welfare of the inhabitants of the state.

**§31-15-3a. West Virginia industry and jobs development  
corporation abolished; establishment of  
economic development authority as succes-  
sor to corporation.**

1 The authority shall be the corporate successor to the  
2 West Virginia industry and jobs development corpora-  
3 tion and is hereby vested with all right, title and interest  
4 of such corporation in and to all property, rights and  
5 choses in action heretofore owned by or vested in such  
6 corporation, including, but not limited to, its loan  
7 portfolio, and shall assume all debts, liabilities and other  
8 obligations, if any, of such corporation. As of the  
9 effective date of this legislation, such corporation shall  
10 cease to exist and all rights and interests heretofore  
11 vested in such corporation shall be vested in the  
12 authority.

13 The unexpended balance of funds authorized under  
14 section seventeen, article one, chapter five-c of this code  
15 available for use of the West Virginia industry and jobs  
16 development corporation as of the effective date of this  
17 legislation is hereby transferred to the authority.

**§31-15-4. Definitions.**

1 Unless the context clearly indicates otherwise, as used  
2 in this article:

3 (a) "Authority" means the West Virginia economic  
4 development authority.

5 (b) "Board" means the governing body of the  
6 authority.

7 (c) "Board of investments" means the board of  
8 investments established by article six, chapter twelve of  
9 this code.

10 (d) "Bonds" means bonds or other debt instruments of  
11 the authority issued under this article, whether the  
12 interest thereon is taxable or tax-exempt for federal  
13 income tax purposes.

14 (e) "Business plan" means a document detailing the  
15 sales, production and distribution plans of an enterprise,  
16 together with the expenditures necessary to carry out  
17 those plans (including budget and cash flow projections)  
18 on an annual basis, and an employment plan setting  
19 forth steps to be taken by the enterprise to retain jobs  
20 or reduce unemployment in this state.

21 (f) "Cost of establishing a project" means the cost of  
22 acquiring existing facilities, cost of machinery, cost of  
23 equipment and fixtures, cost of construction, including,  
24 without limitation, cost of improvements, repairs and  
25 renovations, cost of all lands, water areas, property  
26 rights and easements, financing charges and interest  
27 prior to and during construction, cost of architectural,  
28 engineering, legal and financial or other consulting  
29 services, plans, specifications and surveys, estimates of  
30 costs and any other expenses necessary or incident to  
31 determining the feasibility or practicability of any  
32 project, together with such other costs and expenses as  
33 may be necessary or incidental to the financing and the  
34 construction or acquisition of the project and the placing  
35 of the same in operation.

36 (g) "County" means any county of this state.

37 (h) "Enterprise" means an entity which is or proposes

38 to be engaged in this state in any business activity for  
39 profit. The entity may be owned, operated, controlled,  
40 or under the management of a person, partnership,  
41 corporation, trust, community-based development  
42 organization or council, local commerce group, employee  
43 stock ownership plan, pension or profit-sharing plan,  
44 trust, a group of participating employees who desire to  
45 own an entity which does not presently exist, or any  
46 similar entity or organization.

47 (i) "Federal agency" means the United States of  
48 America and any department, corporation, agency or  
49 instrumentality created, designated or established by  
50 the United States of America.

51 (j) "Financing plan" means a plan designed to meet  
52 the financing needs of an enterprise as reflected in the  
53 business plan.

54 (k) "Fund" means the economic development fund  
55 provided for in section twenty-three of this article.

56 (l) "Government" means state and federal govern-  
57 ment, and any political subdivision, agency or instru-  
58 mentality thereof, corporate or otherwise.

59 (m) "Industrial development agency" means any  
60 incorporated organization, foundation, association or  
61 agency to whose members or shareholders no profit  
62 inures, which has as its primary function the promotion,  
63 encouragement and development of industrial, commer-  
64 cial, manufacturing and tourist enterprises or projects  
65 in this state.

66 (n) "Insurance fund" means the insurance fund  
67 created by this article.

68 (o) "Loan" means any extension of financing by the  
69 authority to an industrial development agency or an  
70 enterprise, including, but not limited to, a loan, a lease  
71 or an installment sale.

72 (p) "Municipality" means any city or town in this  
73 state.

74 (q) "Notes" means any notes, including commercial  
75 paper, of the authority issued under this article whether

76 the interest thereon is taxable or tax-exempt for federal  
77 income tax purposes.

78 (r) "Project" means a commercial or industrial  
79 undertaking and all of the assets reasonably and  
80 necessarily required therefor, all as determined by the  
81 authority, which determination shall be conclusive, and  
82 shall include, without limiting the generality of the  
83 foregoing, industrial projects and commercial projects  
84 as presently defined in section three, article two-c,  
85 chapter thirteen of this code.

86 (s) "Revenues" means all fees, premiums, charges,  
87 moneys, profits, payments of principal of, or interest on,  
88 loans and other investments, gifts, grants, appropri-  
89 ations, contributions and all other income derived or to  
90 be derived by the authority under this article.

91 (t) "Security interest" means an interest in the loan  
92 portfolio of the authority which interest is secured by  
93 an underlying loan or loans and is evidenced by a note  
94 issued by the authority.

**§31-15-5. West Virginia economic development authority;  
composition; appointment; terms; delegation  
of authority by chairman; voting; compensa-  
tion and expenses.**

1 The West Virginia economic development authority  
2 heretofore created is hereby continued as a body  
3 corporate and politic, constituting a public corporation  
4 and government instrumentality.

5 The authority shall be composed of a board of  
6 members consisting of a chairman, who shall be the  
7 governor, or his designated representative, the tax  
8 commissioner and seven members who shall be ap-  
9 pointed by the governor, by and with the advice and  
10 consent of the Senate, and who shall be broadly  
11 representative of the geographic regions of the state.  
12 The board shall direct the exercise of all the powers  
13 given to the authority in this article. The governor shall  
14 also be the chief executive officer of the authority, and  
15 shall designate the treasurer and the secretary of the  
16 board.

17       Upon the effective date of this legislation, the  
18 governor shall forthwith appoint seven members of the  
19 board for staggered terms. The terms of the board  
20 members first taking office on or after the effective date  
21 of this legislation shall expire as designated by the  
22 governor at the time of the nomination, two at the end  
23 of the first year, two at the end of the second year, two  
24 at the end of the third year, and one at the end of the  
25 fourth year, after the first day of July, one thousand nine  
26 hundred eighty-nine. As these original appointments  
27 expire, each subsequent appointment shall be for a full  
28 four-year term. Any member whose term has expired  
29 shall serve until his successor has been duly appointed  
30 and qualified. Any person appointed to fill a vacancy  
31 shall serve only for the unexpired term. Any member  
32 shall be eligible for reappointment. The term of any  
33 person serving as a member of the board immediately  
34 preceding the effective date of this legislation shall cease  
35 and otherwise expire upon such effective date: *Provided,*  
36 That any such member shall be eligible for  
37 reappointment.

38       The governor may, by written notice filed with the  
39 secretary of the authority, from time to time, delegate  
40 to any subordinate the power to represent him at any  
41 meeting of the authority. In such case, the subordinate  
42 shall have the same power and privileges as the  
43 governor and may vote on any question.

44       Members of the authority shall not be entitled to  
45 compensation for services performed as members, but  
46 shall be entitled to reimbursement for all reasonable  
47 and necessary expenses actually incurred in the perfor-  
48 mance of their duties.

49       A majority of the members shall constitute a quorum  
50 for the purpose of conducting business. Except in the  
51 case of a loan or insurance application or unless the  
52 bylaws require a larger number, action may be taken  
53 by majority vote of the members present. Approval or  
54 rejection of a loan or insurance application shall be  
55 made by majority vote of the full membership of the  
56 board.

57 The board shall manage the property and business of  
58 the authority and may prescribe, amend, adopt and  
59 repeal bylaws and rules and regulations governing the  
60 manner in which the business of the authority is  
61 conducted.

62 The board shall, without regard to the provisions of  
63 civil service laws applicable to officers and employees  
64 of the state of West Virginia, appoint such managers,  
65 assistant managers, officers, employees, attorneys and  
66 agents as are necessary for the transaction of its  
67 business, fix their compensation, define their duties and  
68 provide a system of organization to fix responsibility  
69 and promote efficiency. Any appointee of the board may  
70 be removed at the discretion of the board. The authority  
71 may reimburse any state spending unit for any special  
72 expense actually incurred in providing any service or  
73 the use of any facility to the authority.

74 In cases of any vacancy in the office of a member, such  
75 vacancy shall be filled by the governor. Any member  
76 appointed to fill a vacancy in the board occurring prior  
77 to the expiration of the term for which his predecessor  
78 was appointed shall be appointed for the remainder of  
79 such term.

80 The governor may remove a member in the case of  
81 incompetence, neglect of duty, gross immorality or  
82 malfeasance in office, and may declare such member's  
83 office vacant and appoint a person for such vacancy as  
84 provided in other cases of vacancy.

85 The secretary of the board shall keep a record of the  
86 proceedings of the board and perform such other duties  
87 as may be determined appropriate by the board. The  
88 treasurer shall be custodian of all funds of the authority  
89 and shall be bonded in such amount as other members  
90 of the board may designate.

### §31-15-6. General powers of authority.

1 The authority, as a public corporation and government-  
2 tal instrumentality exercising public powers of the state,  
3 shall have and may exercise all powers necessary or

4 appropriate to carry out the purposes of this article,  
5 including the power:

6 (a) To cooperate with industrial development agencies  
7 in efforts to promote the expansion of industrial,  
8 commercial, manufacturing and tourist activity in this  
9 state.

10 (b) To determine, upon the proper application of an  
11 industrial development agency or an enterprise,  
12 whether the declared public purposes of this article have  
13 been or will be accomplished by the establishment by  
14 such agency or enterprise of a project in this state.

15 (c) To conduct examinations and investigations and to  
16 hear testimony and take proof, under oath or affirmation,  
17 at public or private hearings, on any matter  
18 relevant to this article and necessary for information on  
19 the establishment of any project.

20 (d) To issue subpoenas requiring the attendance of  
21 witnesses and the production of books and papers  
22 relevant to any hearing before such authority or one or  
23 more members appointed by it to conduct any hearing.

24 (e) To apply to the circuit court having venue of such  
25 offense to have punished for contempt any witness who  
26 refuses to obey a subpoena, to be sworn or affirmed or  
27 to testify or who commits any contempt after being  
28 summoned to appear.

29 (f) To authorize any member of the authority to  
30 conduct hearings, administer oaths, take affidavits and  
31 issue subpoenas.

32 (g) To financially assist projects by insuring obliga-  
33 tions in the manner provided in this article through the  
34 use of the insurance fund.

35 (h) To finance any projects by making loans to  
36 industrial development agencies or enterprises upon  
37 such terms as the authority shall deem appropriate:  
38 *Provided*, That nothing contained in this subsection (h)  
39 or under any other provision in this article shall be  
40 construed as permitting the authority to make loans for  
41 working capital: *Provided, however*, That nothing

42 contained in this article shall be construed as prohibit-  
43 ing the authority from insuring loans for working  
44 capital made to industrial development agencies or to  
45 enterprises by financial institutions: *Provided further,*  
46 That nothing contained in this subsection or any other  
47 provision of this article shall be construed as permitting  
48 the authority to refinance existing debt except when  
49 such refinancing will result in the expansion of the  
50 enterprise whose debt is to be refinanced or in the  
51 creation of new jobs.

52 (i) To issue revenue bonds or notes to fulfill the  
53 purposes of this article, and to secure the payment of  
54 such bonds or notes, all as hereinafter provided.

55 (j) To issue and deliver revenue bonds or notes in  
56 exchange for a project.

57 (k) To borrow money for its purposes and issue bonds  
58 or notes for the money and provide for the rights of the  
59 holders of the bonds or notes or other negotiable  
60 instruments, to secure the bonds or notes by a deed of  
61 trust on, or an assignment or pledge of, any or all of its  
62 property and property of the project, including any part  
63 of the security for loans, and the authority may issue and  
64 sell its bonds and notes, by public or private sale, in such  
65 principal amounts as it shall deem necessary to provide  
66 funds for any purposes under this article, including the  
67 making of loans for the purposes set forth in this article.

68 (l) To maintain such sinking funds and reserves as the  
69 board shall determine appropriate for the purposes of  
70 meeting future monetary obligations and needs of the  
71 authority.

72 (m) To sue and be sued, implead and be impleaded,  
73 and complain and defend in any court.

74 (n) To adopt, use and alter at will a corporate seal.

75 (o) To make, amend, repeal and adopt both bylaws  
76 and rules and regulations for the management and  
77 regulation of its affairs.

78 (p) To appoint officers, agents and employees and to  
79 contract for and engage the services of consultants.



80 (q) To make contracts of every kind and nature to  
81 execute all instruments necessary or convenient for  
82 carrying on its business.

83 (r) To accept grants and loans from and enter into  
84 contracts and other transactions with any federal  
85 agency.

86 (s) To take title by conveyance or foreclosure to any  
87 project where acquisition is necessary to protect any  
88 loan previously made by the authority and to sell, by  
89 public or private sale, transfer, lease or convey such  
90 project to any enterprise.

91 (t) To participate in any reorganization proceeding  
92 pending pursuant to the United States Code (being the  
93 act of Congress establishing a uniform system of  
94 bankruptcy throughout the United States, as amended)  
95 or in any receivership proceeding in a state or federal  
96 court for the reorganization or liquidation of an  
97 enterprise. The authority may file its claim against any  
98 such enterprise in any of the foregoing proceedings, vote  
99 upon any questions pending therein which requires the  
100 approval of the creditors participating in any reorgan-  
101 ization proceeding or receivership, exchange any  
102 evidence of such indebtedness for any property, security  
103 or evidence of indebtedness offered as a part of the  
104 reorganization of such enterprise or of any other entity  
105 formed to acquire the assets thereof and may comprom-  
106 ise or reduce the amount of any indebtedness owing to  
107 it as a part of any such reorganization.

108 (u) To acquire, construct, maintain, improve, repair,  
109 replace and operate projects within this state, as well  
110 as streets, roads, alleys, sidewalks, crosswalks and other  
111 means of ingress and egress to and from projects located  
112 within this state.

113 (v) To acquire, construct, maintain, improve, repair  
114 and replace and operate pipelines, electric transmission  
115 lines, waterlines, sewer lines, electric power substations,  
116 waterworks systems, sewage treatment and disposal  
117 facilities and any combinations thereof for the use and  
118 benefit of any enterprise located within this state.

119 (w) To acquire watersheds, water and riparian rights,  
120 rights-of-way, easements, licenses and any and all other  
121 property, property rights and appurtenances for the use  
122 and benefit of any enterprise located within this state.

123 (x) To acquire, by purchase, lease, donation or  
124 eminent domain, any real or personal property, or any  
125 right or interest therein, as may be necessary or  
126 convenient to carry out the purposes of the authority.  
127 Title to all property, property rights and interests  
128 acquired by the authority shall be taken in the name of  
129 the authority.

130 (y) To issue renewal notes, or security interests, to  
131 issue bonds to pay notes or security interests and,  
132 whenever it deems refunding expedient, to refund any  
133 bonds or notes by the issuance of new bonds or notes,  
134 whether the bonds or notes to be refunded have or have  
135 not matured and whether or not the authority originally  
136 issued the bonds or notes to be refunded.

137 (z) To apply the proceeds from the sale of renewal  
138 notes, security interests or refunding bonds or notes to  
139 the purchase, redemption or payment of the notes,  
140 security interests or bonds or notes to be refunded.

141 (aa) To accept gifts or grants of property, funds,  
142 security interests, money, materials, labor, supplies or  
143 services from the United States of America or from any  
144 governmental unit or any person, firm or corporation,  
145 and to carry out the terms or provisions of, or make  
146 agreements with respect to, or pledge, any gifts or  
147 grants, and to do any and all things necessary, useful,  
148 desirable or convenient in connection with the procur-  
149 ing, acceptance or disposition of gifts or grants.

150 (bb) To the extent permitted under its contracts with  
151 the holders of bonds, security interests or notes of the  
152 authority, to consent to any modification of the rate of  
153 interest, time of payment of any installment of principal  
154 or interest, security or any other term of any bond,  
155 security interests, note or contract or agreement of any  
156 kind to which the authority is a party.

157 (cc) To sell loans, security interests or other obliga-

158 tions in the loan portfolio of the authority. Such security  
159 interests shall be evidenced by instruments issued by the  
160 authority. Proceeds from the sale of loans, security  
161 interests, or other obligations may be used in the same  
162 manner and for the same purposes as bond and note  
163 revenues.

164 (dd) To procure insurance against any losses in  
165 connection with its property, operations or assets in such  
166 amounts and from such insurers as the authority deems  
167 desirable.

168 (ee) To sell, license, lease, mortgage, assign, pledge or  
169 donate its property, both real and personal, or any right  
170 or interest therein to another or authorize the possession,  
171 occupancy or use of such property or any right or  
172 interest therein by another, in such manner and upon  
173 such terms as it deems appropriate.

174 (ff) To participate with the state and federal agencies  
175 in efforts to promote the expansion of commercial and  
176 industrial development in this state.

177 (gg) To finance, organize, conduct, sponsor, partici-  
178 pate and assist in the conduct of special institutes,  
179 conferences, demonstrations and studies relating to the  
180 stimulation and formation of business, industry and  
181 trade endeavors.

182 (hh) To conduct, finance and participate in technologi-  
183 cal, business, financial and other studies related to  
184 business and economic development.

185 (ii) To conduct, sponsor, finance, participate and  
186 assist in the preparation of business plans, financing  
187 plans and other proposals of new or established busi-  
188 nesses suitable for support by the authority.

189 (jj) To prepare, publish and distribute, with or  
190 without charge as the authority may determine, such  
191 technical studies, reports, bulletins and other materials  
192 as it deems appropriate, subject only to the maintenance  
193 and respect for confidentiality of client proprietary  
194 information.

195 (kk) To exercise such other and additional powers as

196 may be necessary or appropriate for the exercise of the  
197 powers herein conferred.

198 (ll) To exercise all of the powers which a corporation  
199 may lawfully exercise under the laws of this state.

200 (mm) To contract for the provision of legal services by  
201 private counsel, and notwithstanding the provisions of  
202 article three, chapter five, such counsel may, but is not  
203 limited to, represent the authority in court, negotiate  
204 contracts and other agreements on behalf of the  
205 authority, render advice to the authority on any matter  
206 relating thereto, prepare contracts and other agree-  
207 ments, and provide such other legal services as may be  
208 requested by the authority.

209 (nn) To develop, maintain, operate and apply for the  
210 establishment of foreign trade zones pursuant to and in  
211 accordance with all applicable provisions of federal law.

**§31-15-7. Loans to industrial development agencies or  
enterprises for projects.**

1 (a) When it has determined upon application of an  
2 industrial development agency or an enterprise that the  
3 establishment or acquisition of a particular project has  
4 accomplished or will accomplish the public purposes of  
5 this article, the authority may contract to loan such  
6 agency or enterprise up to one hundred percent of the  
7 estimated cost of such project from any or all of the  
8 following sources:

9 (1) The proceeds of bonds or notes issued by the  
10 authority pursuant to this article;

11 (2) Moneys in the fund available to make loans; or

12 (3) The investment in such loans by the board of  
13 investments through the consolidated fund of the state  
14 as provided in this article.

15 (b) Loans made under subsection (a) of this section  
16 shall be subject to the following conditions:

17 (1) If the authority is providing less than one hundred  
18 percent financing for the project, the authority shall  
19 determine that other sources of funds will be available  
20 to complete the project;

21 (2) The loan shall contain such terms and conditions  
22 as the authority deems appropriate, which terms and  
23 conditions shall be set forth in a resolution adopted by  
24 the board in accordance with the provisions of section  
25 ten of this article;

26 (3) The authority may, in its discretion, include within  
27 the terms of a loan minimum project operating periods,  
28 liquidated damage provisions for cessation of operations  
29 prior to the end of the loan period, loan acceleration  
30 provisions, project equipment purchase options in the  
31 event of early closure and other provisions to protect the  
32 jobs intended to be created by the project;

33 (4) The industrial development agency or enterprise  
34 shall pay such loan fees as may be prescribed by the  
35 authority from time to time pursuant to the provisions  
36 of this article.

37 Money loaned by the authority to an industrial  
38 development agency or enterprise pursuant to subdivi-  
39 sions (2) and (3), subsection (a) of this section seven shall  
40 be withdrawn from the fund and paid over to the agency  
41 or enterprise in such manner as shall be determined by  
42 the authority, and the authority shall deposit all  
43 payments of interest on such loans and the principal  
44 thereof in the fund.

#### §31-15-8. Insurance fund.

1 (a) There is hereby created an insurance fund which  
2 shall be a continuing, nonlapsing, revolving fund that  
3 consists of:

4 (1) Moneys appropriated by the state to the insurance  
5 fund;

6 (2) Premiums, fees, and any other amounts received  
7 by the authority with respect to financial assistance  
8 provided by the authority from the insurance fund;

9 (3) Upon the satisfaction of any indebtedness or other  
10 obligation owed on any property held or acquired by the  
11 authority, such proceeds as designated by the authority  
12 from the sale, lease, or other disposition of such  
13 property;

14 (4) Income from investments made from moneys in  
15 the insurance fund; and

16 (5) Any other moneys transferred to the insurance  
17 fund or made available to it for the purposes described  
18 under this section, under this article or pursuant to any  
19 other provisions of this code.

20 Subject to the provisions of any outstanding insurance  
21 agreements entered into by the authority under this  
22 section, the authority may enter into covenants or  
23 agreements with respect to the insurance fund, and  
24 establish accounts within the insurance fund which may  
25 be used to implement the purposes of this article. If the  
26 authority elects to establish separate accounts within the  
27 insurance fund, the authority may allocate its revenues  
28 and receipts among the respective accounts in any  
29 manner the authority considers appropriate.

30 If the authority at any time finds that more money is  
31 needed to keep the reserves of the insurance fund at an  
32 adequate level, the authority, with the consent of the  
33 chairman, shall send a written request to the Legisla-  
34 ture for additional funds.

35 (b) The insurance fund shall be used for the following  
36 purposes by the authority to financially assist projects  
37 so long as such financial assistance will, as determined  
38 by the authority, fulfill the public purposes of this  
39 article:

40 (1) To insure the payment or repayment of all or any  
41 part of the principal of, redemption or prepayment  
42 premiums or penalties on, and interest on bonds or notes  
43 whether issued under the provisions of this article or  
44 under the Industrial Development and Commercial  
45 Development Bond Act, the West Virginia Hospital  
46 Finance Authority Act or, with respect to health care  
47 facilities only, article thirty-three, chapter eight of this  
48 code;

49 (2) To insure the payment or repayment of all or any  
50 part of the principal of, redemption or prepayment  
51 premiums or penalties on, and interest on any instru-  
52 ment executed, obtained, or delivered in connection with

53 the issuance and sale of bonds or notes whether under  
54 the provisions of this article or under the Industrial  
55 Development and Commercial Development Bond Act,  
56 the West Virginia Hospital Finance Authority Act or,  
57 with respect to health care facilities only, article thirty-  
58 three, chapter eight of this code;

59 (3) To insure the payment or repayment of all or any  
60 part of the principal of, prepayment premiums or  
61 penalties on, and interest on any form of debt instru-  
62 ment entered into by an enterprise, public body or  
63 authority of the state with a financial institution,  
64 including, but not limited to, banks, insurance compan-  
65 ies and other institutions in the business of lending  
66 money, which debt instruments shall include, but not be  
67 limited to, instruments relating to loans for working  
68 capital and to the refinancing of existing debt: *Provided,*  
69 That nothing contained in this subsection or any other  
70 provision of this article shall be construed as permitting  
71 the authority to insure the refinancing of existing debt  
72 except when such insurance will result in the expansion  
73 of the enterprise whose debt is to be refinanced or in  
74 the creation of new jobs;

75 (4) To pay or insure the payment of any fees or  
76 premiums necessary to obtain insurance, guarantees,  
77 letters of credit or other credit support from any person  
78 or financial institution in connection with financial  
79 assistance provided by the authority under this section;  
80 and

81 (5) To pay any and all expenses of the authority,  
82 including, but not limited to:

83 (i) Any and all expenses for administrative, legal,  
84 actuarial, and other services related to the operation of  
85 the insurance fund; and

86 (ii) All costs, charges, fees, and expenses of the  
87 authority related to the authorizing, preparing, print-  
88 ing, selling, issuing, and insuring of bonds or notes  
89 (including, by way of example, bonds or notes, the  
90 proceeds of which are used to refund outstanding bonds  
91 or notes) and the funding of reserves.

92 (c) The total aggregate amount of insurance from the  
93 insurance fund with respect to the insured portions of  
94 principal of bonds or notes or other instruments may not  
95 exceed at any time an amount equal to five times the  
96 balance in the insurance fund.

97 (d) The authority may, in its sole and absolute  
98 discretion, set the premiums and fees to be paid to it  
99 for providing financial assistance under this section. The  
100 premiums and fees set by the authority shall be payable  
101 in the amounts, at the time, and in the manner that the  
102 authority, in its sole and absolute discretion, requires.  
103 The premiums and fees need not be uniform among  
104 transactions, and may vary in amount: (1) among  
105 transactions, and (2) at different stages during the terms  
106 of transactions.

107 (e) The authority may, in its sole and absolute  
108 discretion, require the security it believes sufficient in  
109 connection with its insuring of the payment or repay-  
110 ment of any bonds, notes, debt or other instruments  
111 described in subdivisions (1), (2), (3) and (4), subsection  
112 (b) of this section.

113 (f) The authority may itself approve the form of any  
114 insurance agreement entered into under this section or  
115 may authorize the chairman or his designee to approve  
116 the form of any such agreement. Any payment by the  
117 authority under an agreement entered into by the  
118 authority under this section shall be made at the time  
119 and in the manner that the authority, in its sole and  
120 absolute discretion, determines.

121 (g) The obligations of the authority under any insu-  
122 rance agreement entered into pursuant to this article  
123 shall not constitute a debt or a pledge of the faith and  
124 credit or taxing powers of this state or of any county,  
125 municipality or any political subdivision of this state for  
126 the payment of any amount due thereunder or pursuant  
127 thereto, but the obligations evidenced by such insurance  
128 agreement shall be payable solely from the funds  
129 pledged for their payment. All such insurance agree-  
130 ments shall contain on the face thereof a statement to  
131 the effect that such agreements and the obligations



132 evidenced thereby are not debts of the state or any  
133 county, municipality or political subdivision thereof but  
134 are payable solely from funds pledged for their pay-  
135 ment.

**§31-15-9. Bonds and notes issued pursuant to this article.**

1 (a) The authority may issue its bonds or notes to fulfill  
2 the purposes set forth in this article.

3 (b) The authority may issue renewal notes to pay notes  
4 and, if it considers refunding expedient, may refund or  
5 refund in advance, bonds or notes, whether or not  
6 originally issued by the authority, by the issuance of new  
7 bonds or notes.

8 (c) Except as may otherwise be expressly provided by  
9 the authority, every issue of its notes or bonds shall be  
10 special obligations of the authority, payable solely from  
11 the property, revenues or other sources of or available  
12 to the authority pledged therefor.

13 (d) The bonds and the notes shall be authorized by the  
14 authority pursuant to section ten of this article, and  
15 shall be secured, be in such denominations, may bear  
16 interest at such rate or rates, be in such form, either  
17 coupon or registered, carry such registration privileges,  
18 be payable in such medium of payment and at such  
19 place or places and such time or times and be subject  
20 to such terms of redemption as the authority may  
21 authorize. The bonds and notes of the authority may be  
22 sold by the authority, at public or private sale, at or not  
23 less than the price the authority determines. The bonds  
24 and notes shall be executed by manual or facsimile  
25 signature by the chairman of the board, and the official  
26 seal of the authority or a facsimile thereof shall be  
27 affixed to or printed on each bond and note and attested,  
28 manually or by facsimile signature, by the secretary of  
29 the board, and any coupons attached to any bond or note  
30 shall bear the manual or facsimile signature of the  
31 chairman of the board. In case any officer whose  
32 signature, or a facsimile of whose signature, appears on  
33 any bonds, notes or coupons ceases to be such officer  
34 before delivery of such bonds or notes, such signature  
35 or facsimile is nevertheless sufficient for all purposes

36 the same as if he had remained in office until such  
37 delivery; and, in case the seal of the authority has been  
38 changed after a facsimile has been imprinted on such  
39 bonds or notes, such facsimile seal will continue to be  
40 sufficient for all purposes.

**§31-15-10. Approval by authority.**

1 (a) To implement the powers and authority conferred  
2 upon it by this article, the board of the authority may  
3 adopt a resolution pursuant to which it shall:

4 (1) Specify and describe the project;

5 (2) Generally describe the public purpose to be served  
6 and the financing transaction to be accomplished under  
7 this article;

8 (3) Specify the maximum principal amount of any  
9 bonds or notes to be issued by the authority, the  
10 maximum principal amount of the loan, and the amount  
11 of insurance, if any, to be provided by the authority; and

12 (4) Impose any terms or conditions on the issuance of  
13 notes or bonds, the making of a loan or the provision of  
14 insurance that the authority deems appropriate.

15 (b) The board of the authority may, by resolution, or  
16 may delegate to the chairman or other designee the  
17 authority to, specify, prescribe, determine, provide for  
18 and approve such matters, details, forms, documents or  
19 procedures as the authority deems appropriate to the  
20 making of a loan, the authorization, sale, issuance,  
21 security, delivery, or payment of or for bonds or notes,  
22 or the authority's insurance of bonds, notes, loans or  
23 other instruments, including, without limitation, the  
24 rate or rates of interest and any security for the loan  
25 or insurance.

26 (c) The resolution adopted pursuant to this section is  
27 administrative in nature, is not subject to procedures  
28 required for legislative acts, and is not subject to  
29 referendum.

30 (d) In any suit, action, or proceeding involving the  
31 validity or enforceability of any bonds or notes issued,  
32 loan made, or insurance extended by the authority

33 under this article or any security therefor, any finding  
34 by the authority as to the public purpose of any actions  
35 taken under this article and the appropriateness of those  
36 actions to serve the public purpose shall be conclusive.

37 (e) Any resolution authorizing the issuance of bonds  
38 or notes shall provide that such bonds or notes shall  
39 contain a recital that they are issued pursuant to this  
40 article, which recital shall be conclusive evidence of  
41 their validity and of the regularity of their issuance.

**§31-15-11. Trustee for bondholders; contents of trust agreement; pledge or assignment of revenues.**

1 For bonds or notes issued pursuant to the provisions  
2 of this article, in the discretion of the authority, any  
3 bonds or notes, including refunding bonds or notes  
4 issued by the authority, may be secured by a trust  
5 agreement between the authority and a corporate  
6 trustee, which trustee may be any bank or trust  
7 company within or without the state. Any such trust  
8 agreement may contain such binding covenants with the  
9 holders of such bonds or notes as to any matter or  
10 provisions as are deemed necessary or advisable to the  
11 authority to enhance the marketability and security of  
12 such bonds or notes and may also contain such other  
13 provisions with respect thereto as the authority may  
14 authorize and approve. Any resolution adopted by the  
15 authority or any trust agreement may contain a pledge  
16 or assignment of revenues to be received in connection  
17 with the financing.

**§31-15-12. Use of funds by authority; restrictions thereon relating to projects.**

1 All moneys, properties and assets acquired by the  
2 authority, whether as proceeds from the sale of bonds  
3 or notes or as revenues or otherwise, shall be held by  
4 it in trust for the purposes of carrying out its powers  
5 and duties and shall be used and reused in accordance  
6 with the purposes and provisions of this article. Such  
7 moneys shall at no time be commingled with other  
8 public funds. Such moneys, except as otherwise pro-  
9 vided in any resolution authorizing the issuance of bonds

10 or notes or in any trust agreement securing the same,  
11 or except when invested pursuant to this article, shall  
12 be kept in appropriate depositories and secured as  
13 provided and required by law. The resolution authoriz-  
14 ing the issuance of such bonds or notes of any issue or  
15 the trust agreement securing such bonds or notes shall  
16 provide that any officer to whom, or any banking  
17 institution or trust company to which, such moneys are  
18 paid, shall act as trustee of such moneys and hold and  
19 apply them for the purposes hereof, subject to the  
20 conditions this article and such resolution or trust  
21 agreement provide.

**§31-15-13. Refunding bonds or notes.**

1 Any bonds or notes issued by the authority or any  
2 other public body or authority of the state pursuant to  
3 the provisions of this article or any other provision of  
4 this code and at any time outstanding may at any time  
5 and from time to time be refunded by the authority by  
6 the issuance of its refunding bonds or notes in such  
7 amount as it may deem necessary to refund the  
8 principal of the bonds or notes so to be refunded,  
9 together with any unpaid interest thereon; to provide  
10 additional funds for the purposes of the authority; and  
11 to pay any premiums and commissions necessary to be  
12 paid in connection therewith. Any such refunding may  
13 be effected whether the bonds or notes to be refunded  
14 shall have then matured or shall thereafter mature,  
15 either by sale of the refunding bonds or notes and the  
16 application of the proceeds thereof for the redemption  
17 of the bonds or notes to be refunded thereby or by  
18 exchange of the refunding bonds or notes for the bonds  
19 or notes to be refunded thereby. Such refunding bonds  
20 or notes shall be issued in conformance with the  
21 provisions of sections nine and ten of this article.

**§31-15-14. Obligations of authority undertaken pursuant  
to this article not debt of state, county,  
municipality or any political subdivision.**

1 Bonds and notes, including refunding bonds and notes,  
2 issued under the authority of this article and any  
3 coupons in connection therewith, and any other obliga-

4 tions undertaken by the authority pursuant to this  
5 article, shall not constitute a debt or a pledge of the faith  
6 and credit or taxing power of this state or of any county,  
7 municipality or any other political subdivision of this  
8 state, and the holders and owners thereof shall have no  
9 right to have taxes levied by the Legislature or the  
10 taxing authority of any county, municipality or any  
11 other political subdivision of this state for the payment  
12 of the principal thereof or interest thereon, but such  
13 bonds, notes and other obligations shall be payable solely  
14 from revenues and funds pledged for their payment as  
15 authorized by this article unless the notes are issued in  
16 anticipation of the issuance of bonds or the notes are  
17 refunded by refunding bonds issued under the authority  
18 of this article, which bonds or refunding bonds shall be  
19 payable solely from revenues and funds pledged for  
20 their payment as authorized by this article. All such  
21 bonds and notes, and all documents evidencing any other  
22 obligation, shall contain on the face thereof a statement  
23 to the effect that the bonds, notes or such other  
24 obligation as to both principal and interest, are not debts  
25 of the state or any county, municipality or political  
26 subdivision thereof, but are payable solely from re-  
27 venues and funds pledged for their payment.

**§31-15-15. Negotiability of bonds and notes issued pursuant to this article.**

1 Whether or not the bonds or notes issued pursuant to  
2 this article are of such form or character as to be  
3 negotiable instruments under the Uniform Commercial  
4 Code, such bonds or notes are negotiable instruments  
5 within the meaning of and for all the purposes of the  
6 Uniform Commercial Code, subject only to the provi-  
7 sions of the bonds or notes for registration.

**§31-15-16. Bonds and notes issued pursuant to this article; legal investments.**

1 The provisions of sections nine and ten, article six,  
2 chapter twelve of this code to the contrary notwithstand-  
3 ing, the bonds and notes issued pursuant to the provi-  
4 sions of this article are securities in which all public  
5 officers and bodies of this state, including the West

6 Virginia state board of investments, all municipalities  
7 and other political subdivisions of this state, all  
8 insurance companies and associations and other persons  
9 carrying on an insurance business, including domestic  
10 for life and domestic not for life insurance companies,  
11 all banks, trust companies, societies for savings,  
12 building and loan associations, savings and loan associ-  
13 ations, deposit guarantee associations and investment  
14 companies, all administrators, guardians, executors,  
15 trustees and other fiduciaries and all other persons  
16 whatsoever who are authorized to invest in bonds or  
17 other obligations of the state may properly and legally  
18 invest funds, including capital, in their control or  
19 belonging to them.

**§31-15-17. Exemption from taxation.**

1 The exercise of the powers granted to the authority  
2 by this article will be in all respects for the benefit of  
3 the people of the state for the improvement of their  
4 health, safety, convenience and welfare and is a public  
5 purpose. As the operation and maintenance of projects  
6 financed under this article will constitute the perfor-  
7 mance of essential governmental functions, the authority  
8 shall not be required to pay any taxes or assessments  
9 upon any property acquired or used by the authority or  
10 upon the income therefrom. All bonds and notes of the  
11 authority, and all interest and income thereon, shall be  
12 exempt from all taxation by this state and any county,  
13 municipality, political subdivision or agency thereof,  
14 except inheritance taxes.

**§31-15-18. Personal liability; persons executing bonds or notes issued pursuant to this article.**

1 Neither the members or officers of the authority or  
2 of any authority, agency or office, nor any person  
3 executing the bonds or notes issued pursuant to the  
4 provisions of this article, shall be liable personally on  
5 such bonds or notes or be subject to any personal  
6 liability or accountability by reason of the issuance  
7 thereof.

**§31-15-19. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds and notes issued pursuant to this article.**

1 The provisions of this article relating to the making  
2 of loans and to the issuance of bonds and notes shall be  
3 construed as granting cumulative authority for the  
4 exercise of the various powers herein conferred, and  
5 neither the powers nor any bonds or notes issued  
6 hereunder shall be affected or limited by any other  
7 statutory or charter provision now or hereafter in force,  
8 other than as may be provided in this article, it being  
9 the purpose and intention of this article to create full,  
10 separate and complete additional powers. The various  
11 powers conferred herein may be exercised independ-  
12 ently and notwithstanding that no bonds or notes are  
13 issued hereunder.

**§31-15-20. Authority of the board of investments.**

1 The board of investments shall, under the provisions  
2 of this article, invest moneys, securities and other assets  
3 of the special account for the common investment of  
4 state funds designated as the state account within the  
5 special investment fund designated as the consolidated  
6 fund established under the provisions of subsection (b),  
7 section eight, article six, chapter twelve of this code as  
8 a revolving loan fund with the authority, to enable the  
9 authority to make loans approved by the authority and  
10 to be funded from such consolidated fund in an amount  
11 which shall not at anytime exceed one hundred fifty  
12 million dollars in the aggregate principal amount  
13 outstanding. With respect to loans funded under this  
14 article through the consolidated fund of the state, such  
15 loans shall be made in the name of the consolidated fund  
16 by the authority.

**§31-15-21. Loan and insurance application requirements.**

1 Prior to the loaning of any funds to an industrial  
2 development agency or an enterprise for a project or the  
3 insuring of any bonds, notes, loans or other instruments  
4 pursuant to section eight of this article, the authority  
5 shall receive from such agency or enterprise an appli-

6 cation in such form as adopted by the authority for  
7 either the loan or the insurance.

**§31-15-22. Documentary materials concerning trade secrets; commercial or financial information; or confidentiality.**

1 Any documentary material or data made or received  
2 by the authority for the purpose of furnishing assistance  
3 to a business, to the extent that such material or data  
4 consists of trade secrets or commercial or financial  
5 information regarding the financial position or business  
6 operation of such business, shall not be considered  
7 public records and shall be exempt from disclosure  
8 pursuant to the provisions of chapter twenty-nine-b of  
9 this code. Any discussion or consideration of such trade  
10 secrets or commercial or financial information may be  
11 held by the authority in executive session closed to the  
12 public, notwithstanding the provisions of article nine-a,  
13 chapter six of this code: *Provided*, That the authority  
14 shall make publicly available the following information  
15 regarding executed loans or its provision of insurance:  
16 (1) The name of the debtor, (2) location(s) of the project,  
17 (3) amount of the authority loan or financial assistance  
18 provided by the insurance fund, (4) the purpose of the  
19 loan or financial assistance, (5) the term, rate and  
20 interest of the loan, and (6) the fixed assets which serve  
21 as security for the loan or insurance provided.

**§31-15-23. Economic development fund.**

1 The economic development fund, to which shall be  
2 credited any appropriation made by the Legislature to  
3 the authority, any funds which the authority is autho-  
4 rized to receive under any provision of this code, other  
5 funds which the board directs to be deposited into the  
6 fund, and such other deposits as are provided for in this  
7 section, is hereby continued in the state treasury as a  
8 special account.

9 The authority may requisition from the fund such  
10 amounts as are necessary to provide for the payment of  
11 the administrative expenses of this article.  
12 Notwithstanding any other provision of this article,  
13 whenever the authority determines it to be necessary to



14 purchase at a foreclosure sale any project pursuant to  
15 subdivision (t), section six of this article, it may  
16 requisition from the fund such amount as is necessary  
17 to pay the purchase price thereof.

18 The authority shall requisition from the fund such  
19 amounts as are allocated and appropriated for loans to  
20 industrial development agencies or enterprises for  
21 projects. As loans to industrial development agencies or  
22 enterprises are repaid to the authority pursuant to the  
23 terms of mortgages and other agreements, the authority  
24 shall pay such amounts into the fund, consistent with the  
25 intent of this article that the fund shall operate as a  
26 revolving fund whereby all appropriations and pay-  
27 ments made thereto may be applied and reapplied for  
28 the purposes of this article. Revenues deposited into the  
29 fund may be used to make payments of interest and  
30 principal and may be pledged as security for bonds,  
31 security interests or notes issued by the authority  
32 pursuant to this article.

33 Whenever the authority determines that the balance  
34 in the fund is in excess of the immediate requirements  
35 for loans, it may request that such excess be invested  
36 until needed for loan purposes, in which case such excess  
37 shall be invested in a manner consistent with the  
38 investment of other temporary state funds. Interest  
39 earned on any money invested pursuant to this section  
40 shall be credited to the fund.

41 If the authority determines that funds held in the fund  
42 are in excess of the amount needed to carry out the  
43 purposes of this article, it may take such action as is  
44 necessary to release such excess and transfer it to the  
45 general fund of the state treasury.

#### §31-15-24. Transfer of state property to the authority.

1 The governor is authorized to provide for the transfer  
2 to the authority of the use, possession and control of such  
3 real or personal property of the state as he may from  
4 time to time deem useful to the authority in the conduct  
5 of its activities as authorized by this article.

**§31-15-25. Validity of any pledge, mortgage, deed of trust or security instrument.**

1 It is the intention hereof that any pledge, mortgage,  
2 deed of trust or security instrument made by or for the  
3 benefit of the authority shall be valid and binding  
4 between the parties from the time the pledge, mortgage,  
5 deed of trust or security instrument is made; and that  
6 the moneys or property so pledged, encumbered,  
7 mortgaged or entrusted shall immediately be subject to  
8 the lien of such pledge, mortgage, deed of trust or  
9 security instrument without any physical delivery  
10 thereof or further act.

**§31-15-26. Money of the authority.**

1 All money accruing to the authority from whatever  
2 source derived, except legislative appropriations, shall  
3 be collected and received by the treasurer of the  
4 authority, who shall pay it into the state treasury in the  
5 manner required by section two, article two, chapter  
6 twelve of this code, which shall be credited to the  
7 appropriate fund of the authority.

**§31-15-27. Conflict of interest; when contracts void.**

1 No member, officer or employee of the authority shall  
2 either directly or indirectly be a party to or interested  
3 in any manner in any contract or agreement with the  
4 authority whereby liability or indebtedness against or to  
5 the authority is in any manner created. Any contract or  
6 agreement made in violation of the provisions of this  
7 section shall be void and no action thereon shall be  
8 maintained against the authority.

**§31-15-28. Agreement with federal agencies not to alter or limit powers of authority.**

1 The state hereby pledges to and agrees with each  
2 federal agency that, if such agency constructs or loans  
3 or contributes any funds for any project, the state will  
4 not alter or limit the rights and powers of the authority  
5 in any manner which would be inconsistent with the due  
6 performance of any agreement between the authority  
7 and such federal agency and that the authority shall  
8 continue to have and exercise all powers granted for

9 carrying out the purposes of this article for so long as  
10 necessary.

**§31-15-29. Audits.**

1 As soon as possible after the close of each fiscal year,  
2 the authority shall make an annual report of its  
3 activities for the preceding fiscal year to the governor  
4 and the Legislature. Each such report shall set forth a  
5 complete operating and financial statement covering the  
6 authority's operations during the preceding fiscal year.  
7 The authority shall cause an audit of its books and  
8 accounts to be made at least once each fiscal year by  
9 certified public accountants and the cost thereof may be  
10 treated as a part of the cost of construction or of  
11 operations of its projects.

**§31-15-30. Projects not to be considered public  
improvements.**

1 No project, enterprise or business facility which  
2 conducts as its primary activity a manufacturing  
3 process or other nongovernmental or nonpublic activity  
4 may be deemed to be a "public improvement" within the  
5 meaning of the provisions of article five-a, chapter  
6 twenty-one of this code.

**§31-15-31. Foreign trade zones; authority approval.**

1 Any public corporation located in the state is hereby  
2 authorized to apply for, develop, maintain and operate  
3 a foreign trade zone in the state pursuant to and in  
4 accordance with all applicable provisions of federal law:  
5 *Provided*, That any public corporation desiring to apply  
6 for or develop a foreign trade zone must first receive the  
7 approval of the authority.

**§31-15-32. Severability.**

1 If any section, subsection, subdivision, subparagraph,  
2 sentence or clause of this article is adjudged to be  
3 unconstitutional or invalid, such adjudication shall not  
4 affect the validity of the remaining portions of this  
5 article, and, to this end, the provisions of this article are  
6 hereby declared to be severable.

**§31-15-33. Construction.**

- 1 The provisions of this article are remedial and shall
- 2 be liberally construed and applied so as to promote the
- 3 purposes set out in section three of this article.

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## CHAPTER 55

(Com. Sub. for H. B. 2326—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact sections six, twenty-six and twenty-nine, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section thirty; to amend and reenact section two, article two-e of said chapter; to further amend said article by adding thereto three new sections, designated sections three-a, three-b and seven; to amend and reenact sections four, eighteen-a and eighteen-c, article five of said chapter; to amend and reenact sections two, four, five-a, six-a, seven, eight, nine, ten, thirteen-b and twenty-two, article nine-a of said chapter; to amend and reenact section one, article twenty of said chapter; to further amend said article by adding thereto a new section, designated section nine; to amend and reenact sections one, two, five-a, five-b, five-c and eight-a, article four, chapter eighteen-a of said code; and to further amend said article by adding thereto a new section, designated section eight-d, all relating to the curriculum and instructional improvement; providing for the granting of certificates of proficiency to eligible high school graduates; providing for regional educational service agencies to conduct a study for performing certain services and functions for public schools and school districts in the region and protecting certain employees; requiring each regional educational service agency to evaluate school services in its region and requiring each school to evaluate its regional educational service agency services; providing

for awarding competitive grants to schools to implement exemplary and innovative programs to improve instruction; providing for establishment of a statewide curriculum technology resource center to facilitate access to and expedite acquisition of materials; providing for regional educational service agencies to serve as depository and distribution centers for curriculum technology resource materials; clarifying intent of readiness evaluations; providing criteria for use in the development of an evaluation model; requiring a criterion referenced test to be given to first and second graders in reading and math with third and fourth graders being tested in reading, composition and math; providing for honors and advanced placement courses in grades nine through twelve by school year one thousand nine hundred ninety—ninety-one; defining honors and advanced placement; establishing curriculum offered in honors and advanced placement and providing for the instruction thereof; providing for the phase-in of honors and advanced placement; providing that certain students in grades nine through twelve may be served in honors and advanced placement; requiring state board of education to designate an employee who is an expert in financial assistance to inform students of the availability of financial assistance to attend college; providing for high quality basic skills development and remediation in the public schools; changing the time requirement for when a county board must hold a public hearing concerning the preliminary operating budget; providing for additional compensation for elementary teachers whose number of pupils have exceeded the maximum class size; creating the early childhood program to replace the transitional or developmental kindergarten program; revising the definitions of professional instructional personnel, adjusted enrollment and basic resources per pupil; providing that attrition, early retirement and other methods shall be utilized before implementing reduction in force procedures; permitting waiver of ratio of foundation allowance for professional educators and service personnel to net enrollment for a limited period; changing the gradual phase-in of the teachers retirement factor

schedule from three and one half percent to the full fifteen percent; increasing school bus replacement cycle to ten years; increasing the foundation allowance for administrative cost to provide additional funding for regional educational service agencies; increasing the allowance for current expense; resetting base in foundation allowance to improve instructional programs; increasing the minimum amount of funds allocated to each county on the basis of adjusted enrollment from one hundred thousand to one hundred fifty thousand; changing the distribution of funds recaptured due to adjusted enrollment in allowances for remedial and accelerated education programs and salary equity; eliminating certain standards for education quality; revising exceptional children program and defining exceptional gifted; requiring caseload review of various programs in certain grades; establishing requirements for in-field master's degrees earned after a certain date; increasing by five percent the state minimum salary schedule for teachers effective the second half of the employment term and establishing in-field master's salary schedule; removing the limits placed on benefits that counties may provide for teachers and service personnel; requiring certain study relating to service personnel salaries; increasing the service personnel state minimum pay scale to reflect an approximate aggregate five percent increase effective the second half of the employment term; and providing for consolidation of services and seniority rights for administrative personnel.

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

That sections six, twenty-six and twenty-nine, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section thirty; that section two, article two-e of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections three-a, three-b and seven; that sections four, eighteen-a and eighteen-c, article five of said chapter be amended and reenacted; that sections two,

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

### Chapter

18. Education.

18A. School Personnel.

## CHAPTER 18. EDUCATION.

### Article

2. State Board of Education.

2E. High Quality Education Programs.

5. County Board of Education.

9A. Public School Support.

20. Education of Exceptional Children.

### ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Training of teachers; accreditation, classification and standardization of schools; standards for degrees and diploma.

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

§18-2-29. Competitive grant program for selected schools and school districts.

§18-2-30. Statewide curriculum technology resource center established; distribution of materials by regional educational service agencies.

**§18-2-6. Training of teachers; accreditation, classification and standardization of schools; standards for degrees and diploma.**

1 (a) The education of teachers in the state shall be  
 2 under the general direction and control of the state  
 3 board of education after consultation with the board of  
 4 regents, which shall, through the state superintendent  
 5 of schools, exercise supervisory control over teacher  
 6 preparation including (1) those programs in all institu-  
 7 tions of higher education, including student teaching in  
 8 the public schools; and (2) any alternative training  
 9 programs leading to licensure, in accordance with

10 standards for program approval stated in writing by the  
11 board. Such standards shall include a provision for the  
12 study of multicultural education.

13 As used in this section, multicultural education means  
14 the study of the pluralistic nature of American society  
15 including its values, institutions, organizations, groups,  
16 status positions and social roles.

17 (b) To give prospective teachers the teaching expe-  
18 rience needed to demonstrate competence, as a prereq-  
19 uisite to licensure, the state board of education may  
20 enter into an agreement with county boards of education  
21 for the use of the public schools. Such agreement shall  
22 recognize student teaching as a joint responsibility of  
23 the teacher preparation institution and the cooperating  
24 public schools and shall include (1) the minimum  
25 qualifications for the employment of public school  
26 teachers selected as supervising teachers; (2) the  
27 remuneration to be paid public school teachers by the  
28 state board, in addition to their contractual salaries, for  
29 supervising student teachers; and (3) minimum stand-  
30 ards to guarantee adequacy of facilities and program of  
31 the public school selected for student teaching. The  
32 student teacher, under the direction and supervision of  
33 the supervising teacher, shall exercise the authority of  
34 a substitute teacher.

35 Institutions of higher education approved for teacher  
36 preparation may cooperate with each other and with one  
37 or more county boards of education in the organization  
38 and operation of centers to provide selected phases of the  
39 teacher preparation program such as student teaching  
40 or internship programs, instruction in methodology,  
41 seminar programs for college students, first year  
42 teachers and supervising teachers.

43 Such institutions of higher education and participat-  
44 ing county boards of education may budget and expend  
45 funds for the operation of such centers through pay-  
46 ments to the appropriate fiscal office of the county  
47 designated by mutual agreement of participating county  
48 school boards and higher education institutions to serve  
49 as the administering agency of the center.



50 The provisions of this section shall not be construed  
51 to require the discontinuation of an existing student  
52 teacher training center or school which meets the  
53 standards of the state board of education.

54 All institutions of higher education approved for  
55 teacher preparation in the school year of one thousand  
56 nine hundred sixty-two—sixty-three shall continue to  
57 hold that distinction so long as they meet the minimum  
58 standards for teacher preparation. Nothing contained  
59 herein shall infringe upon the rights granted to any  
60 institution by charter given according to law previous  
61 to the adoption of this code.

62 (c) Notwithstanding any other provision of this article  
63 to the contrary, the state board of education is autho-  
64 rized to develop alternative training programs leading  
65 to licensure in accordance with rules and regulations  
66 adopted by the state board of education after consulta-  
67 tion with the board of regents: *Provided*, That no teacher  
68 shall be permanently certified who has not completed a  
69 core curriculum, as determined by the state board after  
70 consultation with the board of regents, in an approved  
71 teacher preparation or improvement program of an  
72 accredited institution of higher education.

73 The state board shall also develop and implement a  
74 beginning teacher internship program by the first day  
75 of July, one thousand nine hundred ninety.

76 (d) The state board shall make rules for the accred-  
77 itation, classification and standardization of all schools  
78 in the state, except institutions of higher education, and  
79 shall determine the minimum standards for the grant-  
80 ing of diplomas and certificates of proficiency by those  
81 schools. Not later than the school year one thousand nine  
82 hundred ninety—ninety-one, certificates of proficiency  
83 including specific information regarding the graduate's  
84 skills, competence, and readiness for employment or  
85 honors and advanced education shall be granted, along  
86 with the diploma, to every eligible high school graduate.  
87 No institution of less than collegiate or university status  
88 may grant any diploma or certificate of proficiency on

89 any basis of work or merit below the minimum stand-  
90 ards prescribed by the state board.

91 No charter or other instrument containing the right  
92 to issue diplomas or certificates of proficiency shall be  
93 granted by the state of West Virginia to any institution  
94 or other associations or organizations of less than  
95 collegiate or university status within the state until the  
96 condition of granting or issuing such diplomas or other  
97 certificates of proficiency has first been approved in  
98 writing by the state board.

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

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

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

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

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

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

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

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

84 (f) Each regional educational service agency shall  
85 submit a report and evaluation of the services provided  
86 and utilized by the schools within each respective  
87 region. Furthermore, each school shall submit an  
88 evaluation of the services provided by the regional  
89 educational service agency, which shall include an  
90 evaluation of the regional educational service agency  
91 program, suggestions as to how to improve utilization  
92 and the individual school's plan as to development of  
93 new programs and enhancement of existing programs.  
94 The reports shall be due by the first day of January of  
95 each year commencing with the year one thousand nine  
96 hundred ninety-one and shall be made available to the  
97 state board of education, standing committees on  
98 education of the West Virginia Senate and House of  
99 Delegates and to the secretary of education and the arts.

100 (g) A regional board shall be empowered to receive  
101 and disburse funds from the state and federal govern-  
102 ments, member counties, gifts and grants.

**§18-2-29. Competitive grant program for selected schools  
and school districts.**

1 The state board shall establish no later than the school  
2 year one thousand nine hundred eighty-nine—ninety, a  
3 competitive grant program whereby schools may be  
4 awarded grants to implement exemplary and innovative  
5 programs designed to improve instruction.

6 Applications for awarding competitive grants which  
7 include one or more of the following considerations shall  
8 be given priority: (a) Whether local community resour-  
9 ces have been committed to work in partnership with  
10 the school to implement the program, (b) whether the  
11 program involves extending the school year, (c) whether  
12 the program is for remediation, (d) whether the proposal  
13 will implement an early childhood program pursuant to  
14 section eighteen-c, article five of this chapter, (e)  
15 whether the proposal will implement a beginning  
16 teacher assistance program, (f) whether the school has  
17 probationary or nonapproval accreditation status, and,  
18 (g) how the program will be evaluated based on  
19 measurable performance criteria such as: Student  
20 achievement gain; student attendance; teacher attend-  
21 ance; parent participation; reduction in the amount of  
22 paperwork required of teachers; and any other factor  
23 promoting the attainment of full accreditation for the  
24 school or the school district.

25 The state board shall promulgate rules which ensure  
26 that the school or school district utilizes these funds  
27 appropriately. The state board shall encourage the  
28 donation of funds from private and other sources to  
29 augment state funding for the program.

**§18-2-30. Statewide curriculum technology resource  
center established; distribution of materials  
by regional educational service agencies.**

1 There shall be established a statewide curriculum  
2 technology resource center to facilitate access to, and  
3 expedite the acquisition of, audiovisual materials to  
4 assist in the continued enrichment of the school curric-  
5 ulum. The state board shall designate the statewide  
6 center. The legislative intent is that appropriations for  
7 the said resource center be designated primarily for  
8 supportive materials to be made available for use by  
9 teachers: *Provided*, That no more than five percent of  
10 the moneys allocated for fiscal year one thousand nine  
11 hundred eighty-nine—ninety be used for capital outlay  
12 and improvements on any structure used to house said  
13 resource center. The center shall develop a program of  
14 services for public school teachers in the fields of

15 curricular development, instructional resources and  
16 technology. The center shall also undertake projects to  
17 describe systematically and evaluate curriculum mate-  
18 rials and instruction resources, provide for dissemina-  
19 tion of software and programs to teachers, provide  
20 leadership in the areas of instructional resources and  
21 provide training to increase skills in the use of technol-  
22 ogy and other instructional resources.

23 The center shall be a centralized purchasing agent for  
24 audiovisual materials requested for use in the public  
25 schools. The center shall utilize curriculum teams of  
26 classroom teachers and other professional educators  
27 representing all regional educational service agency  
28 regions to assist in the materials selection process. The  
29 center may obtain authorization to duplicate such  
30 materials and may duplicate such materials when  
31 duplication is justified by cost and need and when  
32 appropriate authorization has been obtained. The center  
33 shall maintain a central library of all original materials  
34 duplicated and shall compile no later than the first day  
35 of July, one thousand nine hundred ninety, a statewide  
36 catalog of all audiovisual materials available. The center  
37 shall make the statewide catalog accessible to teachers  
38 through electronic or other means.

39 Each regional educational service agency shall serve  
40 as a depository and distribution center for the audiov-  
41 isual materials available to the public schools in its  
42 region. Each regional educational service agency shall  
43 survey audiovisual material currently held in the public  
44 schools in its region and submit the list to the statewide  
45 center for possible inclusion in the statewide catalog:  
46 *Provided*, That nothing in this section shall be construed  
47 to change ownership by any county board of any  
48 materials which are included in the catalog. Whenever  
49 the regional educational service agency receives a  
50 request for material not listed in the statewide catalog,  
51 the agency shall submit a request to the statewide center  
52 for review by one of the curriculum teams and, if  
53 appropriate, purchase and distribute the material.

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

§18-2E-2. Statewide testing of educational progress program (WV-STEP); purposes, development and implementation of program.

§18-2E-3a. Honors and advanced placement programs.

§18-2E-3b. Placement advisory committee established.

§18-2E-7. Providing for high quality basic skills development and remediation in all public schools.

**§18-2E-2. Statewide testing of educational progress program (WV-STEP); purposes, development and implementation of program.**

1 (a) The state board shall establish a program for the  
2 statewide testing of the educational progress of public  
3 school students in attaining a high quality education,  
4 hereinafter referred to as the WV-STEP program.

5 The WV-STEP program shall provide information to:

6 (1) Assess the overall academic progress of students,  
7 including (i) identifying individual students' academic  
8 weaknesses and readiness, and (ii) identifying students  
9 who may need remediation;

10 (2) Assist the teacher in determining student  
11 promotion;

12 (3) Compare achievement of students in West Virgi-  
13 nia to achievement of students on a national basis;

14 (4) Assess the strengths and weaknesses of school  
15 performance;

16 (5) Assess the effects of state and local educational  
17 programs;

18 (6) Make decisions at the state and local level with  
19 regard to educational matters, including (i) the need for  
20 new or revised educational programs and the need to  
21 terminate existing educational programs, (ii) overall  
22 curriculum development and revision activities, and (iii)  
23 teacher training and staff development activities; and

24 (7) Inform the public of the overall quality of educa-  
25 tion in individual schools and school districts.

26 (b) The state board shall prepare detailed design  
27 specifications for the WV-STEP program which ac-  
28 complish the following:

29 (1) Take into account the state learning outcome  
30 statements in the basic skill areas of reading, composi-  
31 tion, mathematics and other subject areas as determined  
32 by the state board; and

33 (2) Include testing of students' higher level cognitive  
34 thinking in each subject area tested.

35 "Learning outcome statements" means statements  
36 developed and adopted by the state board which for the  
37 purposes of this article have been fully and properly  
38 field tested to ensure their reliability and validity in  
39 indicating the knowledge base and skills expected of  
40 students for particular subject areas and which may be  
41 used to measure indicators of statewide standards for  
42 student progress in attaining a high quality education.

43 (c) The state board shall implement the WV-STEP  
44 program as follows:

45 (1) Beginning in the school year one thousand nine  
46 hundred ninety—ninety-one, and continuing thereafter:

47 (i) An evaluation designed to measure student read-  
48 iness to begin the formal school curriculum shall be  
49 administered to all kindergarten public school students.  
50 Such evaluation shall be used solely to assist in making  
51 policy decisions at the state and local levels with regard  
52 to educational matters as outlined in subdivision six,  
53 subsection (a) of this section, and shall not be used for  
54 individual diagnostic or placement purposes.

55 (ii) An evaluation model for children in kindergarten,  
56 first and second grades shall be developed by a  
57 committee of teachers, parents and principals selected  
58 by each regional educational service agency board  
59 within each regional educational service agency. The  
60 evaluation model shall be developed using the following  
61 criteria:

62 (A) The model shall be based on the fact that kinder-  
63 garten through second grade is educationally  
64 continuous;

65 (B) The model shall allow for variability in the  
66 achievement of children in kindergarten through second  
67 grade;



68 (C) The model shall be applied continuously to reflect  
69 assessment as a teaching tool;

70 (D) Information gathered by the evaluation model  
71 shall be used to adapt curriculum and to provide  
72 feedback to parents;

73 (E) The model shall include a measure of achievement  
74 of the state learning outcomes.

75 The evaluation model, as developed by each regional  
76 educational service agency committee, shall be made  
77 available to the state board and to the legislative  
78 oversight commission on education accountability by the  
79 first day of January, one thousand nine hundred ninety;  
80 and

81 (iii) A criterion referenced test measuring competen-  
82 cies based on the learning outcome statements shall be  
83 administered to all public school students in grades one  
84 and two to measure their academic progress in reading  
85 and mathematics; and

86 (iv) A criterion referenced test measuring competen-  
87 cies based on the learning outcome statements shall be  
88 administered to all public school students in grades  
89 three and four to measure their academic progress in  
90 reading, composition and mathematics.

91 The results of the tests shall be used to identify each  
92 student's deficiencies, aid in determining instruction  
93 needed by the student in achieving the statewide  
94 standards established for the respective grade and assist  
95 the teacher in determining student promotion.

96 (2) Beginning in the school year one thousand nine  
97 hundred ninety-one—ninety-two, and continuing  
98 thereafter:

99 (i) A criterion referenced test measuring competen-  
100 cies based on the learning outcome statements for  
101 reading, composition and mathematics in grade five  
102 shall be administered to all public school students in  
103 grade five. Each year thereafter, a criterion referenced  
104 test for these subject areas shall be administered to

105 students in the next higher grade through grade eight;  
106 and

107 (ii) Criterion referenced testing measuring competen-  
108 cies based on the learning outcome statements in  
109 additional subject areas shall be implemented as funds  
110 are available on a schedule determined by the board.

111 (3) Beginning in the school year one thousand nine  
112 hundred ninety--ninety-one, and continuing thereafter,  
113 National Assessment of Educational Progress Program  
114 tests shall be administered in academic areas at the  
115 various grades designated by the National Assessment  
116 of Educational Progress officials to provide comparisons  
117 of West Virginia students to a national sample.

118 (d) The state board shall revise and update the  
119 learning outcome statements as necessary and shall  
120 determine a schedule for the annual administration of  
121 the WV-STEP program tests. The state superintendent  
122 is responsible for the overall development, implementa-  
123 tion and monitoring of the program. The state board  
124 may establish a pilot program to implement the WV-  
125 STEP program prior to the required implementation  
126 dates under subsection (c) of this section.

127 (e) Any student who is unable to take any of the tests  
128 prescribed in this section because of absence from school  
129 and provides school authorities with a valid reason for  
130 such absence shall be given the missed test as soon as  
131 possible following the student's return to school. An  
132 exceptional child is subject to testing under the WV-  
133 STEP program only to the extent specified in that  
134 child's individualized education program (IEP).

135 (f) The parent or guardian of each student tested  
136 under the WV-STEP program shall be notified in  
137 writing of the students test score, along with the average  
138 test score of all other students in the same grade at the  
139 school. The state board shall promulgate rules for the  
140 compilation of aggregate test scores by grade in such  
141 manner as to permit the comparison of student perfor-  
142 mance at different schools within and among the various  
143 school districts. The test scores of all students taking the  
144 test at each school shall be compiled by the district

145 pursuant to such rules, shall be made available for  
146 public inspection and shall be included in the school and  
147 county report cards under section four of this article.  
148 However, no individual student's WV-STEP scores may  
149 be disclosed to the public.

150 (g) The department of education shall take necessary  
151 administrative action under section five of this article  
152 to monitor and evaluate the curriculum and instruction  
153 methods in each school district to ensure compliance  
154 with the standards and purposes of this article.

**§18-2E-3a. Honors and advanced placement programs.**

1 (a) The purpose of this section is to provide honors and  
2 advanced placement programs to meet the needs of  
3 students who have the potential and desire to complete  
4 curriculum more demanding than that offered in the  
5 regular classroom for their current grade level. Honors  
6 programs are those programs offering courses to expand  
7 the academic content in a given program of study and  
8 may include, but shall not be limited to, research and  
9 in-depth studies, mentorships, content-focused seminars,  
10 and extended learning outcomes instruction in the  
11 content area. Advanced placement programs are those  
12 programs offering classes which are advanced in terms  
13 of content and performance expectations of those  
14 normally available for the age/grade level of the student  
15 and providing credit toward graduation and possible  
16 college credit. Advanced placement classes also include  
17 those recognized or offered by the college board,  
18 postsecondary institutions and other recognized founda-  
19 tions, corporations or institutions.

20 Curriculum approved under this section shall be  
21 designed to advance the achievement of students in the  
22 subject area or areas in which the student has achieved  
23 at least two of the following three criteria: (a) Demon-  
24 strated exceptional ability and interest through past  
25 performance, (b) obtained the prerequisite knowledge  
26 and skills to perform honors or advanced placement  
27 work, and (c) recommended by the student's former or  
28 present teachers. Honors and advanced placement  
29 curriculum may include advanced placement courses

30 offered through the college board or other public or  
31 private foundations, corporations, institutions, or  
32 businesses whose courses are generally accepted as  
33 leading to advanced placement or standing in a postse-  
34 condary institution, accelerated instructional courses  
35 offered via satellite and other courses and arrange-  
36 ments, approved by the state board, which provide  
37 students an opportunity to advance their learning above  
38 that offered through the regular curriculum. To the  
39 maximum extent possible, honors and advanced place-  
40 ment courses shall be taught by a regular classroom  
41 teacher. Such classroom teacher shall have adequate  
42 knowledge in the subject area for the instruction of such  
43 course. If a teacher, licensed by the state board, with  
44 adequate knowledge in the advanced subject area is not  
45 available, an adjunct teacher or other qualified person  
46 may be employed, contracted for, or shared between  
47 schools to instruct such course: *Provided*, That the  
48 position shall be posted annually prior to the beginning  
49 of the school year immediately following the school year  
50 in which the adjunct teacher or other qualified person  
51 is employed. The state board may grant waivers to  
52 existing certification requirements for an adjunct  
53 teacher or other qualified person who has an earned  
54 bachelors degree and has demonstrated competence in  
55 the subject to be taught.

56 (b) The honors and advanced placement curriculum  
57 shall be phased-in in accordance with the following  
58 schedule:

59 (1) Prior to the first day of June, one thousand nine  
60 hundred eighty-nine, the state board shall establish a  
61 program coordinated through the colleges and univer-  
62 sities or some other entity, to provide training to  
63 teachers in the instruction of honors and advanced  
64 placement courses: *Provided*, That the state board shall  
65 not establish an additional certification area for the  
66 teaching of honors or advanced placement courses;

67 (2) To assist in the implementation of teacher training  
68 for honors and advanced placement instruction, there  
69 shall be an appropriation to the state board;

70 (3) On or before the first day of June, one thousand  
71 nine hundred eighty-nine, and each year thereafter,  
72 teachers shall be selected to teach honors and advanced  
73 placement courses based upon the teacher's qualifica-  
74 tions and academic interests and the needs of the  
75 students. The county boards of education shall, if  
76 necessary, make arrangements for the teachers to attend  
77 a training program;

78 (4) Beginning in the school year one thousand nine  
79 hundred ninety—ninety-one, each county board shall  
80 provide in grades nine through twelve honors and  
81 advanced placement courses as provided under subsec-  
82 tion (a) of this section.

83 (c) The state board shall designate one employee who  
84 is an expert in the area of higher education financial  
85 aid, including, but not limited to, loans, grants and work  
86 studies, to work on a full-time continuous basis with  
87 high school counselors to ensure that all high school  
88 students are informed of the availability of financial  
89 assistance to attend college.

**§18-2E-3b. Placement advisory committee established.**

1 Gifted students in grades nine through twelve may be  
2 served in honors and advanced placement programs as  
3 described in section three of this article, pursuant to the  
4 student's individualized education program and set  
5 forth in the student's four year education plan. Prior to  
6 the end of grade eight, a placement advisory committee  
7 shall convene for the purpose of determining whether a  
8 student should be placed in an honors or advanced  
9 placement program pursuant to the placement criteria  
10 set forth in section three-a of this article. Upon a  
11 determination that placement in one of the programs  
12 would be appropriate, the placement advisory commit-  
13 tee shall write a four year education plan which will  
14 designate honors or advanced placement courses and/or  
15 offerings appropriate and agreed to by the school,  
16 parent and student.

17 The four year education plan must be reviewed  
18 annually and approved by the parent, student and  
19 school. Schools shall be required to deliver the individ-

20 ualized education program as stated in the four year  
21 education plan.

**§18-2E-7. Providing for high quality basic skills development and remediation in all public schools.**

1 The Legislature finds that teachers must be provided  
2 the support, assistance and teaching tools necessary to  
3 meet individual student instructional needs on a daily  
4 basis in a classroom of students who differ in learning  
5 styles, learning rates and in motivation to learn. The  
6 Legislature further finds that attaining a solid foundation  
7 in the basic skills of reading, composition and  
8 arithmetic is essential for advancement in higher  
9 education, occupational and avocational pursuits and  
10 that computers are an effective tool for the teacher in  
11 corrective, remedial and enrichment activities.  
12 Therefore, the state board shall develop a plan which  
13 specifies the resources to be used to provide services to  
14 students in the earliest grade level and moving upward  
15 as resources become available based on a plan developed  
16 by each individual school team.

17 This plan must provide for standardization of computer  
18 hardware and software for the purposes of achieving  
19 economies of scale, facilitating teacher training, permitting  
20 the comparison of achievement of students in  
21 schools and counties utilizing the hardware and software,  
22 and facilitating the repair of equipment, and  
23 ensuring appropriate utilization of the hardware and  
24 software purchased for remediation and basic skills  
25 development.

26 The state board shall determine the computer hardware  
27 and software specifications after input from  
28 practicing teachers at the appropriate grade levels and  
29 with the assistance of educational computer experts and  
30 the curriculum technology resource center.

31 Computer hardware and software shall be purchased  
32 either directly or through a lease purchase arrangement  
33 pursuant to the provisions of article three, chapter five-  
34 a of this code in the amount equal to anticipated  
35 revenues being appropriated.

36 The state board shall develop and provide through the  
37 state curriculum technology resource center a program  
38 to ensure adequate teacher training, continuous teacher  
39 support and updates.

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

§18-5-18a. Maximum teacher-pupil ratio.

§18-5-18c. Early childhood programs; eligibility and standards for placement; guidelines and criteria.

**§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.**

1 The board shall meet on the first Monday of January,  
2 except that in the year one thousand nine hundred  
3 eighty-two, and every year thereafter, the board shall  
4 meet on the first Monday of July, and upon the dates  
5 provided by law for the laying of levies, and at such  
6 other times as the board may fix upon its records. At  
7 any meeting as authorized above and in compliance with  
8 the provisions of article four of this chapter, the board  
9 may employ such qualified teachers, or those who will  
10 qualify by the time of entering upon their duties,  
11 necessary to fill existing or anticipated vacancies for the  
12 current or next ensuing school year. At a meeting of the  
13 board, on or before the first Monday of May, the  
14 superintendent shall furnish in writing to the board a  
15 list of those teachers to be considered for transfer and  
16 subsequent assignment for the next ensuing school year;  
17 all other teachers not so listed shall be considered as  
18 reassigned to the positions held at the time of this  
19 meeting. Such list of those recommended for transfer  
20 shall be included in the minute record and the teachers  
21 so listed shall be notified in writing, which notice shall  
22 be delivered in writing, by certified mail, return receipt  
23 requested, to such teachers' last-known addresses within  
24 ten days following said board meeting, of their having  
25 been so recommended for transfer and subsequent  
26 assignment.

27 Special meetings may be called by the president or  
28 any three members, but no business shall be transacted  
29 other than that designated in the call.

30 In addition, a public hearing shall be held concerning  
31 the preliminary operating budget for the next fiscal  
32 year not less than ten days after such budget has  
33 received tentative approval by the West Virginia board  
34 of education and at such hearing reasonable time shall  
35 be granted to any person or persons who wish to speak  
36 regarding parts or all of such budget. Notice of such  
37 hearing shall be published as a Class I legal advertise-  
38 ment in compliance with the provisions of article three,  
39 chapter fifty-nine of this code.

40 A majority of the members shall constitute the  
41 quorum necessary for the transaction of official  
42 business.

43 Board members may receive compensation at a rate  
44 not to exceed eighty dollars per meeting attended. But  
45 they shall not receive pay for more than fifty-two  
46 meetings in any one fiscal year.

47 Members shall also be paid, upon the presentation of  
48 an itemized sworn statement, for all necessary traveling  
49 expenses, including all authorized meetings, incurred on  
50 official business, at the order of the board.

51 When, by a majority vote of its members, a county  
52 board of education deems it a matter of public interest,  
53 such board may join the West Virginia school board  
54 association and the national school board association,  
55 and may pay such dues as may be prescribed by said  
56 associations and approved by action of the respective  
57 county boards. Membership dues and actual traveling  
58 expenses of board members for attending meetings of  
59 the West Virginia school board association may be paid  
60 by their respective county boards of education out of  
61 funds available to meet actual expenses of the members,  
62 but no allowance shall be made except upon sworn  
63 itemized statements.

**§18-5-18a. Maximum teacher-pupil ratio.**

1 County boards of education shall provide, by the



2 school year one thousand nine hundred eighty-three—  
3 eighty-four, and thereafter, sufficient personnel, equip-  
4 ment and facilities as will ensure that each first and  
5 second grade classroom, or classrooms having two or  
6 more grades that include either the first or second  
7 grades shall not have more than twenty-five pupils for  
8 each teacher of the grade or grades and shall not have  
9 more than twenty pupils for each kindergarten teacher  
10 per session, unless the state superintendent has excepted  
11 a specific classroom upon application therefor by a  
12 county board.

13 County boards shall provide by the school year one  
14 thousand nine hundred eighty-four—eighty-five, and  
15 continue thereafter, sufficient personnel, equipment and  
16 facilities as will ensure that each third, fourth, fifth and  
17 sixth grade classroom, or classrooms having two or more  
18 grades that include one or more of the third, fourth, fifth  
19 and sixth grades, shall not have more than twenty-five  
20 pupils for each teacher of the grade or grades.

21 Beginning with the school year one thousand nine  
22 hundred eighty-six—eighty-seven, and thereafter, no  
23 county shall maintain a greater number of classrooms  
24 having two or more grades that include one or more of  
25 the grade levels referred to in this section than were in  
26 existence in said county as of the first day of January,  
27 one thousand nine hundred eighty-three: *Provided*, That  
28 for the prior school years, and only if there is insuffi-  
29 cient classroom space available in the school or county,  
30 a county may maintain one hundred ten percent of such  
31 number of classrooms.

32 During the school year one thousand nine hundred  
33 eighty-four—eighty-five, and thereafter, the state  
34 superintendent is authorized, consistent with sound  
35 educational policy, (a) to permit on a statewide basis, in  
36 grades four through six, more than twenty-five pupils  
37 per teacher in a classroom for the purposes of instruc-  
38 tion in physical education, and (b) to permit more than  
39 twenty pupils per teacher in a specific kindergarten  
40 classroom and twenty-five pupils per teacher in a  
41 specific classroom in grades one through six during a  
42 school year in the event of extraordinary circumstances

43 as determined by the state superintendent after appli-  
44 cation by a county board of education.

45 The state board shall establish guidelines for the  
46 exceptions authorized in this section, but in no event  
47 shall the superintendent except classrooms having more  
48 than three pupils above the pupil-teacher ratio as set  
49 forth in this section.

50 The requirement for approval of an exception to  
51 exceed the twenty pupils per kindergarten teacher per  
52 session limit or the twenty-five pupils per teacher limit  
53 in grades one through six is waived in schools where the  
54 schoolwide pupil-teacher ratio is twenty-five or less in  
55 grades one through six: *Provided*, That a teacher shall  
56 not have more than three pupils above the teacher/pupil  
57 ratio as set forth in this section. Any kindergarten  
58 teacher who has more than twenty pupils per session  
59 and any classroom teacher of grades one through six  
60 who has more than twenty-five pupils shall be paid  
61 additional compensation based on the affected classroom  
62 teacher's average daily salary divided by twenty for  
63 kindergarten teachers or twenty-five for teachers of  
64 grades one through six for every day times the number  
65 of additional pupils enrolled up to the maximum pupils  
66 permitted in the teacher's classroom. All such additional  
67 compensation shall be paid from county funds  
68 exclusively.

69 No provision of this section is intended to limit the  
70 number of pupils per teacher in a classroom for the  
71 purpose of instruction in choral, band or orchestra  
72 music.

73 Each school principal shall assign students equitably  
74 among the classroom teachers, taking into consideration  
75 reasonable differences due to subject areas and/or grade  
76 levels.

77 The state board shall collect from each county board  
78 of education information on class size and the number  
79 of pupils per teacher for all classes in grades seven  
80 through twelve. The state board shall report such  
81 information to the legislative oversight commission on

82 education accountability before the first day of January  
83 of each year.

**§18-5-18c. Early childhood programs; eligibility and standards for placement; guidelines and criteria.**

1 County boards shall provide by the school year one  
2 thousand nine hundred eighty-nine—ninety, and contin-  
3 uing thereafter, programs and instructional procedures  
4 that recognize the variability in achievement, develop-  
5 ment, and background experience of the early childhood  
6 years.

7 Such programs and instructional procedures may  
8 include, but shall not be limited to, developmental  
9 kindergarten, developmental first grade, early first  
10 grade, transitional first grade, and/or developmental  
11 second grade.

12 Placement of children in any of the aforementioned  
13 early childhood programs shall be based on the judg-  
14 ment of the teacher and other professional personnel  
15 after consultation with the parent or guardian and in  
16 accordance with the evaluation model for children as set  
17 forth in section two, article two-e of this chapter.  
18 Counties may designate one or more classes or schools  
19 for such early childhood programs and may transport  
20 children to these schools.

21 Provisions shall be made for early childhood teachers  
22 to communicate on a regular basis with other teachers,  
23 professional personnel and representatives of other  
24 appropriate agencies.

25 The state board shall establish and prescribe guide-  
26 lines and criteria relating to the establishment, opera-  
27 tion and successful completion of early childhood  
28 programs in accordance with the other provisions of this  
29 section and high quality educational programs.

**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

§18-9A-2. Definitions.

§18-9A-4. Foundation allowance for professional educators.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

§18-9A-6a. Teachers retirement fund allowance.

- §18-9A-7. Foundation allowance for transportation cost.  
§18-9A-8. Foundation allowance for administrative cost.  
§18-9A-9. Foundation allowance for other current expense and substitute employees.  
§18-9A-10. Foundation allowance to improve instructional programs.  
§18-9A-13b. Allowances for remedial and accelerated education programs and salary equity.  
§18-9A-22. Standards for educational quality.

**§18-9A-2. Definitions.**

1 For the purpose of this article:

2 "State board" means the West Virginia board of  
3 education.

4 "County board" or "board" means a county board of  
5 education.

6 "Professional salaries" means the state legally man-  
7 dated salaries of the professional educators as provided  
8 in article four, chapter eighteen-a of this code.

9 "Professional educator" shall be synonymous with and  
10 shall have the same meaning as "teacher" as defined in  
11 section one, article one, chapter eighteen of this code.

12 "Professional instructional personnel" means a profes-  
13 sional educator whose regular duty is as that of a  
14 classroom teacher, librarian, counselor, attendance  
15 director, school psychologist or school nurse with a  
16 bachelors degree and who is licensed by the West  
17 Virginia board of examiners for registered professional  
18 nurses. A professional educator having both instruc-  
19 tional and administrative or other duties shall be  
20 included as professional instructional personnel for that  
21 ratio of the school day for which he is assigned and  
22 serves on a regular full-time basis in appropriate  
23 instruction, library, counseling, attendance, psychologist  
24 or nursing duties.

25 "Service personnel salaries" shall mean the state  
26 legally mandated salaries for service personnel as  
27 provided in section eight-a, article four, chapter  
28 eighteen-a of this code.

29 "Service personnel" shall mean all personnel as  
30 provided for in section eight, article four, chapter

31 eighteen-a of this code. For the purpose of computations  
32 under this article of ratios of service personnel to  
33 adjusted enrollment, a service employee shall be counted  
34 as that number found by dividing his number of  
35 employment days in a fiscal year by two hundred:  
36 *Provided*, That the computation for any such person  
37 employed for three and one-half hours or less per day  
38 as provided in section eight-a, article four, chapter  
39 eighteen-a of this code shall be calculated as one half an  
40 employment day.

41 "Net enrollment" means the number of pupils enrolled  
42 in special education programs, kindergarten programs  
43 and grades one to twelve, inclusive, of the public schools  
44 of the county. Commencing with the school year  
45 beginning on the first day of July, one thousand nine  
46 hundred eighty-eight, net enrollment further shall  
47 include adults enrolled in regular secondary vocational  
48 programs existing as of the effective date of this section:  
49 *Provided*, That net enrollment shall include no more  
50 than one thousand such adults counted on the basis of  
51 full-time equivalency and apportioned annually to each  
52 county in proportion to the adults participating in  
53 regular secondary vocational programs in the prior year  
54 counted on the basis of full-time equivalency: *Provided*,  
55 *however*, That no tuition or special fees beyond that  
56 required of the regular secondary vocational student is  
57 charged for such adult students.

58 "Adjusted enrollment" means the net enrollment plus  
59 twice the number of pupils enrolled for special educa-  
60 tion. Commencing with the school year beginning on the  
61 first day of July, one thousand nine hundred ninety,  
62 adjusted enrollment means the net enrollment plus  
63 twice the number of pupils enrolled for special educa-  
64 tion, including exceptional gifted, plus the number of  
65 pupils in grades nine through twelve enrolled for honors  
66 and advanced placement programs, plus the number of  
67 pupils enrolled on the first day of July, one thousand  
68 nine hundred eighty-nine, in the gifted program in  
69 grades nine through twelve: *Provided*, That commenc-  
70 ing with the school year beginning on the first day of  
71 July, one thousand nine hundred ninety, no more than

72 four percent of net enrollment of grades one through  
73 eight may be counted as enrolled in gifted education and  
74 no more than six percent of net enrollment of grades  
75 nine through twelve may be counted as enrolled in  
76 gifted education, exceptional gifted education (subject to  
77 the limitation set forth in section one, article twenty of  
78 this chapter) and honors and advanced placement  
79 programs for the purpose of determining adjusted  
80 enrollment within a county: *Provided, however,* That  
81 nothing herein shall be construed to limit the number  
82 of students who may actually enroll in gifted, honors or  
83 advanced placement education programs in any county:  
84 *Provided further,* That until the school year beginning  
85 on the first day of July, one thousand nine hundred  
86 ninety-two, the preceding percentage limitations shall  
87 not restrict the adjusted enrollment definition for a  
88 county to the extent that those limitations are exceeded  
89 by students enrolled in gifted education programs on the  
90 first day of July, one thousand nine hundred eighty-nine:  
91 *And provided further,* That no pupil may be counted  
92 more than three times for the purpose of determining  
93 adjusted enrollment. Such enrollment shall be adjusted  
94 to the equivalent of the instructional term and in  
95 accordance with such eligibility requirements and rules  
96 as established by the state board. No pupil shall be  
97 counted more than once by reason of transfer within the  
98 county or from another county within the state, and no  
99 pupil shall be counted who attends school in this state  
100 from another state.

101 "Levies for general current expense purposes" means  
102 on each hundred dollars of valuation, twenty-two and  
103 five tenths cents on Class I property, forty-five cents on  
104 Class II property, and ninety cents on Classes III and  
105 IV property.

106 "Basic resources per pupil" for the state and the  
107 several counties means the total of (a) property tax  
108 revenues computed at the maximum regular levy rates  
109 as provided by section six-c, article eight, chapter eleven  
110 of this code, at a uniform rate of ninety-five percent, but  
111 excluding revenues from increased levies as provided in  
112 section ten, article X of the Constitution of West

113 Virginia, and (b) basic state aid as provided in sections  
114 twelve and thirteen of this article, but excluding the  
115 foundation allowance to improve instructional programs  
116 as provided in section ten of this article, and excluding  
117 any funds appropriated for the purpose of achieving  
118 salary equity among county board employees, this total  
119 divided by the number of students in adjusted enrol-  
120 lment: *Provided*, That beginning with the school year  
121 commencing on the first day of July, one thousand nine  
122 hundred ninety-one, and thereafter, the foundation  
123 allowance for transportation cost as provided in section  
124 seven of this article shall also be excluded and the total  
125 shall be divided by the number of students in net  
126 enrollment: *Provided, however*, That any year's alloca-  
127 tions to the counties of the eighty percent portion of the  
128 foundation allowance to improve instructional pro-  
129 grams, as provided in section ten of this article, shall  
130 be determined on the basis of the immediately preceding  
131 school year's basic resources per pupil.

**§18-9A-4. Foundation allowance for professional educators.**

1 The basic foundation allowance to the county for  
2 professional educators shall be the amount of money  
3 required to pay the state minimum salaries, in accor-  
4 dance with provisions of article four, chapter eighteen-  
5 a of the code, to such personnel employed: *Provided*,  
6 That in making this computation no county shall receive  
7 an allowance for such personnel which number is in  
8 excess of fifty-five professional educators to each one  
9 thousand students in adjusted enrollment: *Provided*,  
10 *however*, That any county not qualifying under the  
11 provision of section fourteen of this article shall be  
12 eligible for a growth rate in professional personnel in  
13 any one year not to exceed twenty percent of its total  
14 potential increase under this provision, except that in no  
15 case shall such limit be fewer than five professionals:  
16 *Provided further*, That the number of and the allowance  
17 for personnel paid in part by state and county funds  
18 shall be prorated: *And provided further*, That where two  
19 or more counties join together in support of a vocational  
20 or comprehensive high school or any other program or

21 service, the professional educators for such school or  
22 program may be prorated among the participating  
23 counties on the basis of each one's enrollment therein  
24 and that such personnel shall be considered within the  
25 above-stated limit: *And provided further*, That in the  
26 school year beginning the first day of July, one thousand  
27 nine hundred eighty-eight, and the succeeding school  
28 year, each county board shall establish and maintain a  
29 minimum ratio of fifty professional instructional  
30 personnel per one thousand students in adjusted  
31 enrollment, and in the school year beginning the first  
32 day of July, one thousand nine hundred ninety, and for  
33 each succeeding school year, each county board shall  
34 establish and maintain a minimum ratio of fifty-one  
35 professional instructional personnel per one thousand  
36 students in adjusted enrollment. Any county board  
37 which does not establish and maintain this minimum  
38 ratio shall suffer a pro rata reduction in the allowance  
39 for professional educators under this section, and,  
40 further, any county board which does not establish and  
41 maintain this minimum ratio shall utilize any and all  
42 allocations to it by provision of section fourteen of this  
43 article solely to employ professional instructional  
44 personnel until the minimum ratio is attained: *And*  
45 *provided further*, That for the fiscal year commencing  
46 on the first day of July, one thousand nine hundred  
47 eighty-eight, only, the foundation allowance for profes-  
48 sional educators for a county board of education shall  
49 be equal to the amount allowable based upon the actual  
50 ratio of professional educators per one thousand students  
51 in net enrollment for which the county board of  
52 education received state reimbursement during the  
53 school year one thousand nine hundred eighty-seven—  
54 eighty-eight, except that this provision shall not apply  
55 to those counties whose percent rate of special education  
56 enrollment to net enrollment is less than sixteen and two  
57 tenths percent. No person employed prior to the first  
58 day of July, one thousand nine hundred eighty-eight,  
59 shall have their employment terminated because of a  
60 reduction in force resulting from the provisions of this  
61 section. Every county shall utilize methods other than  
62 reductions in force, such as attrition and early retire-



63 ment, before implementing their reductions in force  
64 policy to comply with the limitations of this section.

**§18-9A-5a. Ratio of foundation allowances for profes-  
sional educators and service personnel to  
net enrollment.**

1 (a) The purpose of this section is to establish maxi-  
2 mum ratios between the numbers of professional  
3 educators and service personnel in the counties which  
4 are funded through the public school support plan and  
5 the net enrollment in the counties, such ratios are in  
6 addition to the ratios provided for in sections four and  
7 five of this article. It is the intent of the Legislature to  
8 adjust these ratios pursuant to legislative act as may be  
9 appropriate when additional personnel are needed to  
10 perform additional duties.

11 (b) Commencing with the school year one thousand  
12 nine hundred eighty-nine—ninety, and each year  
13 thereafter, in computing the basic foundation allowance  
14 to a county for professional educators and the basic  
15 foundation allowance to a county for service personnel  
16 under sections four and five of this article, a county shall  
17 not receive an allowance for such personnel which  
18 number per one thousand students in net enrollment is  
19 in excess of the number of professional educators and  
20 the number of service personnel in the county computed  
21 as follows:

22		Maximum professional	Maximum service
23		educators per 1000	personnel per 1000
24	For the	net enrollment the	net enrollment the
25	school year	preceding year	preceding year
26	1989-90	76.5	45.5
27	1990-91	76.0	45.0
28	1991-92	75.5	44.5
29	1992-93	75.0	44.0
30	1993-94	74.5	43.75
31	1994-95 and	74.0	43.5
32	thereafter		

33 (c) No person employed prior to the first day of July,  
34 one thousand nine hundred eighty-eight, will be laid off  
35 because of a reduction in force resulting from the

36 provisions of this section. Every county shall utilize  
37 methods other than reductions in force, such as attrition  
38 and early retirement, before implementing their  
39 reductions in force policy to comply with the limitations  
40 of this section.

41 (d) For the school years one thousand nine hundred  
42 eighty-nine—ninety and one thousand nine hundred  
43 ninety—ninety-one only, if a school district loses more  
44 than six percent of the number chargeable for the  
45 previous school year for professional educator positions  
46 or service personnel positions, due to the maximum  
47 ratios established in subsection (b) of this section, it may  
48 apply to the state board for a waiver of said ratios to  
49 the extent that the loss exceeds either six percent of its  
50 professional educators or service personnel: *Provided,*  
51 That the county board of education establishes and  
52 maintains a minimum ratio of fifty professional instruc-  
53 tional personnel per one thousand students in adjusted  
54 enrollment for the school year beginning the first day  
55 of July, one thousand nine hundred eighty-nine, and  
56 fifty-one professional instructional personnel per one  
57 thousand students in adjusted enrollment for the school  
58 year one thousand nine hundred ninety—ninety-one as  
59 required in section four of this article. Waivers shall be  
60 determined on a case by case basis according to rules  
61 adopted by the state board and granted to the extent  
62 funds are appropriated by the Legislature for this  
63 purpose. Prior to the adoption of such rules, the state  
64 board shall conduct a thorough review of the staffing  
65 patterns in each county. Any personnel positions funded  
66 as a result of a waiver granted under the provisions of  
67 this subsection shall not be included in the computations  
68 set forth in sections four and five of this article.

**§18-9A-6a. Teachers retirement fund allowance.**

1 The total teachers retirement fund allowance shall be  
2 the sum of the basic foundation allowance for profes-  
3 sional educators and the basic foundation allowance for  
4 service personnel, as provided in sections four and five  
5 of this article; all salary equity appropriations autho-  
6 rized in section five, article four of chapter eighteen-a;  
7 and such amounts as are to be paid by the counties

8 pursuant to sections five-a and five-b of said article to  
9 the extent such county salary supplements are equal to  
10 the amount distributed for salary equity among the  
11 counties, multiplied by fifteen percent.

12 The teachers retirement fund allowance amounts shall  
13 be accumulated in the employers accumulation fund of  
14 the state teachers retirement system pursuant to section  
15 eighteen, article seven-a of this chapter, and shall be in  
16 lieu of the contribution required of employers pursuant  
17 to subsection (b) of said section eighteen as to all  
18 personnel included in the allowance for state aid in  
19 accordance with sections four and five of this article.

**§18-9A-7. Foundation allowance for transportation cost.**

1 The allowance in the foundation school program for  
2 each county for transportation shall be the sum of the  
3 following computations:

4 (1) Eighty percent of the transportation cost within  
5 each county for maintenance, operation and related  
6 costs, exclusive of all salaries;

7 (2) The total cost, within each county, of insurance  
8 premiums on buses, buildings and equipment used in  
9 transportation: *Provided*, That such premiums were  
10 procured through competitive bidding;

11 (3) For the school year beginning the first day of July,  
12 one thousand nine hundred eighty-nine, and thereafter,  
13 an amount equal to ten percent of the current replace-  
14 ment value of the bus fleet within each county as  
15 determined by the state board, such amount to be used  
16 only for the replacement of buses;

17 (4) Eighty percent of the cost of contracted transpor-  
18 tation services and public utility transportation with  
19 each county; and

20 (5) Aid in lieu of transportation equal to the state  
21 average amount per pupil for each pupil receiving such  
22 aid within each county.

23 The total state share for this purpose shall be the sum  
24 of the county shares: *Provided*, That no county shall  
25 receive an allowance which is greater than one third

26 above the computed state average allowance per mile  
 27 multiplied by the total mileage in the county.

**18-9A-8. Foundation allowance for administrative cost.**

1 The allowance for administrative cost shall be equal  
 2 to one and twenty-five one hundredths percent of the  
 3 allocation for professional educators, as determined in  
 4 section four of this article.

5 Distribution of the computed allowance shall be made  
 6 as follows:

7 (1) Fifty-six percent of the allowance shall be distrib-  
 8 uted to the counties in equal amounts; and

9 (2) Forty-four percent of the allowance shall be  
 10 distributed to the regional educational service agencies  
 11 in accordance with rules adopted by the state board. The  
 12 allowance for regional educational service agencies shall  
 13 be excluded from the computation of total basic state aid  
 14 as provided for in section twelve of this article.

**§18-9A-9. Foundation allowance for other current ex-  
 pense and substitute employees.**

1 The total allowance for other current expense and  
 2 substitute employees shall be the sum of the following:

3 (1) For current expense, for the year one thousand  
 4 nine hundred eighty-nine—ninety only, ten percent of  
 5 the sum of the computed state allocation for professional  
 6 educators and service personnel as determined in  
 7 sections four and five of this article, and thereafter the  
 8 rate shall be ten and six-tenths percent. Distribution to  
 9 the counties shall be made proportional to the average  
 10 of each county's average daily attendance for the  
 11 preceding year and the county's second month net  
 12 enrollment; plus

13 (2) For professional educator substitutes or current  
 14 expense, two and five-tenths percent of the computed  
 15 state allocation for professional educators as determined  
 16 in section four of this article. Distribution to the counties  
 17 shall be made proportional to the total county allocation  
 18 for professional educators; plus

19 (3) For service personnel substitutes or current  
 20 expense, two and five-tenths percent of the computed

21 state allocation for service personnel as determined in  
22 section five of this article. Distribution to the counties  
23 shall be made proportional to the total county allocation  
24 for service personnel.

**§18-9A-10. Foundation allowance to improve instructional programs.**

1 (a) Commencing with the school year beginning on  
2 the first day of July, one thousand nine hundred eighty-  
3 nine, and thereafter, twenty-eight million eight hundred  
4 thousand dollars, in addition to funds which accrue from  
5 allocations due to increase in total local share above that  
6 computed for the school year beginning on the first day  
7 of July, one thousand nine hundred eighty-nine, from  
8 balances in the general school fund, or from appropri-  
9 ations for such purpose shall be allocated to increase  
10 state support of counties as follows:

11 (1) Twenty percent of these funds shall be allocated  
12 to the counties proportional to adjusted enrollment; and

13 (2) Each county whose allocation in subsection (1) is  
14 less than one hundred fifty thousand dollars in any fiscal  
15 year shall then receive an amount which equals the  
16 difference between such amount received and one  
17 hundred fifty thousand dollars.

18 (b) The remainder of these funds shall be allocated  
19 according to the following plan for progress toward  
20 basic resources per pupil equity:

21 Beginning with the county which has the lowest basic  
22 resources per pupil and progressing through the  
23 counties successively to and beyond the county with the  
24 highest basic resources per pupil, the funds available  
25 shall be allocated in amounts necessary to increase  
26 moneys available to the county or counties to the basic  
27 resources per pupil level, as nearly as is possible, of the  
28 county having the next higher basic resources per pupil:  
29 *Provided*, That to be eligible for its allocation under this  
30 section, a county board shall lay the maximum regular  
31 tax rates set out in section six-c, article eight, chapter  
32 eleven of this code: *Provided, however*, That moneys  
33 allocated by provision of this section shall be used to

34 improve instructional programs according to a plan for  
35 instructional improvement which the affected county  
36 board shall file with the state board by the first day of  
37 August of each year, to be approved by the state board  
38 by the first day of September of that year if such plan  
39 substantially complies with standards to be adopted by  
40 the state board: *Provided further*, That no part of this  
41 allocation may be used to employ professional educators  
42 in counties until and unless all applicable provisions of  
43 sections four and fourteen of this article have been fully  
44 utilized. Such instructional improvement plan shall be  
45 made available for distribution to the public at the office  
46 of each affected county board.

47 (c) Commencing with the school year beginning on the  
48 first day of July, one thousand nine hundred eighty-  
49 eight, and thereafter, fifty percent of the funds which  
50 accrue due to an increase in local share above that  
51 computed for the school year beginning on the first day  
52 of July, one thousand nine hundred eighty-seven, shall  
53 be paid into the school building capital improvements  
54 fund created by section six, article nine-d of this  
55 chapter, and shall be used solely for the purposes of said  
56 article nine-d.

57 (d) There shall be appropriated seven million four  
58 hundred ten thousand six hundred sixty-eight dollars  
59 for aid to counties which may be expended by the county  
60 boards for the initiation, and/or improvements of special  
61 education programs including employment of new  
62 special education professional personnel solely serving  
63 exceptional children; instructional programs which  
64 utilize state of the art technology; training of educa-  
65 tional personnel to work with exceptional children; and  
66 supportive costs such as materials, transportation,  
67 contracted services, minor renovations and other costs  
68 directly related to the special education delivery process  
69 prescribed by the state board. The appropriation may  
70 also be used for nonpersonnel costs associated with the  
71 maintenance of special education programs in accor-  
72 dance with such rules as established by the state board.  
73 The appropriation includes out-of-state instruction and  
74 may be expended to provide instruction, care and

75 maintenance for educable persons who are severely  
76 handicapped and for whom the state provides no  
77 facilities.

78 (e) There shall be appropriated two million one  
79 thousand seven hundred thirty-two dollars to be used by  
80 the state department of education which may be  
81 expended for the purposes of paying staff and operating  
82 costs of both administrative/program personnel and  
83 instructional personnel delivering education to handi-  
84 capped children in facilities operated by the state  
85 department of health; paying state department of  
86 education staff, current expenses and equipment;  
87 supporting a gifted summer camp; and supporting  
88 special state projects including, but not limited to, (1)  
89 an instructional materials center for visually handi-  
90 capped children at the West Virginia Schools for the  
91 Deaf and the Blind, (2) the state special olympics  
92 program, (3) the West Virginia advisory council for the  
93 education of exceptional children at the West Virginia  
94 College of Graduate Studies, (4) statewide training  
95 activities or other programs benefiting exceptional  
96 children, and (5) the state very special arts program.

**§18-9A-13b. Allowances for remedial and accelerated  
education programs and salary equity.**

1 For the fiscal years commencing on the first day of  
2 July, one thousand nine hundred eighty-eight and  
3 eighty-nine, only, the total state appropriation for the  
4 basic foundation program shall be no less than the state  
5 appropriation for the fiscal year which began on the  
6 first day of July, one thousand nine hundred eighty-  
7 seven.

8 For the school year beginning on the first day of July,  
9 one thousand nine hundred eighty-eight, and the school  
10 year beginning on the first day of July, one thousand  
11 nine hundred eighty-nine, funds which accrue from  
12 allocations due to changes in adjusted enrollment above  
13 that computed for the school year beginning on the first  
14 day of July, one thousand nine hundred eighty-seven, or  
15 from appropriations for such purpose, shall be allocated  
16 to increase state support for salary equity and to develop

17 and implement remedial and accelerated programs in  
18 the following manner:

19       Sixty percent of these funds shall be allocated for the  
20 purpose of attaining salary equity among the counties  
21 pursuant to section five, article four, chapter eighteen-  
22 a; and

23       Forty percent of these funds shall be allocated to  
24 implement remedial and accelerated programs as  
25 developed under guidelines of the state board: *Provided,*  
26 That for the school year one thousand nine hundred  
27 eighty-nine—ninety, only, funds which accrue from  
28 allocations due to changes in adjusted enrollment above  
29 that computed for the school year beginning on the first  
30 day of July, one thousand nine hundred eighty-seven,  
31 shall be distributed for the purpose of achieving equity  
32 within the state basic foundation program.

33       Commencing with the school year beginning on the  
34 first day of July, one thousand nine hundred ninety, and  
35 thereafter, funds which accrue from allocations due to  
36 changes in adjusted enrollment above that computed for  
37 the school year beginning on the first day of July, one  
38 thousand nine hundred eighty-seven, or from appropri-  
39 ations for such purpose, shall be allocated to increase  
40 state support for salary equity and to develop and  
41 implement remedial and accelerated programs in the  
42 following manner:

43       Eighty percent of these funds shall be allocated for the  
44 purpose of attaining salary equity among the counties  
45 pursuant to section five, article four, chapter eighteen-  
46 a; and

47       Twenty percent of these funds shall be allocated to  
48 implement remedial and accelerated programs as  
49 developed under guidelines of the state board.

#### §18-9A-22. Standards for educational quality.

1       (a) The purpose of this section is to declare the intent  
2 of the Legislature to provide a thorough and efficient  
3 system of education for West Virginia public school  
4 students. High quality educational standards shall be  
5 provided all public school students on an equal educa-



6 tional opportunity basis. A system for the review of  
7 county educational plans and the on-site reviews of  
8 county educational programs shall provide assurances  
9 that the high quality standards, established pursuant to  
10 this section, are being met.

11 On or before January one, one thousand nine hundred  
12 eighty-five, the state board of education shall establish  
13 and adopt high quality educational standards and shall  
14 provide each county board of education a copy thereof.

15 On or before July one, one thousand nine hundred  
16 eighty-five, and each July one thereafter, each county  
17 board of education shall file an annual specific program  
18 plan with the state department of education. The  
19 program plan shall, at a minimum, meet the statewide  
20 high quality educational standards as established by the  
21 state board of education.

22 The purpose of the program plan is to allow county  
23 boards of education flexibility in developing school  
24 improvement programs structured around locally  
25 identified needs, but in compliance with the high quality  
26 standards adopted by the state board of education. High  
27 quality standards must be met in curriculum, finance,  
28 transportation, special education, facilities, textbooks,  
29 personnel qualifications and other such areas as  
30 determined by the state board of education.

31 The state department of education shall review the  
32 plans annually and conduct an on-site review of each  
33 county's educational program every fourth year. The  
34 state board of education shall have authority to issue  
35 four types of recognition status: (1) Full approval, (2)  
36 substantial approval, (3) probationary and (4)  
37 nonapproval.

38 Full approval status may be granted to a county board  
39 of education whose educational program has undergone  
40 an on-site evaluation by representatives of the state  
41 department of education and has met the high quality  
42 standards adopted by the state board of education. Full  
43 approval status shall be for a period not to exceed four  
44 years.

45 Substantial approval status may be granted to a  
46 county board of education whose educational program  
47 has satisfied all conditions identified under full approval  
48 status, with the exception of an on-site review, or all  
49 conditions identified under full approval have been  
50 satisfied except that one or more of the high quality  
51 standards have not been met but will be attained within  
52 one year, as described in an acceptable plan of action.

53 Probationary status is given to a county board of  
54 education whose educational program has not met the  
55 high quality standards. Probationary status is a warn-  
56 ing that the county board of education must make  
57 specified improvements. If progress is not made toward  
58 meeting the high quality standards during the succeed-  
59 ing year, the county board of education is automatically  
60 placed on nonapproval status.

61 Nonapproval status is given to a county board of  
62 education which fails to submit an annual program  
63 plan, fails to give evidence of meeting the high quality  
64 standards or has not demonstrated a reasonable effort  
65 to meet such standards.

66 (b) After the thirty-first day of December, one  
67 thousand nine hundred eighty-eight, the approval of  
68 educational programs based on high quality educational  
69 standards established by the state board shall be in  
70 accordance with the provisions of article two-e of this  
71 chapter and the provisions of this section shall expire.

#### ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1. Establishment of special programs and teaching services for exceptional children.

§18-20-9. Gifted education caseload review.

#### §18-20-1. Establishment of special programs and teaching services for exceptional children.

1 In accordance with the following provisions, county  
2 boards of education throughout the state shall establish  
3 and maintain for all exceptional children between five  
4 and twenty-three years of age special educational  
5 programs, including, but not limited to, special schools,  
6 classes, regular classroom programs, home-teaching or

7 visiting-teacher services for any type or classification as  
8 the state board shall approve. Provisions shall be made  
9 for educating exceptional children (including the  
10 handicapped and the gifted) who differ from the  
11 average or normal in physical, mental or emotional  
12 characteristics, or in communicative or intellectual  
13 deviation characteristics, or in both communicative and  
14 intellectual deviation characteristics, to the extent that  
15 they cannot be educated safely or profitably in the  
16 regular classes of the public schools or to the extent that  
17 they need special educational provisions within the  
18 regular classroom in order to educate them in accor-  
19 dance with their capacities, limitations and needs:  
20 *Provided*, That commencing with the school year  
21 beginning on the first day of July, one thousand nine  
22 hundred ninety, provisions shall be made for educating  
23 exceptional children, including the handicapped, the  
24 gifted in grades one through eight, the pupils enrolled  
25 on the first day of July, one thousand nine hundred  
26 eighty-nine, in the gifted program in grades nine  
27 through twelve and the exceptional gifted in grades nine  
28 through twelve. The term "exceptional gifted" means  
29 those students in grades nine through twelve identified  
30 as gifted and at least one of the following: Behavior  
31 disorder, specific learning disabilities, psychological  
32 adjustment disorder, underachieving, or economically  
33 disadvantaged. Exceptional gifted children shall be  
34 referred for identification pursuant to recommendation  
35 by a school psychologist, school counselor, principal,  
36 teacher, parent or by self-referral, at which time the  
37 placement process, including development of an individ-  
38 ualized education program, and attendant due process  
39 rights, shall commence. Exceptional gifted children, for  
40 purposes of calculating adjusted enrollment pursuant to  
41 section two, article nine-a of this chapter, shall not  
42 exceed one percent of net enrollment in grades nine  
43 through twelve. Nothing herein shall be construed to  
44 limit the number of students identified as exceptional  
45 gifted and who receive appropriate services. Each  
46 county board of education is mandated to provide gifted  
47 education to its students according to guidelines  
48 promulgated by the state board and consistent with the

49 provisions of this chapter. Upon the recommendation of  
50 a principal, counselor, teacher and parent, a student  
51 who does not meet the gifted eligibility criteria may  
52 participate in any school program deemed appropriate  
53 for the student provided that classroom space is  
54 available. In addition, county boards of education may  
55 establish and maintain other educational services for  
56 exceptional children as the state superintendent of  
57 schools may approve.

58 By the school year beginning on the first day of July,  
59 one thousand nine hundred seventy-four, county boards  
60 of education shall establish and maintain these special  
61 educational programs, including, but not limited to,  
62 special schools, classes, regular class programs, home-  
63 teaching and visiting-teacher services. After the first  
64 day of July, one thousand nine hundred eighty-three, the  
65 special education programs shall include home-teaching  
66 or visiting-teacher services for children who are  
67 homebound due to injury or who for any other reason  
68 as certified by a licensed physician are homebound for  
69 a period that has lasted or will last more than three  
70 weeks: *Provided*, That pupils receiving such homebound  
71 or visiting-teacher services shall not be included when  
72 computing adjusted enrollment as defined in section  
73 two, article nine-a, chapter eighteen of this code. The  
74 state board shall adopt rules and regulations to advance  
75 and accomplish this program and to assure that all  
76 exceptional children in the state, including children in  
77 mental health facilities, residential institutions and  
78 private schools, will receive an education in accordance  
79 with the mandates of state and federal laws.

80 Nothing in this section shall be construed to prevent  
81 county boards of education from providing special  
82 educational programs, including, but not limited to,  
83 special schools, classes, regular class programs, home-  
84 teaching or visiting-teacher services for such excep-  
85 tional children who are three years of age or older.

**§18-20-9. Gifted education caseload review.**

1 Notwithstanding any other provision of this code to  
2 the contrary, the teacher-student ratio for gifted, honors,

3 and advanced placement education in grades nine  
4 through twelve shall be the same as regular classroom  
5 education and not as required for special education of  
6 exceptional children: *Provided*, That this shall not apply  
7 to education of exceptional gifted, as defined in section  
8 one, article twenty of this chapter. The state board shall  
9 review class sizes and enrollment percentages of  
10 students in gifted, exceptional gifted, honors, and  
11 advanced placement programs in grades nine through  
12 twelve and report its findings to the standing education  
13 committees of the Senate and House of Delegates by the  
14 tenth day of January, one thousand nine hundred ninety-  
15 one.

## CHAPTER 18A. SCHOOL PERSONNEL.

### ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-1. Definitions.

§18A-4-2. State minimum salaries for teachers.

§18A-4-5a. County salary supplements for teachers.

§18A-4-5b. County salary supplements for school service personnel.

§18A-4-5c. Equity appropriation from surplus revenues.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-8d. Consolidation of services and seniority rights for administrative personnel.

#### §18A-4-1. Definitions.

1 For the purpose of this section, salaries shall be  
2 defined as: (a) "Basic salaries" which shall mean the  
3 salaries paid to teachers with zero years of experience  
4 and in accordance with the classification of certification  
5 and of training of said teachers; and (b) "advanced  
6 salaries" which shall mean the basic salary plus an  
7 experience increment based on the allowable years of  
8 experience of the respective teachers in accordance with  
9 the schedule established herein for the applicable  
10 classification of certification and of training of said  
11 teachers.

12 "Classification of certification" means the class or type  
13 of certificate issued by the state superintendent of  
14 schools under the statutory provisions of this chapter.  
15 "Classification of training" means the number of  
16 collegiate or graduate hours necessary to meet the

17 requirements stipulated in the definitions set forth in  
18 the next paragraph in items (2) to (10), inclusive.

19 The column heads of the state minimum salary  
20 schedule set forth in section two of this article are  
21 defined as follows:

22 (1) "Years of experience" means the number of years  
23 the teacher has been employed in the teaching profes-  
24 sion, including active work in educational positions  
25 other than the public schools, and service in the armed  
26 forces of the United States if the teacher were under  
27 contract to teach at the time of induction. For a  
28 registered professional nurse employed by a county  
29 board of education, "years of experience" means the  
30 number of years the nurse has been employed as a  
31 public school health nurse, including active work in a  
32 nursing position related to education, and service in the  
33 armed forces if the nurse was under contract with the  
34 county board at the time of induction. For the purpose  
35 of section two of this article, the experience of a teacher  
36 or a nurse shall be limited to that allowed under their  
37 training classification as found in the minimum salary  
38 schedule.

39 (2) "Fourth class" means all certificates previously  
40 identified as (a) "certificates secured by examination,"  
41 and (b) "other first grade certificates."

42 (3) "Third class" means all certificates previously  
43 identified as (a) "standard normal certificates" and (b)  
44 "third class temporary (sixty-four semester hours)  
45 certificates."

46 (4) "Second class" means all certificates previously  
47 identified as "second class temporary certificates based  
48 upon the required ninety-six hours of college work."

49 (5) "A.B." means a bachelor's degree, from an accre-  
50 dited institution of higher education, which has been  
51 issued to, or for which the requirements for such have  
52 been met by, a person who qualifies for or holds a  
53 professional certificate or its equivalent. A registered  
54 professional nurse with a bachelor's degree, who is  
55 licensed by the West Virginia board of examiners for

56 registered professional nurses and employed by a county  
57 board of education, shall be within this classification for  
58 payment in accordance with sections two and two-a of  
59 this article.

60 (6) "A.B. plus 15" means a bachelor's degree as  
61 defined above plus fifteen hours of graduate work, from  
62 an accredited institution of higher education certified to  
63 do graduate work, in an approved planned program at  
64 the graduate level which requirements have been met  
65 by a person who qualifies for or holds a professional  
66 certificate or its equivalent.

67 (7) "M. A." means a master's degree, earned in an  
68 institution of higher education approved to do graduate  
69 work, which has been issued to, or the requirements for  
70 such have been met by, a person who qualifies for or  
71 holds a professional certificate or its equivalent.

72 (8) "M. A. plus 15" means the above-defined master's  
73 degree plus fifteen hours of graduate work, earned in  
74 an institution of higher education approved to do  
75 graduate work, if the person is qualified for or holds a  
76 professional certificate or its equivalent.

77 (9) "M. A. plus 30" means the above-defined master's  
78 degree plus thirty graduate hours, earned in an  
79 institution approved to do graduate work, if the person  
80 is qualified for or holds a professional certificate or its  
81 equivalent.

82 (10) "Doctorate" means a doctor's degree, earned from  
83 a university qualified and approved to confer such a  
84 degree, which has been issued to or the requirements for  
85 such have been met by a person who qualifies for or  
86 holds a professional certificate or its equivalent.

87 Notwithstanding the requirements set forth in subdi-  
88 visions (6), (8) and (9) of this section relating to hours  
89 of graduate work at an institution certified to do such  
90 work, fifteen undergraduate credit hours from a  
91 regionally accredited institution of higher education,  
92 earned after the effective date of this section, may be  
93 utilized for advanced salary classification if such hours  
94 are in accordance with (a) the teacher's current

95 classification of certification and of training, (b) a  
96 designated instructional shortage area documented by  
97 the employing county superintendent, or (c) an identi-  
98 fied teaching deficiency documented through the state  
99 approved county personnel evaluation system.

100 Any professional educator earning a master's degree  
101 shall be entitled to any "MA" classifications of training  
102 for purposes of compensation pursuant to the provisions  
103 of the in-field master's salary schedule set forth in  
104 section two of this article only if a minimum of two-  
105 thirds of the course work for such degree is in the field  
106 in which the professional educator holds certification  
107 and is employed: *Provided*, That the classroom teacher  
108 who holds multiple certifications or a certification in  
109 elementary education and has obtained an in-field  
110 master's in one of those certification areas shall be  
111 compensated at the level commensurate with the in-field  
112 provisions.

113 Upon request for a specific master's degree program,  
114 the appropriate governing board of higher education  
115 shall provide all of the course work needed to obtain a  
116 master's degree in the requested program. The course  
117 work for such program shall be initiated no later than  
118 two years from the date requested and shall be provided  
119 in its entirety within each regional educational service  
120 agency area in which the request has been made as  
121 follows: (1) Via satellite instruction; (2) via public  
122 television home instruction; or (3) in a manner pres-  
123 cribed by such governing board. If a governing board  
124 fails to initiate the course work within the above time  
125 period, an individual shall be compensated at the  
126 appropriate level of years of experience on the in-field  
127 master's salary schedule whenever the individual has  
128 obtained any master's degree related to the public school  
129 program.

130 The governing boards of higher education shall  
131 develop a plan to provide "MA" classification programs  
132 to professional educators throughout this state by the  
133 first day of January, one thousand nine hundred ninety-  
134 one, with the objective being to provide course work



135 enabling professional educators to achieve an "MA"  
 136 degree classification in their teaching field.

§18A-4-2. State minimum salaries for teachers.

STATE MINIMUM SALARY SCHEDULE I							
1	(1)	(2)	(3)	(4)	(5)	(6)	(7)
2	Years	4th	3rd	2nd	A.B.	A.B.	
3	Exp.	Class	Class	Class	A.B.	+15	M.A.
4	0	11,253	11,860	12,103	13,255	13,955	14,655
5	1	11,459	12,066	12,309	13,636	14,336	15,036
6	2	11,665	12,272	12,515	14,017	14,717	15,417
7	3	11,871	12,478	12,721	14,398	15,098	15,798
8	4	12,302	12,909	13,152	15,004	15,704	16,404
9	5	12,508	13,115	13,358	15,385	16,085	16,785
10	6	12,714	13,321	13,564	15,766	16,466	17,166
11	7		13,527	13,770	16,147	16,847	17,547
12	8		13,733	13,976	16,528	17,228	17,928
13	9			14,182	16,909	17,609	18,309
14	10			14,388	17,290	17,990	18,690
15	11				17,671	18,371	19,071
16	12				18,052	18,752	19,452
17	13				18,433	19,133	19,833
18	14						20,214
19	15						20,595
20	16						20,976
21	17						
22	18						
23	19						
24							
25					(8)	(9)	(10)
26	Years				M.A.	M.A.	Doc-
27	Exp.				+15	+30	torate
28	0				15,355	16,055	16,755
29	1				15,736	16,436	17,136
30	2				16,117	16,817	17,517
31	3				16,498	17,198	17,898
32	4				17,104	17,804	18,504
33	5				17,485	18,185	18,885
34	6				17,866	18,566	19,266
35	7				18,247	18,947	19,647
36	8				18,628	19,328	20,028
37	9				19,009	19,709	20,409

38	10	19,390	20,090	20,790
39	11	19,771	20,471	21,171
40	12	20,152	20,852	21,552
41	13	20,533	21,233	21,933
42	14	20,914	21,614	22,314
43	15	21,295	21,995	22,695
44	16	21,676	22,376	23,076
45	17		22,757	23,457
46	18		23,138	23,838
47	19		23,519	24,219

## 48 STATE MINIMUM SALARY SCHEDULE II

49	(1)	(2)	(3)	(4)	(5)	(6)	(7)
50	Years	4th	3rd	2nd		A.B.	
51	Exp.	Class	Class	Class	A.B.	+15	M.A.
52	0	11,816	12,453	12,708	13,918	14,653	15,388
53	1	12,032	12,669	12,924	14,318	15,053	15,788
54	2	12,248	12,886	13,141	14,718	15,453	16,188
55	3	12,465	13,102	13,357	15,118	15,853	16,588
56	4	12,917	13,554	13,810	15,754	16,489	17,224
57	5	13,133	13,771	14,026	16,154	16,889	17,624
58	6	13,350	13,987	14,242	16,554	17,289	18,024
59	7		14,203	14,459	16,954	17,689	18,424
60	8		14,420	14,675	17,354	18,089	18,824
61	9			14,891	17,754	18,489	19,224
62	10			15,107	18,155	18,890	19,625
63	11				18,555	19,290	20,025
64	12				18,955	19,690	20,425
65	13				19,355	20,090	20,825
66	14						21,225
67	15						21,625
68	16						22,025
69	17						
70	18						
71	19						
72					(8)	(9)	(10)
73	Years				M.A.	M.A.	Doc-
74	Exp.				+15	+30	torate
75	0				16,123	16,858	17,593
76	1				16,523	17,258	17,993
77	2				16,923	17,658	18,393

78	3	17,323	18,058	18,793
79	4	17,959	18,694	19,429
80	5	18,359	19,094	19,829
81	6	18,759	19,494	20,229
82	7	19,159	19,894	20,629
83	8	19,559	20,294	21,029
84	9	19,959	20,694	21,429
85	10	20,360	21,095	21,830
86	11	20,760	21,495	22,230
87	12	21,160	21,895	22,630
88	13	21,560	22,295	23,030
89	14	21,960	22,695	23,430
90	15	22,360	23,095	23,830
91	16	22,760	23,495	24,230
92	17		23,895	24,630
93	18		24,295	25,030
94	19		24,695	25,430

## 95 STATE IN-FIELD MASTER'S SALARY SCHEDULE

96	(1)	(2)	(3)	(4)
97	Years		M.A.	M.A.
98	of Exp.	M.A.	+15	+30
99	0	16,388	17,123	17,858
100	1	16,788	17,523	18,258
101	2	17,188	17,923	18,658
102	3	17,588	18,323	19,058
103	4	18,224	18,959	19,694
104	5	18,624	19,359	20,094
105	6	19,024	19,759	20,494
106	7	19,424	20,159	20,894
107	8	19,824	20,559	21,294
108	9	20,224	20,959	21,694
109	10	20,625	21,360	22,095
110	11	21,025	21,760	22,495
111	12	21,425	22,160	22,895
112	13	21,825	22,560	23,295
113	14	22,225	22,960	23,695
114	15	22,625	23,360	24,095
115	16	23,025	23,760	24,495
116	17			24,895
117	18			25,295
118	19			25,695

119 On and after the first day of July, one thousand nine  
120 hundred ninety-four, each teacher who has met the in-  
121 field master's requirements set forth in section one of  
122 this article shall receive the amount prescribed in the  
123 "state in-field master's salary schedule" in lieu of the  
124 "state minimum salary schedule II" and any other  
125 compensation otherwise provided for in this section.

126 On and after the first day of July, one thousand nine  
127 hundred eighty-six, each teacher shall receive the  
128 amount prescribed in the "state minimum salary  
129 schedule I" as set forth in this section, specific additional  
130 amounts prescribed in this section or article, and any  
131 county supplement in effect in a county pursuant to  
132 section five-a of this article during the contract year:  
133 *Provided*, That on and after the first day of the second  
134 half of the teacher's employment term in the school year  
135 one thousand nine hundred eighty-nine—ninety, each  
136 teacher shall receive the amount prescribed in the "state  
137 minimum salary schedule II" as set forth in this section,  
138 specific additional amounts prescribed in this section or  
139 article, and any county supplement in effect in a county  
140 pursuant to section five-a of this article during the  
141 contract year.

142 Six hundred dollars shall be paid annually to each  
143 classroom teacher who has at least twenty years of  
144 teaching experience. Such payments shall be in addition  
145 to any amounts prescribed in the "state minimum salary  
146 schedule," shall be paid in equal monthly installments,  
147 and shall be deemed a part of the state minimum  
148 salaries for teachers.

#### **§18A-4-5a. County salary supplements for teachers.**

1 County boards of education in fixing the salaries of  
2 teachers shall use at least the state minimum salaries  
3 established under the provisions of this article. The  
4 board may establish salary schedules which shall be in  
5 excess of the state minimums fixed by this article, such  
6 county schedules to be uniform throughout the county  
7 as to the above stipulated training classifications,  
8 experience, responsibility and other requirements,  
9 except that no such county schedule may exceed one

10 hundred two and one-half percent of a schedule which  
11 incorporates the state minimum salary for teachers in  
12 effect on the first day of July, one thousand nine  
13 hundred eighty-four, and adopts a supplement which  
14 equals the highest supplement provided by a county on  
15 the first day of January, one thousand nine hundred  
16 eighty-four, so as to assist the state in meeting its  
17 objective of salary equity among the counties: *Provided,*  
18 That all teachers in the state shall be entitled to any  
19 increases in the minimum salary schedules established  
20 under the provisions of this article, and when a county  
21 schedule changes due to said increase in the state  
22 minimum salary taking effect after the first day of July,  
23 one thousand nine hundred eighty-four, it shall not be  
24 deemed to exceed the maximum salary schedule pres-  
25 cribed herein.

26 Counties may fix higher salaries for teachers placed  
27 in special instructional assignments, for those assigned  
28 to or employed for duties other than regular instruc-  
29 tional duties, and for teachers of one-teacher schools,  
30 and they may provide additional compensation for any  
31 teacher assigned duties in addition to the teacher's  
32 regular instructional duties wherein such noninstruc-  
33 tional duties are not a part of the scheduled hours of the  
34 regular school day. Uniformity also shall apply to such  
35 additional salary increments or compensation for all  
36 persons performing like assignments and duties within  
37 the county: *Provided,* That in establishing such local  
38 salary schedules, no county shall reduce local funds  
39 allocated for salaries in effect on the first day of  
40 January, one thousand nine hundred eighty-four, and  
41 used in supplementing the state minimum salaries as  
42 provided for in this article, unless forced to do so by  
43 defeat of a special levy, or a loss in assessed values or  
44 events over which it has no control and for which the  
45 county board has received approval from the state board  
46 prior to making such reduction.

47 Counties may provide, in a uniform manner, benefits  
48 for teachers which require an appropriation from local  
49 funds including, but not limited to, dental, optical,  
50 health and income protection insurance, vacation time

51 and retirement plans excluding the state teachers  
52 retirement system. Nothing herein shall prohibit the  
53 maintenance nor result in the reduction of any benefits  
54 in effect on January one, one thousand nine hundred  
55 eighty-four, by any county board of education.

56 To further assist the state in meeting such objective,  
57 each county board of education shall provide to the state  
58 board of education on or before the first day of  
59 November, one thousand nine hundred eighty-nine, such  
60 information as the state board directs to assist the state  
61 superintendent of schools in preparing a report to be  
62 submitted to the Legislature on the first day of the  
63 regular session thereof in the year one thousand nine  
64 hundred ninety. Such report shall include findings,  
65 conclusions and recommendations with respect to  
66 benefits provided and meeting the objective of benefit  
67 equity among the counties.

**§18A-4-5b. County salary supplements for school service  
personnel.**

1 The county board of education may establish salary  
2 schedules which shall be in excess of the state min-  
3 imums fixed by this article, except that no such schedule  
4 may exceed one hundred two and one-half percent of a  
5 schedule which incorporates the state minimum salary  
6 for school service personnel in effect on the first day of  
7 July, one thousand nine hundred eighty-four, and adopts  
8 a monthly supplement of two hundred and five dollars  
9 for zero years of experience for all pay grades and which  
10 increases said monthly supplement by two dollars for  
11 each year of experience codified for school service  
12 personnel in this article, so as to assist the state in  
13 meeting its objective of salary equity among the  
14 counties: *Provided*, That all school service personnel in  
15 the state shall be entitled to any increases in the  
16 minimum salary for school service personnel established  
17 under the provisions of this article, and when a county  
18 schedule changes due to said increase in the state  
19 minimum salary taking effect after the first day of July,  
20 one thousand nine hundred eighty-four, it shall not be  
21 deemed to exceed the maximum salary schedule pres-  
22 cribed herein. Any county supplement for any position

23 which, on the first day of January, one thousand nine  
24 hundred eighty-four, extends the schedule beyond the  
25 maximum prescribed herein for such position shall be  
26 exempt from the maximums stated herein, subject to the  
27 approval of the state board, but no such supplement  
28 shall be increased beyond the amount received on the  
29 first day of January, one thousand nine hundred eighty-  
30 four.

31 These county schedules shall be uniform throughout  
32 the county with regard to any training classification,  
33 experience, years of employment, responsibility, duties,  
34 pupil participation, pupil enrollment, size of buildings,  
35 operation of equipment or other requirements. Further,  
36 uniformity shall apply to all salaries, rates of pay,  
37 benefits, increments or compensation for all persons  
38 regularly employed and performing like assignments  
39 and duties within the county: *Provided*, That in estab-  
40 lishing such local salary schedules, no county shall  
41 reduce local funds allocated for salaries in effect on the  
42 first day of January, one thousand nine hundred eighty-  
43 four, and used in supplementing the state minimum  
44 salaries as provided for in this article, unless forced to  
45 do so by defeat of a special levy, or a loss in assessed  
46 values or events over which it has no control and for  
47 which the county board has received approval from the  
48 state board prior to making such reduction.

49 Counties may provide, in a uniform manner, benefits  
50 for service personnel which require an appropriation  
51 from local funds including, but not limited to, dental,  
52 optical, health and income protection insurance, vaca-  
53 tion time and retirement plans excluding the state  
54 teachers retirement system. Nothing herein shall  
55 prohibit the maintenance nor result in the reduction of  
56 any benefits in effect on January one, one thousand nine  
57 hundred eighty-four, by any county board of education.

58 To further assist the state in meeting such objective,  
59 each county board of education shall provide to the state  
60 board of education on or before the first day of  
61 November, one thousand nine hundred eighty-nine, such  
62 information as the state board directs to assist the state  
63 superintendent of schools in preparing a report to be

64 submitted to the Legislature on the first day of the  
 65 regular session thereof in the year one thousand nine  
 66 hundred ninety. Such report shall include findings,  
 67 conclusions, and recommendations with respect to  
 68 benefits provided and meeting the objective of benefit  
 69 equity among the counties.

**§18A-4-5c. Equity appropriation from surplus revenues.**

1 Notwithstanding the provisions of section five of this  
 2 article, any moneys appropriated and expended for  
 3 equity that are in addition to such amounts as were  
 4 expended for such purpose prior to the effective date of  
 5 this section shall be apportioned between teachers and  
 6 school service personnel in such proportion as necessary  
 7 to align more closely teachers and school service  
 8 personnel with their counterparts in the contiguous  
 9 states: *Provided*, That an adequate amount of such funds  
 10 shall be reserved to finance the appropriate foundation  
 11 allowances and staffing incentives provided for in  
 12 article nine-a of chapter eighteen.

13 The state board shall collect information annually  
 14 from contiguous states for the purpose of making a  
 15 thorough and comprehensive comparison of West  
 16 Virginia school service personnel salaries to those in  
 17 surrounding states, which shall be used as a guide to  
 18 align more closely teachers and school service personnel  
 19 with their counterparts in the contiguous states.

**§18A-4-8a. Service personnel minimum monthly salaries.**

20 STATE MINIMUM PAY SCALE PAY GRADE I

21	Years of								
22	Employ-								
23	ment	A	B	C	D	E	F	G	H
24	0	822	842	882	932	982	1,042	1,072	1,142
25	1	842	862	902	952	1,002	1,062	1,092	1,162
26	2	862	882	922	972	1,022	1,082	1,112	1,182
27	3	882	902	942	992	1,042	1,102	1,132	1,202
28	4	902	922	962	1,012	1,062	1,122	1,152	1,222
29	5	922	942	982	1,032	1,082	1,142	1,172	1,242
30	6	942	962	1,002	1,052	1,102	1,162	1,192	1,262
31	7	962	982	1,022	1,072	1,122	1,182	1,212	1,282
32	8	982	1,002	1,042	1,092	1,142	1,202	1,232	1,302



33	9	1,002	1,022	1,062	1,112	1,162	1,222	1,252	1,322
34	10	1,022	1,042	1,082	1,132	1,182	1,242	1,272	1,342
35	11	1,042	1,062	1,102	1,152	1,202	1,262	1,292	1,362
36	12	1,062	1,082	1,122	1,172	1,222	1,282	1,312	1,382
37	13	1,082	1,102	1,142	1,192	1,242	1,302	1,332	1,402
38	14	1,102	1,122	1,162	1,212	1,262	1,322	1,352	1,422
39	15	1,122	1,142	1,182	1,232	1,282	1,342	1,372	1,442
40	16	1,142	1,162	1,202	1,252	1,302	1,362	1,392	1,462
41	17	1,162	1,182	1,222	1,272	1,322	1,382	1,412	1,482
42	18	1,182	1,202	1,242	1,292	1,342	1,402	1,432	1,502
43	19	1,202	1,222	1,262	1,312	1,362	1,422	1,452	1,522
44	20	1,222	1,242	1,282	1,332	1,382	1,442	1,472	1,542
45	21	1,242	1,262	1,302	1,352	1,402	1,462	1,492	1,562
46	22	1,262	1,282	1,322	1,372	1,422	1,482	1,512	1,582
47	23	1,282	1,302	1,342	1,392	1,442	1,502	1,532	1,602
48	24	1,302	1,322	1,362	1,412	1,462	1,522	1,552	1,622
49	25	1,322	1,342	1,382	1,432	1,482	1,542	1,572	1,642

## 50 STATE MINIMUM PAY SCALE PAY GRADE II

51	Years of								
52	Employ-								
53	ment	A	B	C	D	E	F	G	H
54	0	849	869	909	959	1,009	1,069	1,099	1,169
55	1	871	891	931	981	1,031	1,091	1,121	1,191
56	2	893	913	953	1,003	1,053	1,113	1,143	1,213
57	3	915	935	975	1,025	1,075	1,135	1,165	1,235
58	4	937	957	997	1,047	1,097	1,157	1,187	1,257
59	5	959	979	1,019	1,069	1,119	1,179	1,209	1,279
60	6	981	1,001	1,041	1,091	1,141	1,201	1,231	1,301
61	7	1,003	1,023	1,063	1,113	1,163	1,223	1,253	1,323
62	8	1,025	1,045	1,085	1,135	1,185	1,245	1,275	1,345
63	9	1,047	1,067	1,107	1,157	1,207	1,267	1,297	1,367
64	10	1,069	1,089	1,129	1,179	1,229	1,289	1,319	1,389
65	11	1,091	1,111	1,151	1,201	1,251	1,311	1,341	1,411
66	12	1,113	1,133	1,173	1,223	1,273	1,333	1,363	1,433
67	13	1,135	1,155	1,195	1,245	1,295	1,355	1,385	1,455
68	14	1,157	1,177	1,217	1,267	1,317	1,377	1,407	1,477
69	15	1,179	1,199	1,239	1,289	1,339	1,399	1,429	1,499
70	16	1,201	1,221	1,261	1,311	1,361	1,421	1,451	1,521
71	17	1,223	1,243	1,283	1,333	1,383	1,443	1,473	1,543
72	18	1,245	1,265	1,305	1,355	1,405	1,465	1,495	1,565
73	19	1,267	1,287	1,327	1,377	1,427	1,487	1,517	1,587
74	20	1,289	1,309	1,349	1,399	1,449	1,509	1,539	1,609

75	21	1,311	1,331	1,371	1,421	1,471	1,531	1,561	1,631
76	22	1,333	1,353	1,393	1,443	1,493	1,553	1,583	1,653
77	23	1,355	1,375	1,415	1,465	1,515	1,575	1,605	1,675
78	24	1,377	1,397	1,437	1,487	1,537	1,597	1,627	1,697
79	25	1,399	1,419	1,459	1,509	1,559	1,619	1,649	1,719
80	26	1,421	1,441	1,481	1,531	1,581	1,641	1,671	1,741
81	27	1,443	1,463	1,503	1,553	1,603	1,663	1,693	1,763
82	28	1,465	1,485	1,525	1,575	1,625	1,685	1,715	1,785
83	29	1,487	1,507	1,547	1,597	1,647	1,707	1,737	1,807
84	30	1,509	1,529	1,569	1,619	1,669	1,729	1,759	1,829

85	CLASS TITLE	PAY GRADE
86	Accountant I .....	D
87	Accountant II.....	E
88	Accountant III.....	F
89	Aide I.....	A
90	Aide II.....	B
91	Aide III.....	C
92	Aide IV.....	D
93	Audiovisual Technician.....	C
94	Auditor.....	G
95	Braille or Sign Language Specialist.....	E
96	Bus Operator.....	D
97	Buyer.....	F
98	Cabinetmaker.....	G
99	Cafeteria Manager.....	D
100	Carpenter I.....	E
101	Carpenter II.....	F
102	Chief Mechanic.....	G
103	Clerk I.....	B
104	Clerk II.....	C
105	Computer Operator.....	E
106	Cook I.....	A
107	Cook II.....	B
108	Cook III.....	C
109	Crew Leader.....	F
110	Custodian I.....	A
111	Custodian II.....	B
112	Custodian III.....	C
113	Custodian IV.....	D
114	Director or Coordinator of Services.....	H
115	Draftsman.....	D
116	Electrician I.....	F

117	Electrician II .....	G
118	Electronic Technician I .....	F
119	Electronic Technician II .....	G
120	Executive Secretary .....	G
121	Food Services Supervisor .....	G
122	Foreman .....	G
123	General Maintenance .....	C
124	Glazier .....	D
125	Graphic Artist .....	D
126	Groundsman .....	B
127	Handyman .....	B
128	Heating and Air Conditioning Mechanic I .....	E
129	Heating and Air Conditioning Mechanic II .....	G
130	Heavy Equipment Operator .....	E
131	Inventory Supervisor .....	D
132	Key Punch Operator .....	B
133	Locksmith .....	G
134	Lubrication Man .....	C
135	Machinist .....	F
136	Mail Clerk .....	D
137	Maintenance Clerk .....	C
138	Mason .....	G
139	Mechanic .....	F
140	Mechanic Assistant .....	E
141	Office Equipment Repairman I .....	F
142	Office Equipment Repairman II .....	G
143	Painter .....	E
144	Plumber I .....	E
145	Plumber II .....	G
146	Printing Operator .....	B
147	Printing Supervisor .....	D
148	Programmer .....	H
149	Roofing/Sheet Metal Mechanic .....	F
150	Sanitation Plant Operator .....	F
151	School Bus Supervisor .....	E
152	Secretary I .....	D
153	Secretary II .....	E
154	Secretary III .....	F
155	Supervisor of Maintenance .....	H
156	Supervisor of Transportation .....	H
157	Switchboard Operator-Receptionist .....	D
158	Truck Driver .....	D

159 Warehouse Clerk .....C  
 160 Watchman.....B  
 161 Welder .....F

162 On and after the first day of July, one thousand nine  
 163 hundred eighty-nine, the minimum monthly pay for  
 164 each service employee whose employment is for a period  
 165 of more than three and one-half hours a day shall be at  
 166 least the amounts indicated in the "state minimum pay  
 167 scale pay grade I" as set forth in this section, and the  
 168 minimum monthly pay for each service employee whose  
 169 employment is for a period of three and one-half hours  
 170 or less a day shall be at least one half the amount  
 171 indicated in the "state minimum pay scale pay grade I"  
 172 set forth in this section: *Provided*, That beginning on the  
 173 first day of the second half of the employment term in  
 174 the school year one thousand nine hundred eighty-nine—  
 175 ninety, and thereafter, "state minimum pay scale pay  
 176 grade II" shall replace "state minimum pay scale pay  
 177 grade I", and an additional ten dollars per month shall  
 178 be added to the minimum monthly pay if the service  
 179 employee holds a high school diploma or its equivalent.

180 Any service employee required to work on any legal  
 181 school holiday shall be paid at a rate one and one-half  
 182 times such employee's usual hourly rate.

183 Any full-time service personnel required to work in  
 184 excess of their normal working day during any week  
 185 which contains a school holiday for which they are paid  
 186 shall be paid for such additional hours or fraction  
 187 thereof at a rate of one and one-half times their usual  
 188 hourly rate and paid entirely from county board of  
 189 education funds.

190 No service employee shall have his or her daily work  
 191 schedule changed during the school year without such  
 192 employee's written consent, and such employee's re-  
 193 quired daily work hours shall not be changed to prevent  
 194 the payment of time and one-half wages or the employ-  
 195 ment of another employee.

196 The minimum pay for extra-duty assignments as  
 197 defined in section eight-b of this article shall be no less  
 198 than one-seventh of the employee's daily total salary for

199 each hour the employee is involved in performing the  
 200 assignment and paid entirely from local funds. The  
 201 salary for any fraction of an hour the employee is  
 202 involved in performing the assignment shall be pro-  
 203 rated accordingly. When performing extra-duty assign-  
 204 ments, employees who are regularly employed on a one-  
 205 half day salary basis shall receive the same hourly  
 206 extra-duty assignment pay computed as though such an  
 207 employee were employed on a full-day salary basis.

**§18A-4-8d. Consolidation of services and seniority rights  
 for administrative personnel.**

1 Where two or more counties join together to share the  
 2 services of central office administrative personnel, any  
 3 employee whose services are no longer needed by virtue  
 4 of such sharing may have his or her contract terminated  
 5 for lack of need, as provided in sections two and six,  
 6 article two of this chapter, notwithstanding any provi-  
 7 sion of this code to the contrary. Any employee whose  
 8 contract is so terminated shall be afforded all rights  
 9 pursuant to section eight-b of this article.

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## CHAPTER 56

(H. B. 2280—By Delegates Sattes and Farmer)

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[Passed March 23, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to providing option to requirement of mailing school report cards.

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

That article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a, to read as follows:

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.****§18-2E-4a. Exception to requirement of mailing school report cards.**

1 Notwithstanding the provisions of section four of this  
 2 article requiring school report cards to be mailed  
 3 directly to the parent or parents of each child enrolled  
 4 in the school, such report cards may, at the option of the  
 5 county board of education, be mailed as provided in said  
 6 section four or be given to each child for delivery to his  
 7 or her parent, parents, custodian or legal guardian:  
 8 *Provided*, That if the school report card is delivered by  
 9 the child, written verification must be received by the  
 10 school indicating the parent, parents, custodian or legal  
 11 guardian has received the school report card.

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## CHAPTER 57

(Com. Sub. for S. B. 478—By Senators Tomblin, M. Manchin and Blatnik, By Request)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county superintendents of schools; and providing a delayed effective date of current requirements for the appointment of a new superintendent.

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

That section four, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.****§18-4-4. Compensation generally; master's degree or equivalent required for new appointee.**

1 On or before the first day of May of the year in which  
 2 the superintendent is appointed, the board shall fix the  
 3 annual salary of the superintendent for the period of

4 appointment for the term beginning on the first day of  
5 July following. The board shall pay the salary from the  
6 general current expense fund of the district: *Provided*,  
7 That the superintendent shall hold at least a master's  
8 degree or its equivalent related to public school  
9 education earned at an institution of higher education  
10 approved to offer graduate work: *Provided, however*,  
11 That commencing with the first day of July, one  
12 thousand nine hundred ninety-three, any newly ap-  
13 pointed superintendent employed as a superintendent  
14 after the twenty-seventh day of June, one thousand nine  
15 hundred eighty-eight, shall meet the requirements set  
16 forth in section two of this article and at a minimum  
17 shall qualify for an initial license as a superintendent,  
18 hold at least a master's degree or its equivalent related  
19 to public school education plus twenty-four semester  
20 hours related to public school education earned at an  
21 institution of higher education approved to offer  
22 graduate work, and shall qualify for a superintendent's  
23 certificate within three years of being employed as a  
24 superintendent: *Provided further*, That any assistant  
25 superintendent or educational administrator employed  
26 in such capacity in this state prior to the twenty-seventh  
27 day of June, one thousand nine hundred eighty-eight,  
28 who was employed as a county superintendent in this  
29 state shall not be required to meet the requirements of  
30 the superintendent's initial licensure, certificate and  
31 said twenty-four semester hours beyond a master's  
32 degree.

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## CHAPTER 58

(S. B. 127—By Senators Holmes, Craigo, Blatnik, Dittmar,  
Warner, Felton and Chernenko)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-b, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to term of office for county board members; and reducing the terms from six years to four years.

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

That section one-b, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-1b. Election; terms of office.**

1 As the terms of county school board members who  
2 presently hold office expire, members shall be elected  
3 for four-year terms at the time of each regular primary  
4 election commencing with the year one thousand nine  
5 hundred ninety. The terms of such members shall begin  
6 on the first day of July next following the primary  
7 election at which they were elected.

8 The term of office of any member of any county board  
9 of education shall immediately cease, and a vacancy  
10 shall exist, upon occurrence of ineligibility as prescribed  
11 in section one-a of this article.

12 This section shall in no manner be construed so as to  
13 affect the unexpired terms of county school board  
14 members who hold office or were elected under prior  
15 existing law.

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## CHAPTER 59

(Com. Sub. for H. B. 2165—By Delegates Murphy and Sattes)

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[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fifteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school terms; employment terms for teachers; providing that one of the seven days outside the school environment coincide with the federal holiday honoring the birthday of Martin Luther King, Jr.; and providing that no more than eight noninstructional days, except holidays, be scheduled before the first day of January in a school term.



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

That section fifteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-15. School term; exception; levies; ages of persons to whom schools are open.**

1 (a) The board shall provide a school term for its  
2 schools which shall be comprised of (a) an employment  
3 term for teachers, and (b) an instructional term for  
4 pupils. Nothing in this section shall prohibit the  
5 establishment of year-round schools in accordance with  
6 rules to be established by the state board.

7 The employment term for teachers shall be no less  
8 than ten months, a month to be defined as twenty  
9 employment days exclusive of Saturdays and Sundays:  
10 *Provided*, That the board may contract with all or part  
11 of the personnel for a longer term. The employment  
12 term shall be fixed within such beginning and closing  
13 dates as established by the state board: *Provided*,  
14 *however*, That the time between the beginning and  
15 closing dates does not exceed forty-three weeks.

16 Within the employment term there shall be an  
17 instructional term for pupils of not less than one  
18 hundred eighty nor more than one hundred eighty-five  
19 instructional days: *Provided*, That the minimum instruc-  
20 tional term may be decreased, by order of the state  
21 superintendent of schools, in any West Virginia county  
22 declared to be a federal disaster area by the Federal  
23 Emergency Management Agency. Instructional and  
24 noninstructional activities may be scheduled during the  
25 same employment day. Noninstructional interruptions  
26 to the instructional day shall be minimized to allow the  
27 classroom teacher to teach. The instructional term shall  
28 commence no earlier than the first day of September  
29 and shall terminate no later than the eighth day of June.

30 Noninstructional days in the employment term may  
31 be used for making up canceled instructional days,  
32 curriculum development, preparation for opening and

33 closing of the instructional term, in-service and profes-  
34 sional training of teachers, teacher-pupil-parent confer-  
35 ences, professional meetings and other related activities.  
36 In addition, each board shall designate and schedule for  
37 teachers and service personnel seven days to be used by  
38 the employee outside the school environment one of  
39 which days shall coincide with the federal holiday  
40 honoring the birthday of Martin Luther King, Jr.  
41 However, no more than eight noninstructional days,  
42 except holidays, may be scheduled prior to the first day  
43 of January in a school term.

44 Notwithstanding any other provisions of the law to the  
45 contrary, if the board has canceled instructional days  
46 equal to the difference between the total instructional  
47 days scheduled and one hundred seventy-eight, each  
48 succeeding instructional day canceled shall be resche-  
49 duled, utilizing only the remaining noninstructional  
50 days, except holidays, following such cancellation, which  
51 are available prior to the second day before the end of  
52 the employment term established by such county board.

53 Where the employment term overlaps a teacher's or  
54 service personnel's participation in a summer institute  
55 or institution of higher education for the purpose of  
56 advancement or professional growth, the teacher or  
57 service personnel may substitute, with the approval of  
58 the county superintendent, such participation for not  
59 more than five of the noninstructional days of the  
60 employment term.

61 The board may extend the instructional term beyond  
62 one hundred eighty-five instructional days provided the  
63 employment term is extended an equal number of days.  
64 If the state revenues and regular levies, as provided by  
65 law, are insufficient to enable the board of education to  
66 provide for the school term, the board may at any  
67 general or special election, if petitioned by at least five  
68 percent of the qualified voters in the district, submit the  
69 question of additional levies to the voters. If at the  
70 election a majority of the qualified voters cast their  
71 ballots in favor of the additional levy, the board shall  
72 fix the term and lay a levy necessary to pay the cost of  
73 the additional term. The additional levy fixed by the

74 election shall not continue longer than five years without  
75 submission to the voters. The additional rate shall not  
76 exceed by more than one hundred percent the maximum  
77 school rate prescribed by article eight, chapter eleven  
78 of the code, as amended.

79 (b) The Legislature finds and declares that excess  
80 levies as they currently exist create unequal educational  
81 opportunities from county to county based on the  
82 difference in the will of the voters and also based on the  
83 differences in property wealth among the counties; that  
84 prior to the first day of July, one thousand nine hundred  
85 ninety-four, the Legislature shall proceed to equalize  
86 educational opportunities over and above the opportu-  
87 nities afforded by each county's property values by  
88 considering the existence or nonexistence of excess  
89 levies as a factor in the distribution of equity moneys;  
90 and that on and after the first day of July, one thousand  
91 nine hundred ninety-four, the Legislature shall imple-  
92 ment a plan for the equitable distribution of funds so  
93 as to eliminate the inequities resulting from county  
94 excess levies.

95 (c) The public schools shall be open for the full  
96 instructional term to all persons who have attained the  
97 entrance age as stated in section five, article two and  
98 section eighteen, article five, chapter eighteen of this  
99 code: *Provided*, That persons over the age of twenty-one  
100 may enter only those programs or classes authorized by  
101 the state board of education and deemed appropriate by  
102 the county board of education conducting any such  
103 program or class: *Provided, however*, That authorization  
104 for such programs or classes shall in no way serve to  
105 affect or eliminate programs or classes offered by  
106 county boards of education at the adult level for which  
107 fees are charged to support such programs or classes.

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## CHAPTER 60

(Com. Sub. for H. B. 2557—By Delegates Basham and Flanigan)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-two, article five,

chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to "specialized health procedures" in the public schools; defining "specialized health procedures"; providing for emergency assistance; specifying school employees who shall be authorized and trained to perform "specialized health procedures"; creating a council of school nurses; and granting authority to the department of health to establish standards relating to "specialized health procedures."

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

That section twenty-two, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.**

1 County boards of education shall provide proper  
2 medical and dental inspections for all pupils attending  
3 the schools of their county and shall further have the  
4 authority to take any other action necessary to protect  
5 the pupils from infectious diseases, including the  
6 authority to require from all school personnel employed  
7 in their county, certificates of good health and of  
8 physical fitness.

9 Each county board of education shall employ full time  
10 at least one school nurse for every one thousand five  
11 hundred kindergarten through seventh grade pupils in  
12 net enrollment or major fraction thereof: *Provided*, That  
13 each county shall employ full time at least one school  
14 nurse: *Provided, however*, That a county board may  
15 contract with a public health department for services  
16 deemed equivalent to those required by this section in  
17 accordance with a plan to be approved by the state  
18 board: *Provided further*, That the state board shall  
19 promulgate rules and regulations requiring the employ-  
20 ment of school nurses in excess of the number required  
21 by this section to ensure adequate provision of services  
22 to severely handicapped pupils.

23 Any person employed as a school nurse shall be a  
24 registered professional nurse properly licensed by the  
25 West Virginia board of examiners for registered  
26 professional nurses in accordance with article seven,  
27 chapter thirty of this code.

28 Beginning with the school year one thousand nine  
29 hundred ninety—ninety-one, specialized health proce-  
30 dures that require the skill, knowledge and judgment of  
31 a licensed health professional, shall be performed only  
32 by school nurses, other licensed school health care  
33 providers as provided for in this section, or school  
34 employees who have been trained and retrained every  
35 two years and subject to the supervision and approval  
36 by school nurses. After assessing the health status of the  
37 individual student, a school nurse, in collaboration with  
38 the student's physician, parents and in some instances  
39 an individualized education program team, may dele-  
40 gate certain health care procedures to a school employee  
41 who shall be trained pursuant to this section, deemed  
42 competent, have consultation with, and be monitored or  
43 supervised by the school nurse: *Provided*, That nothing  
44 herein shall prohibit any school employee from provid-  
45 ing specialized health procedures or any other prudent  
46 action to aid any person who is in acute physical distress  
47 or requires emergency assistance. For the purposes of  
48 this section "specialized health procedures" means, but  
49 is not limited to, catheterization, suctioning of tracheos-  
50 tomy, naso-gastric tube feeding or gastrostomy tube  
51 feeding; and "school employee" means teachers as  
52 defined in section one, article one of this chapter and  
53 aides as defined in section eight, article four-a, chapter  
54 eighteen-a of this code.

55 Any school employee who elects to undergo training  
56 or retraining to provide, in the manner specified herein,  
57 such specialized health care procedures and for whom  
58 such selection has been approved by both the principal  
59 and the county board, may receive additional pay at the  
60 discretion of the county board: *Provided*, That any  
61 training may be considered in lieu of required in-service  
62 training of such school employee and a school employee

63 cannot be required to elect to undergo the training or  
64 retraining: *Provided, however,* That commencing with  
65 the first day of July, one thousand nine hundred eighty-  
66 nine, any newly employed school employee in the field  
67 of special education shall be required to undergo the  
68 training and retraining as provided for in this section.

69 Each county school nurse, as designated and defined  
70 by this section, shall perform a needs assessment. These  
71 nurses shall meet on the basis of the area served by their  
72 regional educational service agency, prepare recommen-  
73 dations and elect a representative to serve on the council  
74 of school nurses.

75 There shall be established a council of school nurses  
76 which shall be convened by the state board of education.  
77 This council shall prepare a procedural manual and  
78 shall provide recommendations regarding a training  
79 course to the director of the state department of health  
80 who shall consult with the state department of educa-  
81 tion. The state department of health shall then have the  
82 authority to promulgate rules and regulations to  
83 implement the training and to create standards used by  
84 those performing specialized health procedures. The  
85 council shall meet every two years to review the  
86 certification and training program regarding school  
87 employees.

88 The state board of education shall work in conjunction  
89 with county boards to provide training and retraining  
90 every two years as recommended by the council of  
91 school nurses and implemented by the state department  
92 of health.

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## CHAPTER 61

(S. B. 159—Originating in the Committee on Education)

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{Passed February 28, 1989; in effect from passage. Approved by the Governor.}

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AN ACT to amend and reenact section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and

to amend and reenact sections two, six and seven, article two, chapter eighteen-a of said code, all relating to requiring members of state teachers retirement system to provide written notification of decision not to retire; extending time for terminating continuing contracts of teachers and service personnel; and extending time for notifying school personnel of possible transfer.

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

That section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, six and seven, article two, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

#### Chapter

18. Education.

18A. School Personnel.

### CHAPTER 18. EDUCATION.

#### ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

**§18-7A-35b. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.**

1 The Legislature hereby finds and declares that a  
2 compelling state interest exists in providing a tempor-  
3 ary, early retirement incentives program for encourag-  
4 ing the early, voluntary retirement of those public  
5 employees who were current, active, contributing  
6 members of this retirement system on the first day of  
7 April, one thousand nine hundred eighty-eight, in the  
8 reduction of the number of such employees and in  
9 reduction of governmental costs therefor; that such  
10 program constitutes a public purpose; and that the  
11 special classifications and differentiations provided in  
12 respect of such program are reasonable and equitable

13 ones for the accomplishment of such purpose and  
14 program as enacted in Enrolled Committee Substitute  
15 for H. B. No. 4672, regular session, one thousand nine  
16 hundred eighty-eight, and as clarified and supple-  
17 mented herein, retroactive to such beginning date,  
18 aforesaid.

19 (a) Beginning on the first day of April, one thousand  
20 nine hundred eighty-eight, and continuing through the  
21 thirty-first day of December, one thousand nine hundred  
22 eighty-eight, (or as extended by contract or by eligibility  
23 qualification requirement, as hereinafter specified)  
24 eligible members, being those active, contributing  
25 members actually and currently employed on such  
26 beginning date, retiring pursuant to this section (except  
27 disability retirees, but including those so employed on  
28 said beginning date and leaving the system during the  
29 incentive period and who are eligible for deferred  
30 benefits), may elect to participate in this incentives  
31 program and may elect any one of the three following  
32 incentive options:

33 (1) Retirement incentive option one:

34 For the purpose of computing the member's annuity,  
35 the normal final average salary shall be computed and  
36 one-eighth thereof shall be added thereto in arriving at  
37 the true final average salary for use in actual compu-  
38 tation of retirement benefit.

39 (2) Retirement incentive option two:

40 A member may elect a lump sum payment, in addition  
41 to his regular retirement annuity, equal to ten percent  
42 of his final average salary not to exceed five thousand  
43 dollars, and in the case of a deferred retirement electing  
44 this option, such lump sum payment shall be receivable  
45 and deferred to the time of receipt of such deferred  
46 retirement annuity.

47 (3) Retirement incentive option three:

48 A person shall be credited with an additional two  
49 years of contributing service and an additional two  
50 years of age. The years credited under this option shall  
51 in no way add to a member's final average salary factor  
52 of computation.



53 (b) Eligible, active, contributing members, aforesaid,  
54 employed under contract and rendering services during  
55 school year one thousand nine hundred eighty-eight—  
56 eighty-nine shall, if retiring pursuant to the provisions  
57 of this section and the early retirement incentive  
58 program set forth herein, make application for retire-  
59 ment, including choice of their respective option, and  
60 give notice to their respective county boards of education  
61 by the thirty-first day of December, one thousand nine  
62 hundred eighty-eight, but shall be permitted to postpone  
63 actual retirement until immediately after the close of  
64 such contract period and said school year; with proper  
65 credit to be granted for such extended period.

66 Also, eligible, active, contributing members employed,  
67 not under contract, who desire to retire under this  
68 section but who are unable to retire by the thirty-first  
69 day of December, one thousand nine hundred eighty-  
70 eight, because an element of eligibility for retirement,  
71 such as age or other element, will not be met until a date  
72 after the thirty-first day of December, one thousand nine  
73 hundred eighty-eight, and before the first day of July,  
74 one thousand nine hundred eighty-nine, shall be permit-  
75 ted to postpone actual retirement until the date of  
76 fulfilling such element of eligibility and shall retire on  
77 such date, before the temporary retirement incentive  
78 program ends on the thirtieth day of June, one thousand  
79 nine hundred eighty-nine; with proper credit to be  
80 granted for such extended period: *Provided*, That  
81 members eligible under the preceding paragraph and  
82 this paragraph shall have made application for retire-  
83 ment, including choice of their respective option, and  
84 given notice to their respective employer by the thirty-  
85 first day of December, one thousand nine hundred  
86 eighty-eight, although postponing actual retirement, as  
87 aforesaid: *Provided, however*, That an application for  
88 retirement under the provisions of the preceding  
89 paragraph and this paragraph shall be binding upon a  
90 member unless the member provides the retirement  
91 system and the local board of education or other  
92 educational agency with written notification of his or  
93 her decision not to retire by the first day of April, one  
94 thousand nine hundred eighty-nine: *Provided further*,

95 That an eligible member under this paragraph or the  
96 preceding paragraph who has a grievance filed on or  
97 before the twenty-second day of February, one thousand  
98 nine hundred eighty-nine, or court proceeding which is  
99 pending as of the twenty-second day of February, one  
100 thousand nine hundred eighty-nine, shall be required to  
101 give final notice of decision not to retire by the thirtieth  
102 day of June, one thousand nine hundred eighty-nine:  
103 *And provided further,* That the state teachers retirement  
104 board on or before the seventeenth day of March, one  
105 thousand nine hundred eighty-nine, shall provide  
106 calculations of anticipated retirement benefits to those  
107 members who intend to retire pursuant to the provisions  
108 of this section.

109 Eligible members other than those covered under the  
110 provisions of the two preceding paragraphs, desiring to  
111 retire under this incentive program shall make their  
112 option election prior to and take their respective  
113 retirement by the close of the thirty-first day of  
114 December, one thousand nine hundred eighty-eight.

115 Any eligible member who retires hereunder during  
116 the school year (after the first day of July, one thousand  
117 nine hundred eighty-eight, and on any date prior to the  
118 thirtieth day of June, one thousand nine hundred eighty-  
119 nine) shall have included such months of such school  
120 year and the salary in respect thereof, if ones of higher  
121 salary, in place of and for any like number of months  
122 in his or her five-year period for computation of  
123 annuities as provided for in section twenty-six of this  
124 article.

125 (c) Any member participating in this retirement  
126 incentive program is not eligible to accept further  
127 employment from the state or any of its political  
128 subdivisions: *Provided,* That a person may retire under  
129 this section and thereafter serve in an elective office:  
130 *Provided, however,* That he shall not receive an incentive  
131 annuity under this section during the term of service in  
132 said office, but shall receive his or her annuity calcu-  
133 lated on regular basis, as if originally taken not under  
134 this section but on such regular basis. At the end of such  
135 term and cessation of service in such office, such

136 incentive annuity shall resume. In respect of an  
137 appointive office, as distinguished from an elective  
138 office, any person retiring under this section and  
139 thereafter serving in such appointive office shall not  
140 receive an incentive annuity under this section during  
141 the term of service in said office, but the same shall be  
142 suspended during such period: *Provided further*, That at  
143 the end of such term and cessation of service in such  
144 appointive office the incentive annuity provided for  
145 under this section shall be resumed.

146 In any event, an eligible member may retire under  
147 this section and thereafter continue to receive his  
148 incentive annuity and be employed as a substitute  
149 teacher or as adjunct faculty, or as a school service  
150 personnel substitute.

151 Any such incentive retirants, under this section, may  
152 not thereafter receive such annuity and enter or reenter  
153 any governmental retirement system established or  
154 authorized to be established by the state, notwithstand-  
155 ing any provision of the code to the contrary, unless  
156 required by constitutional provision.

157 The additional annuity allowed for temporary early  
158 retirement under these options is intended to be paid  
159 from the retirement incentive account hereby created as  
160 a special account in the state treasury and from the  
161 funds therein established with moneys required to be  
162 applied or transferred by heads of spending units from  
163 the unused portion of salary and fringe benefits in their  
164 budgets accruing in respect to such positions vacated  
165 and subsequently canceled under this temporary early  
166 retirement program. Salary and fringe benefit moneys  
167 actually saved in a particular fiscal year shall constitute  
168 the fund source. No such additional annuity shall be  
169 disallowed even though initial receipts may not be  
170 sufficient, with funds of the system to be applied for  
171 such purpose, as for the base annuity.

172 (d) The executive secretary of the retirement system  
173 shall provide forms for applicants. Such forms shall  
174 include a detailed description of the incentive plan  
175 options.

176 The executive secretary of the retirement system shall  
177 file a report to the Legislature no later than the fifteenth  
178 day of February, one thousand nine hundred eighty-  
179 nine, and quarterly thereafter, detailing the number of  
180 retirees who have elected to accept early retirement  
181 incentive options, the dollar cost to date by option  
182 selected, and the projected annual cost through the year  
183 two thousand.

184 (e) Within every spending unit, department, board,  
185 corporation, commission, or any other agency or entity  
186 wherein two or multiples of two members elect to retire  
187 either under the temporary early retirement incentives  
188 set forth above, or under regular, voluntary retirement,  
189 and countable on an agency-wide or entity-wide basis,  
190 no more than one of such vacated positions may be filled,  
191 with the second position being abolished upon the  
192 effective day of the member's retirement: *Provided,*  
193 That county boards of education in replacing employees  
194 leaving under this temporary early retirement incentive  
195 program shall be eligible to replace in that number as  
196 authorized by the basic school aid formula and pursuant  
197 to those guidelines in respect of number of positions lost  
198 or projected to be lost due to declining enrollment,  
199 changes in statutes, changes in state appropriations and  
200 the other guidelines set forth and contained within said  
201 basic school aid formula. The vacant position abolish-  
202 ment requirement shall not apply to elective positions  
203 or appointed public officers whose positions are estab-  
204 lished by state constitutional or statutory provision. The  
205 retirant's employing entity shall decide as to which of  
206 the vacated positions made available through special  
207 early retirement or through regular, voluntary retire-  
208 ment are to be abolished and the head of such spending  
209 unit shall immediately notify the state auditor, the  
210 legislative auditor, and the commissioner of the depart-  
211 ment of finance and administration of the decisions and  
212 shall then apply and/or transfer, as aforesaid, the  
213 remaining salary and fringe benefit appropriations:  
214 *Provided, however,* That this vacant position abolishment  
215 provision shall not apply to any county position, other  
216 than those under the authority of county boards of  
217 education, nor to any position or positions, whether

218 designated by spending unit, department, agency,  
219 commission, entity or otherwise, which the governor  
220 may exempt or amend under such abolishment provision  
221 upon his recommendation that such exemption or  
222 amendment is necessary to preserve the health, welfare  
223 or safety of the people of West Virginia, and with the  
224 prior concurrence of the joint committee on government  
225 and finance in such recommendation, after the chairmen  
226 thereof shall cause such committee to meet.

227 (f) *Special rule of eighty.* — Any active, contributing  
228 member of the retirement system as of the first day of  
229 April, one thousand nine hundred eighty-eight, who  
230 selects one of the incentive options in this section, may  
231 retire under the special early retirement provisions with  
232 full pension rights, without reduction of benefits if the  
233 sum of such member's age plus years of contributing  
234 service equals or exceeds eighty: *Provided*, That such  
235 person has at least twenty years of contributing service,  
236 up to two years of which may be military service, or  
237 prior service, or already paid and credited out-of-state  
238 service (if so paid and credited by the first day of April,  
239 one thousand nine hundred eighty-eight) or any combi-  
240 nation thereof not exceeding an aggregate of two years.

241 (g) *Termination of temporary retirement incentives*  
242 *program.* — The right to elect, choose, select or use any  
243 of the options, special rule of eighty, or other benefits  
244 set forth in this section shall terminate on the thirtieth  
245 day of June, one thousand nine hundred eighty-nine.

## CHAPTER 18A. SCHOOL PERSONNEL.

### ARTICLE 2. SCHOOL PERSONNEL.

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

§18A-2-6. Continuing contract status for service personnel; termination.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and  
recommendation of dismissal of school personnel by superin-  
tendent; preliminary notice of transfer; hearing on the transfer;  
proof required.

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

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

10 A teacher's contract, under this section, shall be for  
11 a term of not less than one nor more than three years;  
12 and if, after three years of such employment, the teacher  
13 who holds a professional certificate, based on at least a  
14 bachelor's degree, has met the qualifications for the  
15 same, and the board of education enter into a new  
16 contract of employment, it shall be a continuing  
17 contract: *Provided*, That any teacher holding a valid  
18 certificate with less than a bachelor's degree who is  
19 employed in a county beyond the said three-year  
20 probationary period shall upon qualifying for said  
21 professional certificate based upon a bachelor's degree,  
22 if reemployed, be granted continuing contract status:  
23 *Provided, however*, That a teacher holding continuing  
24 contract status with one county shall be granted  
25 continuing contract status with any other county upon  
26 completion of one year of acceptable employment if such  
27 employment is during the next succeeding school year  
28 or immediately following an approved leave of absence  
29 extending no more than one year.

30 The continuing contract of any teacher shall remain  
31 in full force and effect except as modified by mutual  
32 consent of the school board and the teacher, unless and  
33 until terminated (1) by a majority vote of the full  
34 membership of the board before April first of the then  
35 current year, after written notice, served upon the

36 teacher, return receipt requested, stating cause or  
37 causes, and an opportunity to be heard at a meeting of  
38 the board prior to the board's action thereon, or (2) by  
39 written resignation of the teacher before that date,  
40 except that for the school year one thousand nine  
41 hundred eighty-eight—eighty-nine only, the board shall  
42 have until the fourth Monday of April, one thousand  
43 nine hundred eighty-nine, to initiate termination of a  
44 continuing contract. Such termination shall take effect  
45 at the close of the school year in which the contract is  
46 so terminated: *Provided*, That the contract may be  
47 terminated at any time by mutual consent of the school  
48 board and the teacher, and that this section shall not  
49 affect the powers of the school board to suspend or  
50 dismiss a principal or teacher pursuant to section eight  
51 of this article: *Provided, however*, That a continuing  
52 contract for any teacher holding a certificate valid for  
53 more than one year and in full force and effect during  
54 the school year one thousand nine hundred eighty-four,  
55 and one thousand nine hundred eighty-five, shall remain  
56 in full force and effect: *Provided further*, That a  
57 continuing contract shall not operate to prevent a  
58 teacher's dismissal based upon the lack of need for the  
59 teacher's services pursuant to the provisions of law  
60 relating to the allocation to teachers and pupil-teacher  
61 ratios. But in case of such dismissal, the teachers so  
62 dismissed shall be placed upon a preferred list in the  
63 order of their length of service with that board, and no  
64 teacher shall be employed by the board until each  
65 qualified teacher upon the preferred list, in order, shall  
66 have been offered the opportunity for reemployment:  
67 *And provided further*, That he has not accepted a  
68 teaching position elsewhere. Such reemployment shall  
69 be upon a teacher's preexisting continuing contract and  
70 shall have the same effect as though the contract had  
71 been suspended during the time the teacher was not  
72 employed.

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

78 teacher or any other rights, privileges or benefits under  
79 the provisions of this chapter.

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

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

**§18A-2-6. Continuing contract status for service person-  
nel; termination.**

1 After three years of acceptable employment, each  
2 service personnel employee who enters into a new  
3 contract of employment with the board shall be granted  
4 continuing contract status: *Provided*, That a service  
5 personnel employee holding continuing contract status  
6 with one county shall be granted continuing contract  
7 status with any other county upon completion of one  
8 year of acceptable employment if such employment is  
9 during the next succeeding school year or immediately  
10 following an approved leave of absence extending no  
11 more than one year. The continuing contract of any such



12 employee shall remain in full force and effect except as  
13 modified by mutual consent of the school board and the  
14 employee, unless and until terminated with written  
15 notice, stating cause or causes, to the employee, by a  
16 majority vote of the full membership of the board before  
17 the first day of April of the then current year, or by  
18 written resignation of the employee before that date,  
19 except that for the school year one thousand nine  
20 hundred eighty-eight—eighty-nine only, the board shall  
21 have until the fourth Monday of April, one thousand  
22 nine hundred eighty-nine, to initiate termination of a  
23 continuing contract. The affected employee shall have  
24 the right of a hearing before the board, if requested,  
25 before final action is taken by the board upon the  
26 termination of such employment.

27 Those employees who have completed three years of  
28 acceptable employment as of the effective date of this  
29 legislation shall be granted continuing contract status.

**§18A-2-7. Assignment, transfer, promotion, demotion,  
suspension and recommendation of dismissal  
of school personnel by superintendent;  
preliminary notice of transfer; hearing on  
the transfer; proof required.**

1 The superintendent, subject only to approval of the  
2 board, shall have authority to assign, transfer, promote,  
3 demote or suspend school personnel and to recommend  
4 their dismissal pursuant to provisions of this chapter.  
5 However, an employee shall be notified in writing by the  
6 superintendent on or before the first Monday in April  
7 if he is being considered for transfer or to be trans-  
8 ferred, except that for the school year one thousand nine  
9 hundred eighty-eight—eighty-nine only, the superin-  
10 tendent shall have until the fourth Monday of April to  
11 provide an employee with such written notice. Any  
12 teacher or employee who desires to protest such  
13 proposed transfer may request in writing a statement  
14 of the reasons for the proposed transfer. Such statement  
15 of reasons shall be delivered to the teacher or employee  
16 within ten days of the receipt of the request. Within ten  
17 days of the receipt of the statement of the reasons, the

18 teacher or employee may make written demand upon  
19 the superintendent for a hearing on the proposed  
20 transfer before the county board of education. The  
21 hearing on the proposed transfer shall be held on or  
22 before the first Monday in May, except that for the  
23 school year one thousand nine hundred eighty-eight—  
24 eighty-nine only, the hearing shall be held on or before  
25 the fourth Monday in May, one thousand nine hundred  
26 eighty-nine. At the hearing, the reasons for the proposed  
27 transfer must be shown.

28 The superintendent at a meeting of the board on or  
29 before the first Monday in May shall furnish in writing  
30 to the board a list of teachers and other employees to  
31 be considered for transfer and subsequent assignment  
32 for the next ensuing school year, except that for the  
33 school year one thousand nine hundred eighty-eight--  
34 eighty-nine only, the superintendent shall have until the  
35 fourth Monday in May to provide the board with such  
36 written list. All other teachers and employees not so  
37 listed shall be considered as reassigned to the positions  
38 or jobs held at the time of this meeting. The list of those  
39 recommended for transfer shall be included in the  
40 minute record of such meeting and all those so listed  
41 shall be notified in writing, which notice shall be  
42 delivered in writing, by certified mail, return receipt  
43 requested, to such persons' last known addresses within  
44 ten days following said board meeting, of their having  
45 been so recommended for transfer and subsequent  
46 assignment and the reasons therefor. The superintend-  
47 ent's authority to suspend school personnel shall be  
48 temporary only pending a hearing upon charges filed by  
49 the superintendent with the board of education and such  
50 period of suspension shall not exceed thirty days unless  
51 extended by order of the board.

52 The provisions of this section respecting hearing upon  
53 notice of transfer shall not be applicable in emergency  
54 situations where the school building becomes damaged  
55 or destroyed through an unforeseeable act and which act  
56 necessitates a transfer of such school personnel because  
57 of the aforementioned condition of the building.

## CHAPTER 62

(Com. Sub. for H. B. 2325—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to repeal section twenty-one, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, six and eight, article nine-d of said chapter; and to further amend said article nine-d by adding thereto two new sections, designated sections fifteen and sixteen, all relating to school facilities generally; reconstituting the school building authority and providing generally therefor; defining certain terms; authorizing authority to contract for professional services; changing manner in which counties are allocated facilities moneys; deleting requirement of legislative appropriation; modifying content of bond resolution; providing for distribution of certain bond revenues on basis of net enrollment and need; allowing percentage of available funds to be used by state board; providing for forfeiture of allocations unexpended by a county after three years; requiring guidelines for certain matters; requiring approved regional facilities plans prior to distribution of moneys; providing generally for submission of facilities plans; outlining certain matters to be included in such plans; and allowing authority to require changes or additions in approved plans.

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

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

**ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

- §18-9D-1. School building authority; powers.  
§18-9D-2. Definitions.  
§18-9D-3. Powers of authority.  
§18-9D-4. School building authority authorized to issue revenue bonds for school building capital improvement projects; refunding bonds authorized.  
§18-9D-6. School building capital improvements fund in state treasury; collections to be paid into special fund; authority to pledge such collections as security for revenue bonds; authority to finance projects on a cash basis.  
§18-9D-8. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.  
§18-9D-15. Legislative intent; distribution of money.  
§18-9D-16. Facilities plans generally; need-based eligibility.

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

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

9 The citizen appointments shall be made as soon as  
10 possible after the effective date of this section, and no  
11 two citizen appointees shall be residents within the same  
12 region. Two of the initial appointments shall be for two-  
13 year terms, and two shall be for four-year terms, with  
14 all successive appointments being for four-year terms.  
15 Until such appointments take effect, the state board as  
16 constituted under the provisions of section one, article  
17 two of this chapter may act as the authority with such  
18 power as was granted them under the prior enactment  
19 of this section.

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

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

**§18-9D-2. Definitions.**

1 The following terms, wherever used or referred to in  
2 this article, shall have the following meanings, unless a  
3 different meaning clearly appears from the context:

4 (1) "Authority" means the school building authority of  
5 West Virginia or, if said authority shall be abolished,  
6 any board or officer succeeding to the principal  
7 functions thereof, or to whom the powers given to said  
8 authority shall be given by law;

9 (2) "Bonds" means bonds issued by the authority  
10 pursuant to this article;

11 (3) "Project" or "capital improvement project" means  
12 the new construction, major renovation, repair and  
13 safety upgrading of facilities, buildings and structures  
14 for school purposes including the acquisition of land for  
15 current or future use in connection therewith, equip-  
16 ment, machinery, furnishings, installation of utilities  
17 and other similar items convenient in connection with  
18 placing the foregoing into operation, but may not  
19 include such items as books, fuel, supplies and other  
20 items which are customarily deemed to result in a  
21 current operating charge;

22 (4) "Cost of project" means the cost of construction,  
23 renovation, repair and safety upgrading of facilities,  
24 buildings and structures for school purposes; the cost of  
25 land, equipment, machinery, furnishings, installation of  
26 utilities and other similar items convenient in connec-  
27 tion with placing the foregoing into operation; and the  
28 cost of financing, interest during construction, profes-  
29 sional service fees and all other charges or expenses  
30 necessary, appurtenant or incidental to the foregoing,  
31 including the cost of administration of this article;

32 (5) "Revenue" or "revenues" mean moneys deposited  
33 in the school building capital improvements fund  
34 pursuant to the operation of section ten, article nine-a  
35 of this chapter; any moneys received, directly or

36 indirectly, from any source for the use of all or any part  
37 of any project completed pursuant to this article; and  
38 any other moneys received by the authority for the  
39 purposes of this article;

40 (6) "Facilities plan" means the regional plan for  
41 school facilities required prior to the distribution of  
42 state funds to any county board pursuant to section  
43 fifteen; and

44 (7) "Region" means the area encompassed within and  
45 serviced by a regional educational service agency  
46 established pursuant to section twenty-six, article two of  
47 this chapter.

### §18-9D-3. Powers of authority.

1 The school building authority has the power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name  
5 of the authority by purchase, lease-purchase, or other-  
6 wise, real property or rights or easements necessary or  
7 convenient for its corporate purposes and to exercise the  
8 power of eminent domain to accomplish such purposes;

9 (4) To acquire, hold and dispose of real and personal  
10 property for its corporate purposes;

11 (5) To make bylaws for the management and rule of  
12 its affairs;

13 (6) With the consent of the attorney general of the  
14 state of West Virginia, to use the facilities, office,  
15 assistants and employees of the attorney general in all  
16 legal matters relating to or pertaining to the authority;

17 (7) To appoint officers, agents and employees and fix  
18 their compensation;

19 (8) To make contracts and to execute all instruments  
20 necessary or convenient to effectuate the intent of, and  
21 to exercise the powers granted to it by, this article;

22 (9) To renegotiate all contracts entered into by it  
23 whenever, due to a change in situation, it appears to the  
24 authority that its interests will be best served;

25 (10) To acquire by purchase, eminent domain or  
26 otherwise all real property or interests therein necessary  
27 or convenient to accomplish the purposes of this article;

28 (11) To require proper maintenance and insurance of  
29 any project authorized hereunder;

30 (12) To charge rent for the use of all or any part of  
31 a project or buildings at any time financed, constructed,  
32 acquired or improved in whole or in part with the  
33 revenues of the authority;

34 (13) To acquire land, buildings and capital improve-  
35 ments to existing school buildings and property, by lease  
36 from a private or public lessor for a term not to exceed  
37 twenty-five years, with or without an option to purchase  
38 pursuant to an investment contract with said lessor, for  
39 use as public school facilities on such terms and  
40 conditions as may be determined to be in the best  
41 interests of the authority and consistent with the  
42 purposes of this article;

43 (14) To accept and expend any gift, grant, contribu-  
44 tion, bequest or endowment of money to, or for the  
45 benefit of, the authority, from the state of West Virginia  
46 or any other source for any or all of the purposes  
47 specified in this article or for any one or more of such  
48 purposes as may be specified in connection with such  
49 gift, grant, contribution, bequest or endowment;

50 (15) To enter on any lands and premises for the  
51 purpose of making surveys, soundings and  
52 examinations;

53 (16) To contract for architectural, engineering or  
54 other professional services deemed necessary or econom-  
55 ical by the authority to provide consultative or other  
56 services to any regional educational service agency or  
57 county board requesting professional services offered by  
58 the authority, to evaluate any facilities plan or any  
59 project encompassed therein, to inspect existing facili-  
60 ties or any project that has received or may receive  
61 funding from the authority, or to perform any other  
62 service deemed by the authority to be necessary or  
63 economical. Assistance to the region or district may

64 include the development of preapproved systems, plans,  
65 designs, models or documents; advice or oversight on  
66 any plan or project; or any other service that may be  
67 efficiently provided to regional educational service  
68 agencies or county boards by the authority; and

69 (17) To do all things necessary or convenient to carry  
70 out the powers given in this article.

**§18-9D-4. School building authority authorized to issue revenue bonds for school building capital improvement projects; refunding bonds authorized.**

1 The school building authority may by resolution, in  
2 accordance with the provisions of this article, issue  
3 revenue bonds of the authority from time to time, either  
4 to finance the cost of school building capital improve-  
5 ment projects for public schools in this state, or to  
6 refund, at the discretion of the authority, bonds issued  
7 and outstanding under and pursuant to the provisions  
8 of this article. The principal of, interest and redemption  
9 premium, if any, on such bonds shall be payable solely  
10 from the special fund herein provided for such payment.

**§18-9D-6. School building capital improvements fund in state treasury; collections to be paid into special fund; authority to pledge such collections as security for revenue bonds; authority to finance projects on a cash basis.**

1 There is created in the state treasury a school building  
2 capital improvements fund to be expended by the  
3 authority for the purposes of this article.

4 The school building authority shall have authority to  
5 pledge all or such part of the revenues paid into the  
6 school building capital improvements fund as may be  
7 needed to meet the requirements of any revenue bond  
8 issue or issues authorized by this article, including the  
9 payment of principal of, interest and redemption  
10 premium, if any, on such revenue bonds and the  
11 establishing and maintaining of a reserve fund or funds  
12 for the payment of the principal of, interest and  
13 redemption premium, if any, on such revenue bond issue



14 or issues when other moneys pledged may be insufficient  
15 therefor, including such additional protective pledge of  
16 revenues as the authority in its discretion may provide  
17 by resolution authorizing the issue of such bonds and in  
18 any trust agreement made in connection therewith. The  
19 authority may further provide in such resolution and in  
20 such trust agreement for such priorities on the revenues  
21 paid into such school building capital improvements  
22 fund as may be necessary for the protection of the prior  
23 rights of the holders of bonds issued at different times  
24 under the provisions of this article.

25 Any balance remaining in the school building capital  
26 improvements fund after the authority has issued bonds  
27 authorized by this article, and after the requirements of  
28 all funds including reserve funds established in connec-  
29 tion with the bonds issued pursuant to this article have  
30 been satisfied, may be used for the redemption of any  
31 of the outstanding bonds issued hereunder which by  
32 their terms are then redeemable, or for the purchase of  
33 such bonds at the market price, but not exceeding the  
34 price, if any, at which such bonds shall in the same year  
35 be redeemable, and all bonds redeemed or purchased  
36 shall forthwith be canceled and shall not again be  
37 issued.

38 The school building authority, in its discretion, may  
39 use the moneys in the school building capital improve-  
40 ments fund to finance the cost of projects on a cash basis.  
41 Any pledge of moneys in such fund for revenue bonds  
42 shall be a prior and superior charge on such fund over  
43 the use of any of the moneys in such fund to pay for the  
44 cost of any project on a cash basis: *Provided*, That any  
45 expenditures from such fund, other than for the  
46 retirement of revenue bonds, may only be made by the  
47 authority in accordance with the provisions of this  
48 article.

**§18-9D-8. Issuance of revenue bonds; use of proceeds;  
bonds exempt from taxation.**

1 The issuance of revenue bonds under the provisions of  
2 this article shall be authorized from time to time by  
3 resolution or resolutions of the school building authority,

4 which shall set forth the proposed projects and provide  
5 for the issuance of bonds in amounts sufficient, when  
6 sold as hereinafter provided, to provide moneys deemed  
7 by the authority sufficient to pay such costs, less the  
8 amounts of any other funds available for said costs or  
9 from any appropriation, grant or gift therefor: *Provided,*  
10 That bond revenues which are to be distributed in  
11 accordance with section fifteen of this article shall not  
12 be required to set forth the proposed projects in the  
13 resolution. Such resolution shall prescribe the rights and  
14 duties of the bondholders and the school building  
15 authority, and for such purpose may prescribe the form  
16 of the trust agreement hereinafter referred to. The  
17 bonds may be issued from time to time, in such amounts,  
18 shall be of such series, bear such date or dates, mature  
19 at such time or times not exceeding forty years from  
20 their respective dates, bear interest at such rate or rates;  
21 be in such denominations; be in such form, either coupon  
22 or registered, carrying such registration, exchangeabil-  
23 ity and interchangeability privileges; be payable in such  
24 medium of payment and at such place or places within  
25 or without the state; be subject to such terms of  
26 redemption at such prices not exceeding one hundred  
27 five percent of the principal amount thereof; and be  
28 entitled to such priorities on the revenues paid into the  
29 school building authority capital improvements fund as  
30 may be provided in the resolution authorizing the  
31 issuance of the bonds or in any trust agreement made  
32 in connection therewith. The bonds shall be signed by  
33 the governor, and by the president or vice president of  
34 the authority, under the great seal of the state, attested  
35 by the secretary of state, and the coupons attached  
36 thereto shall bear the facsimile signature of the  
37 president or vice president of the authority. In case any  
38 of the officers whose signatures appear on the bonds or  
39 coupons cease to be such officers before the delivery of  
40 such bonds, such signatures shall nevertheless be valid  
41 and sufficient for all purposes the same as if such  
42 officers had remained in office until such delivery. Such  
43 revenue bonds shall be sold in such manner as the  
44 authority may determine to be for the best interests of  
45 the state.

46 Any pledge of revenues for such revenue bonds made  
47 by the school building authority shall be valid and  
48 binding between the parties from the time the pledge  
49 is made; and the revenues so pledged shall immediately  
50 be subject to the lien of such pledge without any further  
51 physical delivery thereof or further act. The lien of such  
52 pledge shall be valid and binding against all parties  
53 having claims of any kind in tort, contract or otherwise,  
54 irrespective of whether such parties have notice of the  
55 lien of such pledge, and such pledge shall be a prior and  
56 superior charge over any other use of such revenues so  
57 pledged.

58 The proceeds of such bonds shall be used solely for the  
59 purpose or purposes as may be generally or specifically  
60 set forth in the resolution authorizing those bonds and  
61 shall be deposited in the state treasury in a special fund  
62 to be disbursed as provided by law for the disbursement  
63 of any other state funds. If the proceeds of such bonds,  
64 by error in calculations or otherwise, shall be less than  
65 the cost of any projects specifically set forth in the  
66 resolution, additional bonds may in like manner be  
67 issued to provide the amount of the deficiency; and  
68 unless otherwise provided for in the resolution or trust  
69 agreement hereinafter mentioned, such additional bonds  
70 shall be deemed to be of the same issue, and shall be  
71 entitled to payment from the same fund, without  
72 preference or priority, as the bonds before issued for  
73 such projects. If the proceeds of bonds issued for such  
74 projects exceed the cost thereof, the surplus may be used  
75 for such other projects as the school building authority  
76 may determine or in such other manner as the resolution  
77 authorizing such bonds may provide. Prior to the  
78 preparation of definitive bonds, the authority may,  
79 under like restrictions, issue temporary bonds with or  
80 without coupons, exchangeable for definitive bonds upon  
81 the issuance of such definitive bonds.

82 After the issuance of any of such revenue bonds, the  
83 revenues pledged therefor shall not be reduced as long  
84 as any of such revenue bonds are outstanding and  
85 unpaid except under such terms, provisions and condi-  
86 tions as shall be contained in the resolution, trust

87 agreement or other proceedings under which such  
88 revenue bonds were issued.

89 Such revenue bonds and the revenue refunding bonds,  
90 and bonds issued for combined purposes shall, together  
91 with the interest thereon, be exempt from all taxation  
92 by the state of West Virginia, or by any county, school  
93 district, municipality or political subdivision thereof.

**§18-9D-15. Legislative intent; distribution of money.**

1 (a) It is the intent of the Legislature to empower the  
2 school building authority to facilitate and provide state  
3 funds for the construction and maintenance of school  
4 facilities so as to meet the educational needs of the  
5 people of this state in an efficient and economical  
6 manner. The authority shall make funding determina-  
7 tions in accordance with the provisions of this article  
8 and shall assess existing school facilities and each  
9 facilities plan in relation to the needs of the individual  
10 student, the general school population, the communities  
11 served by the facilities, and facility needs statewide.

12 (b) An amount that is no more than three percent of  
13 the sum of moneys that are determined by the authority  
14 to be available for distribution during the then current  
15 fiscal year from (1) the increase in local share paid into  
16 the school building capital improvements fund pursuant  
17 to section ten, article nine-a of this chapter, (2) the  
18 issuance of revenue bonds for which such increase in  
19 local share is pledged as security, and (3) any other  
20 moneys received by the authority may be allocated and  
21 may be expended by the authority for projects that  
22 service the educational community statewide or, upon  
23 application by the state board, for educational programs  
24 that are under the jurisdiction of the state board.

25 Fifty percent of the remaining available funds shall  
26 be allocated and distributed to each county board on the  
27 basis of its net enrollment as defined in section two,  
28 article nine-a of this chapter: *Provided*, That such  
29 moneys shall not be distributed to any county board  
30 whose region does not have an approved facilities plan  
31 or to any county board that is not prepared to commence  
32 expenditures of such funds during the fiscal year in

33 which the moneys are distributed: *Provided, however,*  
34 That any moneys allocated to a county board and not  
35 distributed to that county board shall be redistributed  
36 on the basis of net enrollment to those county boards  
37 then eligible for the receipt of net enrollment distribu-  
38 tions in that fiscal year. Prior to any allocation and  
39 distribution of the fifty percent based on net enrollment  
40 in a subsequent fiscal year, the authority shall deduct  
41 from the fifty percent determination any moneys  
42 allocated and not distributed to a county board during  
43 the preceding three fiscal years upon written notice  
44 from any county board that such county board is  
45 prepared to expend such amount in the then current  
46 fiscal year and shall distribute such moneys accordingly.  
47 The balance shall then be allocated and distributed  
48 among all the eligible counties.

49 The remaining fifty percent of moneys available for  
50 distribution shall be allocated and expended on the basis  
51 of need and efficient use of resources, such basis to be  
52 determined by the authority in accordance with the  
53 provisions of section sixteen of this article.

54 No local matching funds shall be required under the  
55 provisions of this subsection, and any county board may  
56 use the state moneys provided herein in conjunction with  
57 local funds derived from bonding or other source. Any  
58 county board may dedicate any allocations of state  
59 moneys pursuant to this subsection to the payment of  
60 local bonds used for purposes encompassed in an  
61 approved facilities plan or for the payment of bonds that  
62 are issued by the authority for the benefit of that county  
63 that are in addition to the bond moneys distributed in  
64 accordance with this subsection.

65 Moneys made available pursuant to this subsection  
66 that shall be expended on projects that benefit more  
67 than one district shall be apportioned among the  
68 districts in accordance with the formula encompassed in  
69 that portion of the facilities plan that addresses the  
70 project designed to benefit more than one district.

71 (c) To encourage regional educational service agencies  
72 and county boards to proceed promptly with facilities

73 planning and to prepare for the expenditure of any state  
74 moneys derived from the sources described in subsection  
75 (b) of this section, any county board failing to expend  
76 money within three years of the allocation thereto shall  
77 forfeit such allocation and thereafter shall be ineligible  
78 for further net enrollment or other allocations pursuant  
79 to subsection (b) until the county board is ready to  
80 expend funds in accordance with an approved facilities  
81 plan. Any amount so forfeited shall be added to the total  
82 funds available for allocation and distribution in the  
83 next ensuing fiscal year.

84 (d) Distribution to the county boards may be in a  
85 lump sum or in accordance with a schedule of payments  
86 adopted by the authority pursuant to such guidelines as  
87 it shall adopt.

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

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

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

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

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

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

48 (1) Student health and safety;

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

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

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

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

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

64 (7) Adequate space for projected student enrollments.

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

69 (d) Each plan shall prioritize all the projects both  
70 within a county and among the counties, which priority  
71 list shall be the basis for determining how available  
72 funds shall be expended.

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

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

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## CHAPTER 63

(H. B. 2029—By Delegates Love and Ashley)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten-c,  
chapter eighteen of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, relating  
to membership in the southern regional education  
compact continued.

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



That section three, article ten-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 10C. THE SOUTHERN REGIONAL EDUCATION COMPACT.**

**§18-10C-3. Membership in compact continued; findings.**

1       After having conducted a performance and fiscal  
2       audit through its joint committee on government  
3       operations, pursuant to section nine, article ten, chapter  
4       four of this code, the Legislature hereby finds and  
5       declares that West Virginia should remain a member of  
6       the compact. Accordingly, notwithstanding the provi-  
7       sions of section four, article ten, chapter four of this  
8       code, West Virginia shall continue to be a member of  
9       this compact until the first day of July, one thousand  
10      nine hundred ninety-four.

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## CHAPTER 64

(Com. Sub. for S. B. 420—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

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

reenact sections five and thirteen, article thirty of said chapter; to further amend said code by adding thereto two new chapters, designated chapters eighteen-b and eighteen-c; and to amend and reenact section four, article three-b, chapter sixty-one of said code, all relating to the reorganization of higher education; clarifying the meaning of board of regents in rules for construction of statutes; changing membership on the advisory council to the department of veterans' affairs, the educational broadcasting authority and the state board of education; authorizing the state board of education to promulgate rules for granting certificates and awards with respect to certain vocational-technical-occupational programs; abolishing the state board of vocational education effective the first day of July, one thousand nine hundred ninety; establishing the joint commission on vocational-technical-occupational education effective the first day of July, one thousand nine hundred eighty-nine; providing that the joint commission shall be the sole agency for administering vocational-technical-occupational education; establishing implementation team to review the work of the joint commission and requiring certain reports; establishing area vocational education program funds for secondary vocational education and post-secondary vocational education; authorizing certain boards to expend funds; vesting title to property in certain boards effective the first day of July, one thousand nine hundred eighty-nine; creating the Albert Yanni programs of excellence in vocational-technical education; establishing an academy for talented vocational-technical education students and administrators; establishing a scholarship program for secondary vocational-technical education graduates and educators for enumerated purposes; establishing an interdisciplinary doctoral program for vocational-technical education; establishing an effective schools program in vocational-technical education; establishing a unified technology transfer program; placing state autism training center under jurisdiction of board of trustees; providing that same hearing examiner may not hear grievance brought before education employees grievance board by former grievant; changing compo-

sition and quorum of board of directors of the West Virginia higher education tuition trust; changing conditions precedent to administration of trust; creating the University of West Virginia board of trustees and the board of directors of the state college system; providing definitions and assigning the state institutions of higher education to the state university system or the state college system and providing for the governance of each system by separate governing boards; transferring the powers, duties, authorities, orders, resolutions, rules, titles to property, valid agreements and obligations, and statutory powers and duties of the board of regents to the appropriate governing boards and abolishing the board of regents; placing board of trustees and board of directors under the jurisdiction of the department of education and the arts; providing for coordination of policies and purposes of state university system and state college system by secretary of education and the arts; requiring study of certain institutions of higher education for the purpose of determining their role and mission within the reorganized system of higher education; providing for review of rules promulgated by board of trustees and board of directors; transferring supervision of state institutions of higher education from board of regents to appropriate governing board; requiring each governing board to develop a system of comparison information and allocation decisions for implementation; providing powers and duties of governing boards and institutional presidents; establishing a task force on faculty salaries and resource allocation; providing for composition, appointment, terms and qualifications of members of University of West Virginia board of trustees; providing for meetings and compensation; providing additional duties of board of trustees; changing name of college of graduate studies to University of West Virginia college of graduate studies and transferring operation of the institution to the board of trustees; transferring operation of West Virginia school of osteopathic medicine to board of trustees; providing for composition, appointment, terms and qualifications of members of board of directors of the state college system; providing

for meetings and compensation; providing additional duties of board of directors; providing for the continuance and establishment of community colleges, technical courses and job training and establishing eight community college service areas; establishing a separate division of community colleges within the state college system and creating position of vice chancellor for community colleges; moving the authority to adopt rules for accreditation of private proprietary institutions awarding specialized associate degrees from the state board of education to the board of directors of state college system and providing penalties for violations; providing definition for proprietary schools that award specialized associate degrees; providing remedies for students under consumer laws; establishing the West Virginia joint commission for vocational-technical-occupational education subject to the jurisdiction of the department of education and the arts; providing definitions; providing for composition, terms and qualifications of members of joint commission; providing for meetings, compensation and duties and responsibilities of members of the joint commission; providing for general administration of board of trustees and board of directors; providing for employment of chancellors, senior administrator and staff for the boards; appointing director of state department of health as vice chancellor for health affairs and requiring study of role and mission of state medical schools for governor and Legislature; enumerating powers and duties of senior administrator; authorizing board of trustees and board of directors to participate in reciprocal regional and interstate higher educational agreements; authorizing board of trustees and board of directors to apply for, accept, administer and expend funds from federal and private grants, appropriations, allocations and programs for higher education and establishing related powers and duties; authorizing board of trustees and board of directors to appoint and compensate security officers; granting powers, authority and responsibilities of law-enforcement officers to security officers and establishing eligibility for law-enforcement training at an approved academy; authorizing the acquisition,

operation and regulation of parking areas, roads and facilities at state institutions of higher education and providing civil and criminal penalties for violations; providing for accreditation of institutions of higher education and standards for degrees; providing three areas for budget appropriations within the system of higher education; providing for allocation and disposition of appropriated funds; authorizing the board of trustees and the board of directors to contract for programs, services and facilities; providing for purchase or acquisition of materials, supplies, equipment and printing through the senior administrator; permitting private institutions of higher education to join as purchasers and to be responsible for payment of purchases; eliminating reference to board of regents in various code provisions and replacing it with reference to governing boards; providing that members of advisory councils of faculty may be elected by ballot process; providing for proportional representation on advisory councils of students; increasing membership on advisory councils of classified employees; increasing membership on advisory council on federal resources and increasing mileage allowance; eliminating reference to West Virginia Anatomical Board and replacing it with reference to the University of West Virginia Anatomical Board; seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to granting sabbatical leaves, effect of leave of absence on academic tenure and rank, notice to probationary faculty members of retention or nonretention and hearing procedures, and faculty and classified employee continuing education and development program; defining Marshall University as a doctoral institution and placing it on the minimum salary schedule for full-time faculty at doctoral institutions; providing a five percent salary increase for faculty beginning the first day of January, one thousand nine hundred ninety, and providing for the distribution of such salary increase; providing for the employment of

faculty after the first day of July, one thousand nine hundred eighty-nine, and assigning them to the appropriate salary schedule; eliminating reference to board of regents and replacing it with reference to appropriate governing board in code provisions relating to merit increases and salary adjustment, additional employment by mutual agreement and classified employee salary schedule and classification system; changing definition of classified employee and adding new definition for job and grade classification; redesignating chapter number for higher education classified employee monthly salary schedule; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to establishment of personnel classification system, assignment to classification and to salary schedule and classified employee salary; requiring governing boards to establish by rule an equitable system of job classifications for review by secretary of education and the arts and for implementation by the first day of July, one thousand nine hundred ninety; requiring governing boards to notify employees of assignment to classification, job title, pay grade and providing for appeal procedures; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to classified employees salary, annual review of classifications and classification system, conferences regarding personnel classification, hirings after effective date and additional employment by mutual agreement; establishing effective date of the first day of July, one thousand nine hundred eighty-nine, for classified employee salary and experience increment; providing five percent salary increase and method of distributing such increase for classified staff beginning on the first day of January, one thousand nine hundred ninety; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to fees and other money collected at state institutions of higher education, enrollment, tuition and other fees at educational institutions, refund of fees, higher education resource fee, faculty improvement fee and medical education fee; establishing a health

professions education fee; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to fee waivers—undergraduate schools, fee waivers—professional and graduate schools and tuition and fee waivers for children and spouses of officers and firefighters killed in the line of duty; providing that additional registration fees collected from students shall be paid into special capital improvements fund which shall be expended jointly by the governing boards; redesignating chapter reference in code provision relating to authority to excuse students in certain educational programs from payment of enrollment fees; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to disposition and use of student union fees, issuance of revenue bonds, fees and money derived from athletic contests, fees from operation of dormitories, faculty homes, dining halls and cafeterias, bookstores, changing disposition of end of year bookstore moneys, authority of educational institutions to provide special services and programs, collection and disposition of fees; providing that funds collected from certain sources and interest revenue generated by special student fee account shall be expended only at or for the institution where such funds or fee was collected; creating a center for regional progress and providing for a director, powers and mission and purpose; redesignating chapter reference for code provisions relating to institute for public affairs and institute for international trade development; providing for private nonprofit research and development corporations under agreements with state institutions of higher education; research and development agreements for state institutions of higher education; creating a “High-Tech 2000” program and foundation for science and technology to assist business and industry in adopting new technology; redesignating chapter reference in code provisions relating to authorization to sell West Virginia University poultry farm properties located in Morgantown and authorization to sell West Virginia University vacant lot located in Morgantown and biological research station located in

Terra Alta; providing that senior administrator shall administer programs for student financial assistance, guaranteed student loans and medical student loans; authorizing board of trustees to contract for training of students in optometry; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to trespass on student residence premises or student facility premises of an institution of higher education.

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

That articles twenty-two, twenty-four, twenty-six, twenty-six-b, twenty-six-c and twenty-six-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section ten, article two, chapter two of said code be amended and reenacted; that section eleven, article one, chapter nine-a of said code be amended and reenacted; that section two, article five, chapter ten of said code be amended and reenacted; that sections one, three and ten, article two, chapter eighteen of said code be amended and reenacted; that sections two, three, four and five, article two-b of said chapter be amended and reenacted; that said chapter eighteen be further amended by adding thereto a new article, designated article ten-h; that sections one, two, three and six, article twenty-six-a of said chapter be amended and reenacted; that section five, article twenty-nine of said chapter be amended and reenacted; that sections five and thirteen, article thirty of said chapter be amended and reenacted; that said code be further amended by adding thereto two new chapters, designated chapters eighteen-b and eighteen-c; and that section four, article three-b, chapter sixty-one of said code be amended and reenacted, all to read as follows:

**Chapter**

2. **Common Law, Statutes, Legal Holidays, Definitions and Legal Capacity.**
- 9A. **Veterans' Affairs.**
10. **Public Libraries; Public Recreation; Athletic Establishments; Monuments and Memorials; Roster of Servicemen; Educational Broadcasting Authority.**
18. **Education.**
- 18B. **Higher Education.**
- 18C. **Student Loans; Scholarships and State Aid.**
61. **Crimes and Their Punishment.**



**CHAPTER 2. COMMON LAW, STATUTES,  
LEGAL HOLIDAYS, DEFINITIONS  
AND LEGAL CAPACITY.**

**ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS;  
CONSTRUCTION OF STATUTES; DEFINITIONS.**

**§2-2-10. Rules for construction of statutes.**

1     The following rules shall be observed in the construc-  
2     tion of statutes, unless a different intent on the part of  
3     the Legislature be apparent from the context:

4     (a) A word importing the singular number only may  
5     be applied to several persons or things, as well as to one  
6     person or thing; a word importing the plural number  
7     only may be applied to one person or thing as well as  
8     to several; and a word importing the masculine gender  
9     only may be applied to females as well as males;

10    (b) Words purporting to give a joint authority to three  
11    or more persons confer such authority upon a majority  
12    of them, and not upon any less number;

13    (c) The words "written" or "in writing" include any  
14    representation of words, letters or figures, whether by  
15    printing, engraving, writing or otherwise. But when the  
16    signature of any person is required, it must be in his  
17    or her own proper handwriting, or his or her mark,  
18    attested, proved or acknowledged;

19    (d) The words "preceding," "succeeding" or "follow-  
20    ing" used in reference to any section or sections of a  
21    chapter or statute, mean next preceding, next succeed-  
22    ing or next following that in which such reference is  
23    made, unless a different interpretation be required by  
24    the context;

25    (e) An officer shall be deemed to have qualified when  
26    he or she has done all that is required by law to be done  
27    before proceeding to exercise the authority and dis-  
28    charge the duties of his or her office;

29    (f) The words "the governor" are equivalent to "the  
30    executive of the state" or "the person having the  
31    executive power";

32 (g) "Justice" or "justices" as used in article one,  
33 chapter fifty-one of this code and in other references to  
34 a member or members of the supreme court of appeals  
35 shall mean and apply to a judge or the judges of said  
36 court as provided for in the constitution of the state. The  
37 word "justice" in any other context is equivalent to the  
38 words "justice of the peace," and the word "notary" is  
39 equivalent to "notary public";

40 (h) The word "state," when applied to a part of the  
41 United States and not restricted by the context, includes  
42 the District of Columbia and the several territories, and  
43 the words "United States" also include the said district  
44 and territories;

45 (i) The word "person" or "whoever" shall include  
46 corporations, societies, associations and partnerships, if  
47 not restricted by the context;

48 (j) The words "personal representative" include the  
49 executor of a will, the administrator of the estate of a  
50 deceased person, the administrator of such estate with  
51 the will annexed, the administrator de bonis non of such  
52 estate, whether there be a will or not, the sheriff or other  
53 officer lawfully charged with the administration of the  
54 estate of a deceased person, and every other curator or  
55 committee of a decedent's estate for or against whom  
56 suits may be brought for causes of action which accrued  
57 to or against such decedent;

58 (k) The word "will" embraces a testament, a codicil,  
59 an appointment by will or writing in the nature of a will  
60 in exercise of a power, also any other testamentary  
61 disposition;

62 (l) The word "judgment" includes decrees and orders  
63 for the payment of money or the conveyance or delivery  
64 of land or personal property, or some interest therein,  
65 or any undertaking, bond or recognizance which has the  
66 legal effect of a judgment;

67 (m) The words "under disability" include persons  
68 under the age of eighteen years, insane persons, and  
69 convicts while confined in the penitentiary;

70 (n) The words "insane person" include everyone who

71 has mental illness as defined in section two, article one,  
72 chapter twenty-seven of this code;

73 (o) The word "convict" means a person confined in the  
74 penitentiary of this or any other state, or of the United  
75 States;

76 (p) The word "land" or "lands" and the words "real  
77 estate" or "real property" include lands, tenements and  
78 hereditaments, all rights thereto and interests therein  
79 except chattel interests;

80 (q) The words "personal estate" or "personal property"  
81 include goods, chattels, real and personal, money,  
82 credits, investments and the evidences thereof;

83 (r) The word "property" or "estate" embraces both  
84 real and personal estate;

85 (s) The word "offense" includes every act or omission  
86 for which a fine, forfeiture or punishment is imposed by  
87 law;

88 (t) The expression "laws of the state" includes the  
89 constitution of the state and the constitution of the  
90 United States, and treaties and laws made in pursuance  
91 thereof;

92 (u) The word "town" includes a city, village or town,  
93 and the word "council," any body or board, whether  
94 composed of one or more branches, who are authorized  
95 to make ordinances for the government of a city, town  
96 or village;

97 (v) When a council of a town, city or village, or any  
98 board, number of persons or corporations, are autho-  
99 rized to make ordinances, bylaws, rules, regulations or  
100 orders, it shall be understood that the same must be  
101 consistent with the laws of this state;

102 (w) The words "county court" include any existing  
103 tribunal created in lieu of a county court; the words  
104 "commissioner of the county court" and "county commis-  
105 sioner" mean, and have reference to, the commissioners,  
106 or one of them, composing the county court, in pursu-  
107 ance of section twenty-two, article eight of the constitu-

108 tion, as amended, or any existing tribunal created in lieu  
109 of a county court;

110 (x) The word "horse" embraces a stallion, a mare and  
111 a gelding;

112 (y) The words "railroad" and "railway" shall be  
113 construed by the courts of this state to mean the same  
114 thing in law; and, in any proceeding wherein a railroad  
115 company or a railway company is a party, it shall not  
116 be deemed error to call a railroad company a railway  
117 company or vice versa; nor shall any demurrer, plea or  
118 any other defense be set up to a motion, pleading or  
119 indictment in consequence of such misdescription;

120 (z) The sectional headings or headlines of the several  
121 sections of this code printed in black-faced type are  
122 intended as mere catchwords to indicate the contents of  
123 the section and shall not be deemed or taken to be titles  
124 of such sections, or as any part of the statute, and, unless  
125 expressly so provided, they shall not be so deemed when  
126 any of such sections, including the headlines, are  
127 amended or reenacted;

128 (aa) The words "infant" and "minor" mean persons  
129 under the age of eighteen years as such words are used  
130 in this code or in rules and regulations promulgated by  
131 the supreme court of appeals;

132 (bb) A statute is presumed to be prospective in its  
133 operation unless expressly made retrospective;

134 (cc) Unless there is a provision in a section, article or  
135 chapter of this code specifying that the provisions  
136 thereof shall not be severable, the provisions of every  
137 section, article or chapter of this code, whether enacted  
138 before or subsequent to the effective date of this  
139 subdivision, shall be severable so that if any provision  
140 of any such section, article or chapter is held to be  
141 unconstitutional or void, the remaining provisions of  
142 such section, article or chapter shall remain valid,  
143 unless the court finds the valid provisions are so  
144 essentially and inseparably connected with, and so  
145 dependent upon, the unconstitutional or void provision  
146 that the court cannot presume the Legislature would  
147 have enacted the remaining valid provisions without the

148 unconstitutional or void one, or unless the court finds the  
149 remaining valid provisions, standing alone, are incom-  
150 plete and are incapable of being executed in accordance  
151 with the legislative intent: *Provided*, That if any such  
152 section, article or chapter of this code has its own  
153 severability clause; then such severability clause shall  
154 govern and control with respect to such section, article  
155 or chapter in lieu of the provisions of this subdivision.  
156 The provisions of this subdivision shall be fully appli-  
157 cable to all future amendments or additions to this code,  
158 with like effect as if the provisions of this subdivision  
159 were set forth in extenso in every such amendment or  
160 addition and were reenacted as a part thereof, unless  
161 such amendment or addition contains its own severabil-  
162 ity clause;

163 (dd) A reference to any section, article or chapter of  
164 this code applies to all reenactments, revisions or  
165 amendments thereof;

166 (ee) If a statute refers to a series of numbers or  
167 letters, the first and the last numbers or letters in the  
168 series are deemed to be included;

169 (ff) The words "board of regents," wherever they  
170 appear in the code, means the board of trustees created  
171 by section one, article one, chapter eighteen-b of this  
172 code and the board of directors created by section one,  
173 article one, chapter eighteen-b of this code unless the  
174 term is used in relation to activities conducted solely by  
175 an institution or institutions governed by article two,  
176 chapter eighteen-b of this code in which case it only  
177 means the board of trustees, or where the term is used  
178 in relation to activities conducted solely by an institution  
179 or institutions governed by article three, chapter  
180 eighteen-b of the code in which case it only means the  
181 board of directors.

## CHAPTER 9A. VETERANS' AFFAIRS.

### ARTICLE 1. DEPARTMENT OF VETERANS' AFFAIRS.

#### §9A-1-11: Advisory council.

1 There is hereby established an advisory council to the  
2 West Virginia department of veterans' affairs, which

3 shall meet on the call of the chairman of the veterans'  
 4 council with the veterans' council at any of its regular  
 5 or special meetings, in connection with the establish-  
 6 ment of rules of the department to effectuate the  
 7 purposes of this article and promote the efficient  
 8 operation of the department, but the advisory council  
 9 shall have no vote. The director, in carrying out his  
 10 powers and duties, shall have the right to call on the  
 11 individual members of the advisory council, and through  
 12 them or their department, agency or organization, and  
 13 also to call on such other departments or agencies of the  
 14 state, as may be necessary, for advice, aid and assist-  
 15 ance. The members of the advisory council shall be the  
 16 state superintendent of free schools, commissioner of  
 17 agriculture, adjutant general, state banking commis-  
 18 sioner, state director of health, secretary of education  
 19 and the arts, commissioner of corrections, commissioner  
 20 of the department of highways and the commissioner of  
 21 the department of human services, or their duly  
 22 authorized and accredited representatives.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RE-  
 CREATION; ATHLETIC ESTABLISHMENTS; MONU-  
 MENTS AND MEMORIALS; ROSTER OF  
 SERVICEMEN; EDUCATIONAL BROADCASTING  
 AUTHORITY.**

**ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.**

**§10-5-2. West Virginia educational broadcasting author-  
 ity; members; organization; officers; em-  
 ployees; meetings; expenses.**

1 The West Virginia educational broadcasting author-  
 2 ity, heretofore created, is hereby continued as a public  
 3 benefit corporation. It shall consist of eleven voting  
 4 members, who shall be residents of the state, of whom  
 5 one shall be the state superintendent of schools, one shall  
 6 be a member of the West Virginia board of education  
 7 to be selected by it annually, one shall be a member of  
 8 the university of West Virginia board of trustees to be  
 9 selected by it annually, and one shall be a member of  
 10 the board of directors of the state college system to be  
 11 selected by it annually. The other seven members shall

12 be appointed by the governor by and with the advice and  
13 consent of the Senate for overlapping terms of seven  
14 years, one term expiring each year, except that the  
15 appointment to fill the membership position for the term  
16 expiring in the year one thousand nine hundred eighty-  
17 three, shall be for a term of six years. Not less than one  
18 appointive member shall come from each congressional  
19 district. Employees of noncommercial broadcasting  
20 stations in West Virginia are not eligible for appoint-  
21 ment to the authority. The present members of the  
22 authority shall continue to serve out the terms to which  
23 they were appointed. Any vacancy among the appointive  
24 members shall be filled by the governor by appointment  
25 for the unexpired term.

26 The chairperson and vice chairperson of the authority  
27 as of the effective date of this section shall continue in  
28 their respective offices until their successors are elected.  
29 Thereafter, at its annual meeting in each year the  
30 authority shall elect one of its members as chairperson  
31 and one as vice chairperson. The authority is authorized  
32 to select an executive director and such other personnel  
33 as may be necessary to perform its duties and to fix the  
34 compensation of such personnel to be paid out of moneys  
35 appropriated for this purpose. The executive director  
36 shall keep a record of the proceedings of the authority  
37 and shall perform such other duties as it may prescribe.  
38 The authority is authorized to establish such office or  
39 offices as may be necessary for the proper performance  
40 of its duties.

41 The authority shall hold an annual meeting and may  
42 meet at such other times and places as may be neces-  
43 sary, such meetings to be held upon its own resolution  
44 or at the call of the chairperson of the authority. The  
45 members shall serve without compensation but may be  
46 reimbursed for actual expenses incident to the perfor-  
47 mance of their duties upon presentation to the chairper-  
48 son of an itemized sworn statement thereof.

## CHAPTER 18. EDUCATION.

### Article.

2. State Board of Education.
- 2B. Area Vocational Program.

- 10H. Albert Yanni Programs of Excellence in Vocational—Technical Education.
- 26A. State Autism Training Center.
- 29. Grievance Procedure.
- 30. West Virginia Higher Education Tuition Trust Act.

## ARTICLE 2. STATE BOARD OF EDUCATION.

- §18-2-1. Creation; composition; appointment, qualifications, terms and removal of members; offices.
- §18-2-3. Meetings; compensation and expenses of members.
- §18-2-10. Certificates and awards.

### §18-2-1. Creation; composition; appointment, qualifications, terms and removal of members; offices.

1        There shall be a state board of education, to be known  
 2        as the West Virginia board of education, which shall be  
 3        a corporation and as such may contract and be con-  
 4        tracted with, plead and be impleaded, sue and be sued,  
 5        and have and use a common seal. The state board shall  
 6        consist of twelve members, of whom one shall be the  
 7        state superintendent of schools, ex officio; one of whom  
 8        shall be the chancellor of the board of trustees, ex  
 9        officio; and one of whom shall be the chancellor of the  
 10       board of directors, ex officio, none of whom shall be  
 11       entitled to vote. The other nine members shall be  
 12       citizens of the state, appointed by the governor, by and  
 13       with the advice and consent of the Senate, for overlap-  
 14       ping terms of nine years, except that the original  
 15       appointments shall be for terms of one, two, three, four,  
 16       five, six, seven, eight and nine years, respectively.  
 17       Terms of office shall begin on the fifth day of November  
 18       of the appropriate year and end on the fourth day of  
 19       November of the appropriate year. At least two but not  
 20       more than three members shall be appointed from each  
 21       congressional district.

22       No more than five of the appointive members shall  
 23       belong to the same political party, and no person shall  
 24       be eligible for appointment to membership on the state  
 25       board who is a member of any political party executive  
 26       committee or holds any other public office or public  
 27       employment under the federal government or under the  
 28       government of this state or any of its political subdivi-



29 sions, or who is an appointee or employee of the board.  
30 Members shall be eligible for reappointment. Any  
31 vacancy on the board shall be filled by the governor by  
32 appointment for the unexpired term.

33 Notwithstanding the provisions of section four, article  
34 six, chapter six of this code, no member of the state  
35 board may be removed from office by the governor  
36 except for official misconduct, incompetence, neglect of  
37 duty, or gross immorality and then only in the manner  
38 prescribed by law for the removal by the governor of  
39 state elective officers.

40 Before exercising any authority or performing any  
41 duties as a member of the state board, each member  
42 shall qualify as such by taking and subscribing to the  
43 oath of office prescribed by section five, article four of  
44 the constitution of West Virginia, the certificate whereof  
45 shall be filed with the secretary of state. A suitable  
46 office in the state department of education at the state  
47 capitol shall be provided for the use of the state board.  
48

### §18-2-3. Meetings; compensation and expenses of members.

1 The state board shall hold at least six meetings in  
2 every year at such times and places as it may prescribe.  
3 It may meet at such other times as may be necessary,  
4 such meetings to be held upon its own resolution or at  
5 the call of the president of the state board. The members  
6 of the state board, other than the ex officio members of  
7 the board, shall be paid one hundred dollars per diem  
8 each day or any part thereof spent in the performance  
9 of their duties under this article, and shall be reim-  
10 bursed for all reasonable and necessary expenses  
11 actually incurred incident to the performance of their  
12 duties. The state superintendent of schools, the chancel-  
13 lor of the board of trustees and the chancellor of the  
14 board of directors shall be reimbursed for such ex-  
15 penses, but shall not receive a per diem allowance. Upon  
16 presentation of itemized sworn statements, the per diem  
17 and reimbursement payments shall be made from

18 appropriations made by the Legislature to the state board.

**§18-2-10. Certificates and awards.**

1 The state board of education shall make rules and  
2 regulations and shall determine the minimum standards  
3 for the granting of certificates and awards for secondary  
4 vocational education, adult basic education, adult  
5 occupational education and adult technical preparatory  
6 education, subject to the provisions of section two, article  
7 two-b of this chapter and article three-a of chapter  
8 eighteen-b of this code.

**ARTICLE 2B. AREA VOCATIONAL PROGRAM.**

§18-2B-2. State board of vocational education; authority to establish programs, etc., until July 1, 1990; Joint Commission for Vocational-Technical-Occupational Education; state board of education and board of directors; authority to establish programs, etc.; division of vocational education established; rules and regulations; director.

§18-2B-3. Area vocational education program funds.

§18-2B-4. Expenditure of funds.

§18-2B-5. Title to property.

**§18-2B-2. State board of vocational education; authority to establish programs, etc., until July 1, 1990; Joint Commission for Vocational-Technical-Occupational Education; state board of education and board of directors; authority to establish programs, etc.; division of vocational education established; rules and regulations; director.**

1 (a) For the purpose of this article, the state board of  
2 education is designated as the state board of vocational  
3 education serving and meeting as the sole agency  
4 responsible for the administration of vocational educa-  
5 tion and for supervision of the administration thereof by  
6 local educational agencies and is hereby authorized and  
7 empowered to establish, operate and maintain area  
8 vocational educational programs including the acquisi-  
9 tion by purchase, lease, gift or otherwise of necessary  
10 lands and the construction, expansion, remodeling,  
11 alteration and equipping of necessary buildings for the  
12 purpose of operating and conducting educational  
13 training centers. The state board of vocational education

14 may delegate for such period of time as it may deter-  
15 mine its operational authority for multi-county voca-  
16 tional centers to an administrative council composed of  
17 equal representation from each of the participating  
18 county boards of education, the superintendent of  
19 schools from each participating county, and the state  
20 director of vocational education or his representative. To  
21 this end, there is hereby expressly established in the  
22 state board of education a division of vocational  
23 education which shall establish the area or areas in  
24 which the programs are to be conducted and shall have  
25 authority to promulgate, pursuant to the provisions of  
26 chapter twenty-nine-a of this code, rules and regulations  
27 necessary to carry out the provisions of this article. The  
28 administration and supervision of the area vocational  
29 educational programs shall be administered by the  
30 director of the division of vocational education.

31 (b) Effective the first day of July, one thousand nine  
32 hundred ninety, the West Virginia Joint Commission for  
33 Vocational-Technical-Occupational Education, hereinaf-  
34 ter referred to as "joint commission," established  
35 pursuant to the provisions of article three-a, chapter  
36 eighteen-b of this code, is designated as the sole agency  
37 responsible for the administration of vocational-techni-  
38 cal-occupational education in the state. The joint  
39 commission is designated thereafter to receive federal  
40 money for vocational-technical-occupational education in  
41 the state as of the first day of July, one thousand nine  
42 hundred ninety. Effective the first day of July, one  
43 thousand nine hundred eighty-nine, the joint commission  
44 shall determine which adult occupational education  
45 programs and which adult technical preparatory  
46 educational programs as defined in section one-b, article  
47 three-a, chapter eighteen-b of this code, shall be under  
48 the jurisdiction of the state board of education and  
49 which said programs shall be under the jurisdiction of  
50 the board of directors. Effective the first day of July,  
51 one thousand nine hundred eighty-nine, any proposed  
52 new program by the state board of education or the  
53 board of directors in the areas of adult occupational  
54 education or adult technical preparatory education as  
55 defined in section one-b, article three-a, chapter

56 eighteen-b of this code shall be filed with the joint  
57 commission with notice of intent to plan, which such  
58 new program shall require approval by the joint  
59 commission prior to institution of such new program.  
60 The secondary and post-secondary vocational education  
61 programs of the state existing as of the effective date  
62 of this article shall remain in place until the first day  
63 of July, one thousand nine hundred ninety, during which  
64 time the joint commission shall conduct a study of  
65 secondary and post-secondary vocational education in  
66 the state including definitions of same, and shall make  
67 recommendations to the Legislature respecting second-  
68 ary and post-secondary vocational education in the  
69 state, including recommendations as to the definitions of  
70 same, on or before the first day of December, one  
71 thousand nine hundred ninety. As of the first day of  
72 July, one thousand nine hundred ninety, the joint  
73 commission is authorized to implement policies to  
74 supervise and coordinate the secondary and post-  
75 secondary vocational education programs in the state.  
76 The joint commission is hereby empowered as of the  
77 first day of July, one thousand nine hundred ninety, to  
78 determine the standards for the certification and  
79 awards of vocational programs in the state or to delegate  
80 said authority, based on the joint commission's aforesaid  
81 study of the secondary and post-secondary vocational  
82 education in the state. The state board of education shall  
83 be responsible for the administration of secondary  
84 vocational education programs, as determined by the  
85 joint commission, and for supervision of the administra-  
86 tion thereof by local educational agencies and is hereby  
87 authorized and empowered to establish, operate and  
88 maintain area vocational educational programs includ-  
89 ing the acquisition by purchase, lease, gift or otherwise  
90 of necessary lands and the construction, expansion,  
91 remodeling, alteration and equipping of necessary  
92 buildings for the purpose of operating and conducting  
93 secondary educational training centers. The state board  
94 of education may delegate for such period of time as it  
95 may determine its operational authority for multi-  
96 county vocational centers to an administrative council  
97 composed of equal representation from each of the

98 participating county boards of education, the superin-  
99 tendent of schools from each participating county, and  
100 the state director of vocational education or his repre-  
101 sentative. To this end, there is hereby expressly  
102 established in the state board of education a division of  
103 secondary vocational education which shall establish the  
104 area or areas in which the programs are to be conducted  
105 and shall have authority to promulgate, pursuant to the  
106 provisions of chapter twenty-nine-a of this code, rules  
107 and regulations necessary to carry out the provisions of  
108 this article. The administration and supervision of the  
109 area vocational educational programs shall be adminis-  
110 tered by the director of the division of vocational  
111 education. The state board of vocational education,  
112 previously established under this article, is abolished  
113 effective the first day of July, one thousand nine  
114 hundred ninety.

115 The board of directors shall be responsible for the  
116 administration of all post-secondary vocational educa-  
117 tion in the state, as determined by the joint commission,  
118 which shall be administered as a part of the state college  
119 system as defined in section two, article one, chapter  
120 eighteen-b of this code. In the development of the post-  
121 secondary education portion of any and all state plans  
122 or amendments thereto as may be required for partici-  
123 pation in the Vocational Education Act of 1963, as  
124 amended, or as may be required for state participation  
125 in any federally funded post-secondary vocational-  
126 technical or occupational education programs, the board  
127 of directors shall solicit recommendations from the state  
128 board of education and the director of the division of  
129 vocational education for the post-secondary education  
130 provisions to be included in all such plans.

131 The joint commission shall, in any and all plans  
132 submitted for federal vocational education funds in  
133 support of vocational-technical or occupational educa-  
134 tion, provide that:

135 (a) The secondary vocational-technical-occupational  
136 education programs administered by the state board of  
137 education shall be eligible to receive vocational-techni-

138 cal-occupational education funds in accordance with  
139 federal guidelines;

140 (b) The comprehensive community college education  
141 service regions as established by the board of directors  
142 shall be eligible to receive post-secondary vocational-  
143 technical-occupational funds in accordance with federal  
144 guidelines;

145 (c) Services, programs, equipment and facilities may  
146 be contracted between comprehensive community  
147 colleges, area vocational technical schools and county  
148 boards of education as a means of preventing unneces-  
149 sary duplication;

150 (d) Federal funds provided to the state in support of  
151 vocational-technical-occupational education shall be  
152 allocated to the state board of education and to the board  
153 of directors for use in the state system of comprehensive  
154 vocational-technical-occupational education in an  
155 amount in direct proportion as the respective vocational-  
156 technical-occupational enrollments of each program is to  
157 the total vocational-technical-occupational enrollment of  
158 the state.

159 (e) There shall be established an implementation team  
160 to review the work of the joint commission for voca-  
161 tional-technical-occupational education and to file a  
162 report with the governor and the Legislature by the first  
163 day of December, one thousand nine hundred ninety,  
164 and shall also file a report with the legislative oversight  
165 commission on education accountability no later than  
166 the first day of December, one thousand nine hundred  
167 eighty-nine. The implementation team shall be com-  
168 posed of one representative of the state department of  
169 education, one representative of the community colleges,  
170 three members of the senate education committee and  
171 three members of the house education committee, all to  
172 be appointed by the governor. The secretary of educa-  
173 tion and the arts shall be responsible for staffing the  
174 implementation team utilizing existing personnel,  
175 equipment and offices of the board of directors of the  
176 state college system and the state board of education.

**§18-2B-3. Area vocational education program funds.**

1 There is hereby established a fund to be known as "the  
2 area vocational education program fund for secondary  
3 education." There is hereby established a separate fund  
4 to be known as "the area vocational education program  
5 fund for post-secondary vocational education." All  
6 moneys appropriated for such purpose by the Legisla-  
7 ture as well as any gifts or grants made to the  
8 appropriate fund by any governmental subdivision of  
9 the state or by the United States government or by any  
10 individual, firm or corporation, to carry out the  
11 provisions of this article shall be expended by the state  
12 board of education or the board of directors, as the case  
13 may be.

**§18-2B-4. Expenditure of funds.**

1 The state board of education and the board of  
2 directors, as the case may be, are authorized and  
3 empowered to expend the area vocational education  
4 program funds for salaries, teachers' retirement contri-  
5 butions, and necessary travelling expenses of teachers,  
6 and other necessary employees, including, but not  
7 limited to, vocational guidance counselors, for purchase,  
8 rental, maintenance and repair of instructional equip-  
9 ment, buildings and supplies, and for the necessary costs  
10 of transportation of certified students.

**§18-2B-5. Title to property.**

1 Title to any property, equipment, tools, furniture or  
2 instructional materials purchased prior to the effective  
3 date of this section out of the fund provided for area  
4 vocational education program funds previously estab-  
5 lished and existing immediately prior to the effective  
6 date of this article shall be transferred to and vested in  
7 the West Virginia board of education. After the effective  
8 date of this article, purchases from funds established in  
9 section four shall be vested in the state board of  
10 education or the board of directors as the case may be.

**ARTICLE 10H. ALBERT YANNI PROGRAMS OF EXCELLENCE  
IN VOCATIONAL-TECHNICAL EDUCATION.**

§18-10H-1. Purpose; legislative intent.

§18-10H-2. Academy for talented vocational-technical education students.

§18-10H-3. Scholarship fund for vocational-technical education students and  
educators.

§18-10H-4. Interdisciplinary doctoral program in vocational-technical education.

§18-10H-5. Vocational-technical education administrator's academy.

§18-10H-6. Effective schools program in vocational-technical education.

§18-10H-7. Unified technology transfer program.

**§18-10H-1. Purpose; legislative intent.**

1 Rapid technological advances, the advent of a global  
2 economy, changing demographics and restructuring of  
3 the traditional workplace have dictated changes in  
4 educational programs designed to prepare work force  
5 entrants and incumbents. More emphasis must be  
6 placed on the transfer of technology, via the educational  
7 system, to the workplace resulting in an academically  
8 and technically literate work force. A structure must be  
9 established to provide incentives, high expectations and  
10 encouragement for talented vocational-technical stu-  
11 dents to pursue advanced education and training related  
12 to their technical disciplines, as well as provide a  
13 mechanism for the technical updating of vocational-  
14 technical teachers and administrators, including oppor-  
15 tunities for the attainment of advanced degrees.

16 The economic future of the state of West Virginia will  
17 be greatly influenced by the ability of the educational  
18 system to prepare competent individuals for a highly  
19 competitive and technological workplace. Excellence in  
20 terms of faculty, programs and educational opportuni-  
21 ties for all West Virginians will greatly affect the  
22 degree of future economic prosperity within the state.  
23 With the enactment of this article, the Legislature  
24 intends to address a major void in the current system  
25 of vocational-technical education in West Virginia  
26 through the creation of a comprehensive program of  
27 educational incentives for talented students, teachers  
28 and administrators. The results of the programs and  
29 initiatives proposed by this article can have a significant  
30 impact toward achieving excellence in vocational-  
31 technical education within West Virginia and revitaliz-  
32 ing the state's economy.

**§18-10H-2. Academy for talented vocational-technical education students.**

1 The West Virginia board of education shall establish



2 by the first day of July, one thousand nine hundred  
3 ninety, an annual academy for talented vocational-  
4 technical education students, including a foundation for  
5 receiving private financial support. The purposes of the  
6 academy are to stimulate and reward student commit-  
7 ment to excellence in secondary vocational-technical  
8 education; to stimulate growth in the critical and  
9 creative thinking abilities of vocational-technical  
10 students; to assist exceptionally talented secondary  
11 vocational-technical education students to achieve their  
12 individual potentials; to bridge the gap between  
13 educational practice and the technological workplace;  
14 and to provide a medium for interaction between  
15 talented vocational-technical students and innovative  
16 leaders of business and industry and labor.

17 The state board of education may establish a coordi-  
18 nating committee to set operating guidelines for the  
19 academy and supporting foundation, including, but not  
20 limited to, selection of participants, promotion, program  
21 development, location, facilities and staffing.

22 The nonprofit academy foundation shall exist to solicit  
23 private funds and resources to enhance the operation of  
24 the academy.

**§18-10H-3. Scholarship fund for vocational-technical  
education students and educators.**

1 Beginning with the school year one thousand nine  
2 hundred eighty-nine—ninety, the state board of educa-  
3 tion shall establish a scholarship program for outstand-  
4 ing secondary vocational-technical education graduates  
5 to pursue additional post-secondary college work in a  
6 related career or technical field. The board may award  
7 twenty annual scholarships, not to exceed two thousand  
8 dollars each, based on criteria to be established by the  
9 board. Additionally, the board may award fifteen  
10 annual scholarships, not to exceed one thousand dollars  
11 each, to outstanding vocational-technical teachers for  
12 the purpose of pursuing advanced degrees or technical  
13 updating of their professional competencies. The criteria  
14 for awarding the educator scholarships shall be promul-  
15 gated by the board. The foundation provided for in

16 section two of this article shall solicit private sector  
17 funds for these scholarships.

**§18-10H-4. Interdisciplinary doctoral program in vocational-technical education.**

1 The West Virginia board of regents shall establish by  
2 the first day of July, one thousand nine hundred ninety-  
3 one, a plan for a coordinate interdisciplinary doctoral  
4 program in vo-tech education utilizing existing facilities  
5 and personnel of state universities, colleges, the state  
6 department of education vocational-technical staff and  
7 board of regents members.

**§18-10H-5. Vocational-technical education administrator's academy.**

1 The West Virginia board of education shall maintain  
2 and expand an annual vocational-technical education  
3 administrator's academy. The purposes of this academy  
4 are to stimulate excellence in vocational-technical  
5 education programming statewide through the develop-  
6 ment of progressive instructional leadership, planning  
7 and program development competencies of vocational-  
8 technical education administrators.

9 The board may establish a coordinating committee  
10 made up of the department of education staff, local  
11 vocational administrators and representatives of the  
12 vocational-technical education department at Marshall  
13 University to plan and administer this program. The  
14 nonprofit academy foundation established in section two  
15 of this article shall exist to solicit private funds and  
16 resources to enhance the operation of the academy.

**§18-10H-6. Effective schools program in vocational-technical education.**

1 The state board of education shall establish and  
2 operate an effective schools program for vocational-  
3 technical education. The purpose of the program is to  
4 provide vocational-technical education personnel with  
5 resources and staff development for school program  
6 improvement based on application of the effective  
7 schools research, including components such as instruc-  
8 tional leadership, school climate, high student expecta-

9 tions, emphasis on academic and occupational achieve-  
10 ment, and community and parental involvement. The  
11 program shall be coordinated by the bureau of voca-  
12 tional, technical and adult education with the advise-  
13 ment from a committee composed of two vocational  
14 administrators, two vocational teachers, one vocational  
15 guidance counselor, one educator of vocational teachers,  
16 one county school superintendent, one comprehensive  
17 high school principal, one academic teacher, two  
18 business/industry representatives, one labor representa-  
19 tive, and one vocational education program completer.

**§18-10H-7. Unified technology transfer program.**

1 The state board of education shall establish a unified  
2 technology transfer program for vocational-technical  
3 educators, beginning the first day of July, one thousand  
4 nine hundred ninety. This program shall emphasize  
5 initiatives designed to improve the transfer of technol-  
6 ogy through the vocational-technical education curricu-  
7 lum. Such initiatives must impact on improved staff  
8 development, curricula and instructional methods  
9 reflecting work applications of the new and emerging  
10 technologies. The vocational-technical education system.  
11 must be a catalyst in bridging the gap between high  
12 technology and the workplace. Workers for the twenty-  
13 first century must know how to install, operate and  
14 maintain high technology equipment, systems and  
15 processes.

16 The unified technology transfer program shall provide  
17 innovative staff development opportunities through the  
18 following initiatives:

19 (a) A technical update program for vocational-  
20 technical education teachers to learn high technology  
21 skills needed to teach the operation, maintenance, or  
22 repair of high technology equipment, through placement  
23 in industry, formal technical coursework, seminars,  
24 teleconferences and other staff development functions;

25 (b) A "Teachers-Teach-Teachers" program to allow  
26 the most effective teachers in the state to instruct fellow  
27 teachers on how to effectively teach and incorporate  
28 high technology skills in the classroom and laboratory;

29 (c) An "Academy Chair" program to allow education  
 30 or business-industry persons to serve as a resident  
 31 expert in the transfer of technology, including conduct-  
 32 ing seminars in educational institutions, teleconferences  
 33 and in the workplace;

34 (d) A business and education exchange program to  
 35 allow vocational-technical education teachers to work in  
 36 a company or business, while the business person  
 37 teaches in the vocational-technical education program;

38 (e) A beginning teacher internship program to allow  
 39 new vocational-technical teachers to receive guidance  
 40 from a mentor teacher in teaching high technology  
 41 skills, including acquisition of such skills; and

42 (f) A vocational-technical completer capstone expe-  
 43 rience program that allows talented students an  
 44 opportunity to learn high technology skills appropriate  
 45 for their occupational area of study through internship  
 46 placement in an appropriate business or industry  
 47 setting.

48 The state board of education may formulate policies  
 49 and procedures designed to implement this section.

50 The foundation provided for in section two of this  
 51 article shall solicit private sector funds and encourage  
 52 partnerships to implement this program.

#### ARTICLE 26A. STATE AUTISM TRAINING CENTER.

§18-26A-1. Purpose.

§18-26A-2. Definitions.

§18-26A-3. Powers and duties of board of trustees and state autism center.

§18-26A-6. Advisory board.

#### §18-26A-1. Purpose.

1 The purpose of the Legislature in the enactment of  
 2 this article is to establish and develop an autism  
 3 training center in the state of West Virginia with a  
 4 highly skilled, interdisciplinary, appropriately expe-  
 5 rienced staff which will train teachers, parents,  
 6 guardians and others important to the autistic person's  
 7 education and training. The center shall be established  
 8 and operated by the West Virginia board of trustees or  
 9 its designees.

**§18-26A-2. Definitions.**

- 1 For the purposes of this article:
- 2 "Board" means the West Virginia board of trustees;
- 3 "Center" means the autism training center;
- 4 "Client" means a person with the primary diagnosis  
5 of autism or autistic-like behavior; and
- 6 "Expenses" means those reasonable and customary  
7 expenditures related to training and treatment of  
8 eligible clients as defined in the rules and regulations  
9 promulgated by the center.

**§18-26A-3. Powers and duties of board of trustees and state autism center.**

- 1 The board of trustees is authorized to operate a state  
2 autism training center, including either the acquisition  
3 by purchase, lease, gift or otherwise, of necessary lands,  
4 and the construction of necessary buildings; the expansion,  
5 remodeling, altering or equipping of necessary  
6 buildings; and the making of contracts by the board of  
7 trustees with any state, county or municipal agency, or  
8 nonprofit institution, providing for the equipment,  
9 expenses, compensation of personnel, operation and  
10 maintenance of any facility of such agency or institution  
11 utilized for the purposes of this article. The board or its  
12 designees may make and enter into all contracts and  
13 agreements necessary and incidental to the performance  
14 of its powers and duties under this section, and may  
15 cooperate with other agencies of the state, county and  
16 federal governments.

**§18-26A-6. Advisory board.**

- 1 The board of trustees shall appoint a board of West  
2 Virginia citizens to advise the center director on matters  
3 of policy. The advisory board shall be composed of fifty  
4 percent parents or guardians of clients eligible for the  
5 center's program; forty percent persons from profes-  
6 sional fields related to autism, such as special education,  
7 psychology, hearing and speech, neurology and pedi-

8 atrics; and ten percent knowledgeable lay citizens such  
9 as legislators or other lay community leaders. The  
10 director of the center shall be an ex officio nonvoting  
11 member of the advisory board.

**ARTICLE 29. GRIEVANCE PROCEDURE.**

**§18-29-5. Education employees grievance board; hearing examiners.**

1 (a) There is hereby created and shall be an education  
2 employees grievance board which shall consist of three  
3 members who shall be citizens of the state appointed by  
4 the governor by and with the advice and consent of the  
5 Senate for overlapping terms of three years, except that  
6 the original appointments shall be for a period of one,  
7 two and three years, respectively, commencing on the  
8 first day of July, one thousand nine hundred eighty-five.  
9 No two members shall be from the same congressional  
10 district, and no more than two of the appointed  
11 members shall be from the same political party. No  
12 person shall be appointed to membership on the board  
13 who is a member of any political party executive  
14 committee or holds any other public office or public  
15 employment under the federal government or under the  
16 government of this state. Members shall be eligible for  
17 reappointment, and any vacancy on the board shall be  
18 filled within thirty days of the vacancy by the governor  
19 by appointment for the unexpired term.

20 A member of the board may not be removed from  
21 office except for official misconduct, incompetence,  
22 neglect of duty, gross immorality or malfeasance, and  
23 then only in the manner prescribed in article six,  
24 chapter six of this code for the removal by the governor  
25 of the state elected officers.

26 The board shall hold at least two meetings yearly at  
27 such times and places as it may prescribe and may meet  
28 at such other times as may be necessary, such meetings  
29 to be agreed to in writing by at least two of the  
30 members. Members of the board shall each be paid  
31 seventy-five dollars for each calendar day devoted to the  
32 work of the board, but not more than seven hundred and  
33 fifty dollars during any one fiscal year. Each member

34 shall be reimbursed for all reasonable and necessary  
35 expenses actually incurred in the performance of board  
36 duties, but shall submit a request therefor upon sworn  
37 itemized statement.

38 The board is hereby authorized and required to  
39 administer the grievance procedure at level four as  
40 provided for in section four of this article and shall  
41 employ at least two full-time hearing examiners on an  
42 annual basis and such clerical help as is necessary to  
43 implement the legislative intent expressed in section one  
44 of this article.

45 The board shall hire hearing examiners who reside in  
46 different regional educational service agency areas  
47 unless and until the number of hearing examiners  
48 exceeds the number of such areas, at which time two  
49 hearing examiners may be from the same such area. If  
50 a grievant previously before a hearing examiner again  
51 brings a grievance, a different hearing examiner shall  
52 be required to hear the grievance upon written request  
53 therefor by any party to the grievance. These hearing  
54 examiners shall serve at the will and pleasure of the  
55 board.

56 The board shall submit a yearly budget and shall  
57 report annually to the governor and Legislature regard-  
58 ing receipts and expenditures, number of level four  
59 hearings conducted, synopses of hearing outcomes and  
60 such other information as the board may deem approp-  
61 riate. The board shall further evaluate on an annual  
62 basis the level four grievance process and the perfor-  
63 mance of all hearing examiners and include such  
64 evaluation in the annual report to the governor and  
65 Legislature. In making such evaluation, the board shall  
66 notify all institutions, employee organizations and all  
67 grievants participating in level four grievances in the  
68 year for which evaluation is being made and shall  
69 provide for the submission of written comment and/or  
70 the hearing of testimony regarding the grievance  
71 process. The board shall provide suitable office space for  
72 all hearing examiners in space other than that utilized  
73 by any institution as defined in section two of this article

74 and shall ensure that reference materials are generally  
75 available.

76 The board is authorized to promulgate rules and  
77 regulations consistent with the provisions of this article,  
78 such rules and regulations to be adopted in accordance  
79 with chapter twenty-nine-a of this code.

80 (b) Hearing examiners are hereby authorized and  
81 shall have the power to consolidate grievances, allocate  
82 costs among the parties in accordance with section eight  
83 of this article, subpoena witnesses and documents in  
84 accordance with the provisions of section one, article  
85 five, chapter twenty-nine-a of this code, provide such  
86 relief as is deemed fair and equitable in accordance with  
87 the provisions of this article, and such other powers as  
88 will provide for the effective resolution of grievances not  
89 inconsistent with any rules or regulations of the board  
90 or the provisions of this article.

**ARTICLE 30. WEST VIRGINIA HIGHER EDUCATION TUITION  
TRUST ACT.**

§18-30-5. Appointment of board of directors; terms; compensation;  
proceedings generally.

§18-30-13. Conditions precedent to administration of trust; disclaimer;  
enforcement.

**§18-30-5. Appointment of board of directors; terms;  
compensation; proceedings generally.**

1 (a) The board of directors shall consist of the secre-  
2 tary of education and the arts, who shall be the  
3 chairman of the board, the state treasurer, and the state  
4 superintendent of schools, who shall serve as ex officio  
5 voting members of the board, and six other members  
6 with knowledge, skill and experience in an academic,  
7 business or financial field, who shall be residents of the  
8 state appointed by the governor, by and with the advice  
9 and consent of the Senate. Of the six appointed  
10 members, four shall be appointed from nominations as  
11 follows: One shall be a private citizen not employed by  
12 or an officer of the state or any political subdivision  
13 thereof appointed from one or more nominees of the



14 Speaker of the House of Delegates; one shall be a private  
15 citizen not employed by or an officer of the state or  
16 any political subdivision thereof appointed from one or  
17 more nominees of the President of the Senate; one shall  
18 be a president of a state institution of higher education  
19 who shall be appointed from one or more nominees of  
20 the council of presidents of state colleges and universi-  
21 ties; and one shall represent the interests of private  
22 institutions of higher education located in this state who  
23 shall be appointed from one or more nominees of the  
24 West Virginia association of private colleges. Of these  
25 six members first appointed, two shall be appointed  
26 for terms that expire on the thirty-first day of De-  
27 cember, one thousand nine hundred eighty-nine, two  
28 shall be appointed for terms that expire on the thirty-  
29 first day of December, one thousand nine hundred  
30 ninety, and two shall be appointed for a term that  
31 expires on the thirty-first day of December, one  
32 thousand nine hundred ninety-one. Following the  
33 expiration of these fixed terms, a member shall be  
34 appointed for a term of three years. A member shall  
35 serve until a successor is appointed, and a vacancy shall  
36 be filled for the balance of the unexpired term in the  
37 same manner as the original appointment. The chan-  
38 cellor, treasurer, state superintendent or president of a  
39 state institution of higher education may appoint a  
40 designee to serve as a voting member of the board in  
41 such person's absence.

42 (b) Members of the board shall serve without compen-  
43 sation, but shall receive reimbursement for reasonable  
44 and necessary expenses actually incurred in the perfor-  
45 mance of their duties as board members unless such  
46 member is otherwise reimbursed as an employee of the  
47 state.

48 (c) A majority of the voting members appointed to the  
49 board shall constitute a quorum for the transaction of  
50 business at a meeting of the board, or the exercise of  
51 a power or function of the trust, notwithstanding the  
52 existence of one or more vacancies. Voting upon action  
53 taken by the board shall be conducted by majority vote  
54 of the members present in person at a meeting of the

55 board, and, if authorized by the bylaws of the board and  
56 when a quorum is present in person at the meeting, by  
57 use of amplified telephonic equipment. The board shall  
58 meet at the call of the chairman and as may be provided  
59 in its bylaws. Meetings of the board may be held  
60 anywhere within the state.

61 (d) The board is subject to the open governmental  
62 proceedings and freedom of information provisions of  
63 article nine-a, chapter six, and chapter twenty-nine-b,  
64 respectively, of this code.

**§18-30-13. Conditions precedent to administration of  
trust; disclaimer; enforcement.**

1 (a) Before the trust can enter into a tuition prepay-  
2 ment contract or tuition trust account contract with  
3 purchasers, it shall provide the Legislature with a  
4 report outlining any ruling or opinion rendered by the  
5 Internal Revenue Service regarding the federal tax  
6 consequences of any benefits or refunds received from  
7 the trust under the applicable contract. This ruling or  
8 opinion rendered by the Internal Revenue Service may  
9 be a ruling or opinion sought by the trust or a ruling  
10 or opinion that relates to similar contracts in another  
11 state.

12 (b) Before entering into a tuition prepayment contract  
13 or tuition trust account contract with purchasers, the  
14 state shall solicit answers to appropriate ruling requests  
15 from the federal Securities and Exchange Commission  
16 regarding the application of federal security laws to the  
17 trust. No contracts may be entered without the trust  
18 making known to the Legislature the status of the  
19 request.

20 (c) Nothing in this article or in a contract entered into  
21 pursuant to this article may be construed as a promise  
22 or guarantee by the trust or the state that a person will  
23 be admitted to a particular institution of higher  
24 education, will be allowed to continue to attend an  
25 institution of higher education after having been  
26 admitted or will be graduated from an institution of  
27 higher education.

- 28 (d) The board, state institutions of higher education,  
 29 purchasers and qualified beneficiaries may enforce this  
 30 article and any contract entered into pursuant to this  
 31 article in the circuit court of Kanawha County.

## CHAPTER 18B. HIGHER EDUCATION.

### Article

1. Governance.
2. University of West Virginia Board of Trustees.
3. Board of Directors of the State College System.
- 3A. West Virginia Joint Commission for Vocational-Technical-Occupational Education.
4. General Administration.
5. Higher Education Budgets and Expenditures.
6. Other Boards and Advisory Councils.
7. Personnel Generally.
8. Higher Education Full-Time Faculty Salaries.
9. Classified Employee Salary Schedule and Classification System.
10. Fees and Other Money Collected at State Institutions of Higher Education.
11. Miscellaneous Institutes and Centers.
12. Research and Development Agreements for State Institutions of Higher Education.
13. Higher Education-Industry Partnerships.
14. Miscellaneous.

### ARTICLE 1. GOVERNANCE.

- §18B-1-1. Legislative purpose; creation of governing boards.  
 §18B-1-2. Definitions.  
 §18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the board of trustees and board of directors.  
 §18B-1-4. Prior transfer of powers, etc., to board of regents; board of regents abolished.  
 §18B-1-5. Board of trustees and board of directors under department of education and the arts.  
 §18B-1-6. Rule making.  
 §18B-1-7. Supervision by governing boards; delegation to president.  
 §18B-1-8. Powers and duties of governing boards generally.  
 §18B-1-9. Powers and duties of institutional presidents.  
 §18B-1-10. Task force on faculty salaries and resource allocation.

#### §18B-1-1. Legislative purpose; creation of governing boards.

- 1 The purpose of the Legislature in the enactment of
- 2 this article is to establish a governance structure for the
- 3 state institutions of higher education consisting of a
- 4 board to govern the University of West Virginia system,

5 designated the "University of West Virginia Board of  
6 Trustees," and a board to govern the state college  
7 system, designated the "Board of Directors of The State  
8 College System."

9 In furtherance of this purpose, there are hereby  
10 created two governing boards to be known as the  
11 university of West Virginia board of trustees, and the  
12 board of directors of the state college system, which  
13 shall be corporations and as such may contract and be  
14 contracted with, plead and be impleaded, sue and be  
15 sued, and have and use common seals.

#### §18B-1-2. Definitions.

1 The following words when used in this chapter and  
2 chapter eighteen-c of this code shall have the meaning  
3 hereafter ascribed to them unless the context clearly  
4 indicates a different meaning:

5 (a) "Governing board" or "board" means the univer-  
6 sity of West Virginia board of trustees or the board of  
7 directors of the state college system, whichever is  
8 applicable within the context of the institution or  
9 institutions referred to in this chapter or in other  
10 provisions of law;

11 (b) "Governing boards" or "boards" means both the  
12 board of trustees and the board of directors;

13 (c) "Community colleges" means Southern West  
14 Virginia Community College, West Virginia Northern  
15 Community College, and any institution of higher  
16 education which has been designated as a community  
17 college by the board of directors under the provisions  
18 of section four, article three of this chapter;

19 (d) "Directors" or "board of directors" mean the board  
20 of directors of the state college system created pursuant  
21 to article three of this chapter or the members thereof;

22 (e) "Higher educational institution" means any insti-  
23 tution as defined by sections 401(f), (g), (h) of the federal  
24 higher education facilities act of 1963, as amended;

25 (f) "Post-secondary vocational education programs"  
26 means any college-level course or program beyond the

27 high school level provided through an institution of  
28 higher education which results in or may result in the  
29 awarding of a two-year associate degree, under the  
30 jurisdiction of the board of directors;

31 (g) "Rule" or "rules" mean a regulation, standard,  
32 policy or interpretation of general application and  
33 future effect;

34 (h) "Senior administrator" means the person hired by  
35 the governing boards in accordance with section one,  
36 article four of this chapter, with such powers and duties  
37 as may be provided for in section two of said article four;

38 (i) "State college" means Bluefield State College,  
39 Concord College, Fairmont State College, Glenville  
40 State College, Shepherd College, West Liberty State  
41 College, West Virginia Institute of Technology, or West  
42 Virginia State College;

43 (j) "State college system" means the state colleges and  
44 community colleges, and also shall include post-second-  
45 ary vocational education programs in the state, as those  
46 terms are defined in this section;

47 (k) "State institution of higher education" means any  
48 university, college or community college in the state  
49 university system or the state college system as those  
50 terms are defined in this section;

51 (l) "Trustees" and "board of trustees" mean the  
52 university of West Virginia board of trustees created  
53 pursuant to article two of this chapter or the members  
54 thereof;

55 (m) "University of West Virginia" and "state univer-  
56 sity system" means the multi-campus, integrated  
57 university of the state, consisting of West Virginia  
58 University including West Virginia University at  
59 Parkersburg, Potomac State College of West Virginia  
60 University and the West Virginia University School of  
61 Medicine; Marshall University including the Marshall  
62 University School of Medicine; the University of West  
63 Virginia College of Graduate Studies; and the West  
64 Virginia School of Osteopathic Medicine; and

65 (n) "University" means the multi-campus, integrated  
66 university of the state, consisting of West Virginia  
67 University including West Virginia University at  
68 Parkersburg, Potomac State College of West Virginia  
69 University and the West Virginia University School of  
70 Medicine; Marshall University including the Marshall  
71 University School of Medicine; the University of West  
72 Virginia College of Graduate Studies; or the West  
73 Virginia School of Osteopathic Medicine.

**§18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the board of trustees and board of directors.**

1 (a) All powers, duties and authorities transferred to  
2 the board of regents pursuant to former provisions of  
3 chapter eighteen of this code are hereby transferred to  
4 the governing boards created in this chapter and shall  
5 be exercised and performed by the governing boards as  
6 such powers, duties and authorities may apply to each  
7 governing board and to institutions under its  
8 jurisdiction.

9 (b) Title to all property previously transferred to or  
10 vested in the board of regents formerly existing under  
11 the provisions of chapter eighteen of this code are  
12 hereby transferred to such governing board as those  
13 titles may apply to property which is appropriately  
14 under the jurisdiction of that governing board. Property  
15 transferred to or vested in the board of regents shall  
16 include (1) all property vested in the board of governors  
17 of West Virginia University and transferred to and  
18 vested in the West Virginia board of regents; (2) all  
19 property acquired in the name of the state board of  
20 control or the West Virginia board of education and  
21 used by or for the state colleges and universities and  
22 transferred to and vested in the West Virginia board of  
23 regents; and (3) all property acquired in the name of the  
24 state commission on higher education and transferred to  
25 and vested in the West Virginia board of regents.

26 (c) Each valid agreement and obligation previously  
27 transferred to or vested in the board of regents formerly  
28 existing under the provisions of chapter eighteen of this

29 code is hereby transferred to the governing boards as  
30 those agreements and obligations may apply to each  
31 governing board and to institutions under its jurisdic-  
32 tion. Valid agreements and obligations transferred to  
33 the board of regents shall include (1) each valid  
34 agreement and obligation of the board of governors of  
35 West Virginia University transferred to and deemed the  
36 agreement and obligation of the West Virginia board of  
37 regents; (2) each valid agreement and obligation of the  
38 state board of education with respect to the state  
39 colleges and universities transferred to and deemed the  
40 agreement and obligation of the West Virginia board of  
41 regents; and (3) each valid agreement and obligation of  
42 the state commission on higher education transferred to  
43 and deemed the agreement and obligation of the West  
44 Virginia board of regents.

45 (d) All orders, resolutions and rules adopted or  
46 promulgated by the board of regents and in effect  
47 immediately prior to the first day of July, one thousand  
48 nine hundred eighty-nine, are hereby transferred to the  
49 governing boards as those orders, resolutions and rules  
50 may apply to each governing board and to institutions  
51 under its jurisdiction and shall continue in effect and  
52 shall be deemed the orders, resolutions and rules of the  
53 respecting governing boards until rescinded, revised,  
54 altered or amended by the appropriate governing board  
55 in the manner and to the extent authorized and  
56 permitted by law. Such orders, resolutions and rules  
57 shall include (1) those adopted or promulgated by the  
58 board of governors of West Virginia University and in  
59 effect immediately prior to the first day of July, one  
60 thousand nine hundred sixty-nine, unless and until  
61 rescinded, revised, altered or amended by the board of  
62 regents in the manner and to the extent authorized and  
63 permitted by law; (2) those respecting state colleges and  
64 universities adopted or promulgated by the West  
65 Virginia board of education and in effect immediately  
66 prior to the first day of July, one thousand nine hundred  
67 sixty-nine, unless and until rescinded, revised, altered or  
68 amended by the board of regents in the manner and to  
69 the extent authorized and permitted by law; and (3)  
70 those adopted or promulgated by the state commission

71 on higher education and in effect immediately prior to  
72 the first day of July, one thousand nine hundred sixty-  
73 nine, unless and until rescinded, revised, altered or  
74 amended by the board of regents in the manner and to  
75 the extent authorized and permitted by law.

76 (e) As to any title, agreement, obligation, order,  
77 resolution, rule or any other matter about which there  
78 is some uncertainty, misunderstanding or question  
79 regarding the applicability to one or both of the  
80 governing boards, the matter shall be summarized in  
81 writing and sent to the secretary of education and the  
82 arts, who shall make a determination regarding such  
83 matter within thirty days of receipt thereof.

84 (f) Rules or provisions of law which refer to other  
85 provisions of law which were repealed, rendered  
86 inoperative, or superseded by the provisions of this  
87 section shall remain in full force and effect to such  
88 extent as may still be applicable to higher education and  
89 may be so interpreted. Such references include, but are  
90 not limited to, references to sections and prior enact-  
91 ments of article twenty-six, chapter eighteen of this code  
92 and code provisions relating to retirement, health  
93 insurance, grievance procedures, purchasing, student  
94 loans and savings plans. Any determination which needs  
95 to be made regarding applicability of any provision of  
96 law shall first be made by the secretary of education and  
97 the arts.

**§18B-1-4. Prior transfer of powers, etc., to board of regents; board of regents abolished.**

1 (a) All the powers, duties and authorities which the  
2 board of governors of West Virginia University,  
3 previously established by article eleven of chapter  
4 eighteen of the code or by any other provisions of law,  
5 may have had immediately prior to the first day of July,  
6 one thousand nine hundred sixty-nine, shall be the  
7 powers, duties and authorities of the West Virginia  
8 board of regents until the first day of July, one thousand  
9 nine hundred eighty-nine. Until such date, all of the  
10 policies and affairs of West Virginia University shall be  
11 determined, controlled, supervised and managed by the



12 West Virginia board of regents, who shall exercise and  
13 perform all such powers, duties and authorities.

14 All powers, duties and authorities which the West  
15 Virginia board of education may have had with respect  
16 to state colleges and universities immediately prior to  
17 the first day of July, one thousand nine hundred sixty-  
18 nine, shall be the powers, duties and authorities of the  
19 West Virginia board of regents until the first day of  
20 July, one thousand nine hundred eighty-nine. Until such  
21 date, all of the policies and affairs of the state colleges  
22 and universities shall be determined, controlled, super-  
23 vised and managed by the West Virginia board of  
24 regents, who shall exercise and perform all such powers,  
25 duties and authorities: *Provided*, That the standards for  
26 education of teachers and teacher preparation programs  
27 at the state colleges and universities shall continue to be  
28 under the general direction and control of the West  
29 Virginia board of education, and the West Virginia  
30 board of education shall have sole authority to continue,  
31 as authorized by section six, article two, chapter  
32 eighteen of this code, to enter into agreements with  
33 county boards of education for the use of the public  
34 schools to give prospective teachers teaching experience.

35 All powers, duties and authorities vested in the state  
36 commission on higher education by previous provisions  
37 of chapter eighteen of this code or by any other  
38 provisions of law shall be the powers, duties and  
39 authorities of the West Virginia board of regents until  
40 the first day of July, one thousand nine hundred eighty-  
41 nine. Until such date, all of the powers, duties, and  
42 authorities of the state commission on higher education  
43 shall be exercised and performed by the West Virginia  
44 board of regents.

45 (b) The board of regents shall be abolished on the first  
46 day of July, one thousand nine hundred eighty-nine.

**§18B-1-5. Board of trustees and board of directors under  
department of education and the arts.**

1 (a) The university of West Virginia board of trustees  
2 and the board of directors of the state college system,  
3 created in articles two and three of this chapter, are

4 under the jurisdiction of the department of education  
5 and the arts created in article one, chapter five-f of this  
6 code, and are subject to the supervision of the secretary  
7 of education and the arts. Rules adopted by the  
8 governing boards shall be subject to approval by the  
9 secretary of education and the arts. The budget submit-  
10 ted by each board pursuant to the provisions of section  
11 eight of this article shall be subject to approval of the  
12 secretary of the department of education and the arts,  
13 all pursuant to the provisions of article two, chapter  
14 five-f of this code.

15 (b) The secretary of education and the arts is respon-  
16 sible for the coordination of policies and purposes of the  
17 state university system and the state college system and  
18 shall provide for and facilitate sufficient interaction  
19 between the governing boards, and between the govern-  
20 ing boards and the state board of education, to assure  
21 appropriate mission and program coordination and  
22 cooperation among (1) the state university system, (2)  
23 the state college system, exclusive of the community  
24 colleges, (3) the community colleges and community  
25 college components of four-year institutions, if any, and  
26 (4) the vocational-technical centers in the state, recog-  
27 nizing the inherent differences in the missions and  
28 capabilities of these four categories of institutions.

29 (c) The secretary of education and the arts shall  
30 conduct a special study of the West Virginia University  
31 at Parkersburg, Potomac State College of West Virginia  
32 University and the University of West Virginia College  
33 of Graduate Studies to determine the role and mission  
34 of said institutions in the reorganized system of higher  
35 education in the state and shall submit a report on the  
36 study to the Legislature on or before the first day of  
37 January, one thousand nine hundred ninety.

#### **§18B-1-6. Rule making.**

1 The university of West Virginia board of trustees and  
2 the board of directors of the state college system are  
3 hereby empowered to promulgate, adopt, amend or  
4 repeal rules, subject to the approval of the secretary of  
5 education and the arts, in accordance with the provi-

6 sions of article three-a, chapter twenty-nine-a of this  
7 code, as they may deem necessary and convenient to  
8 ensure the full implementation of their powers and  
9 duties. Each governing board shall file a copy of any  
10 rule it proposes to promulgate, adopt, amend or repeal  
11 under the authority of this article with the legislative  
12 oversight commission on education accountability  
13 created in said article three-a, chapter twenty-nine-a of  
14 this code.

15 Nothing in this section shall be construed to apply to  
16 any rule promulgated or adopted by a state institution  
17 of higher education.

**§18B-1-7. Supervision by governing boards; delegation to president.**

1 On and after the first day of July, one thousand nine  
2 hundred eighty-nine, the governing boards shall deter-  
3 mine, control, supervise and manage all of the policies  
4 and affairs of the state institutions of higher education  
5 under their jurisdiction and shall exercise and perform  
6 all such powers, duties and authorities respecting those  
7 institutions as were previously exercised and performed  
8 by the West Virginia board of regents.

9 The governing boards have the general determination,  
10 control, supervision and management of the financial,  
11 business, and educational policies and affairs of all state  
12 institutions of higher education under their jurisdiction.  
13 The board of trustees and the board of directors shall  
14 seek the approval of the West Virginia Legislature  
15 before either governing board takes action that would  
16 result in the creation or closing of a state institution of  
17 higher education.

18 Except as otherwise provided by law, each board's  
19 responsibilities shall include, but shall not be limited to,  
20 the making of studies and recommendations respecting  
21 higher education in West Virginia; allocating among the  
22 state institutions of higher education under their  
23 jurisdiction specific functions and responsibilities;  
24 submitting budget requests for such institutions; and  
25 equitably allocating available state appropriated funds  
26 among such institutions.

27 Each board shall delegate, as far as is lawful, efficient  
28 and fiscally responsible and within prescribed standards  
29 and limitations, such part of its power and control over  
30 financial, educational and administrative affairs of each  
31 state institution of higher education to the president or  
32 other administrative head of those institutions. This  
33 shall not be interpreted to include the classification of  
34 employees, lawful appeals made by students in accor-  
35 dance with board policy, lawful appeals made by faculty  
36 or staff, or final review of new or established academic  
37 or other programs.

38 To promote the missions and achieve the goals and  
39 objectives of the institutions and systems under their  
40 jurisdiction and to provide information and guidance for  
41 the allocation of funding among institutions in the  
42 separate systems in an equitable manner in relation to  
43 their missions, goals and objectives, the board of trustees  
44 and the board of directors shall each develop comparison  
45 information including such factors as peer institution  
46 information, enrollment information, data on institu-  
47 tional program scope and diversity, and measures of  
48 institutional quality and performance, and shall annu-  
49 ally present such information to the secretary of  
50 education and the arts and the Legislature along with  
51 the resulting allocation decisions made by the respective  
52 governing boards. This system shall be implemented by  
53 the first day of July, one thousand nine hundred ninety-  
54 one. Until the new system is implemented, the current  
55 resource allocation model, updated for enrollment and  
56 in accordance with other provisions of this code, shall  
57 be in effect.

**§18B-1-8. Powers and duties of governing boards generally.**

1 (a) Each governing board shall separately have the  
2 power and duty to:

3 (1) Determine, control, supervise and manage the  
4 financial, business and educational policies and affairs  
5 of the state institutions of higher education under its  
6 jurisdiction;

7 (2) Prepare a master plan for the state institutions of

8 higher education under its jurisdiction, setting forth the  
9 goals, missions, degree offerings, resource requirements,  
10 physical plant needs, state personnel needs, enrollment  
11 levels and other planning determinates and projections  
12 necessary in such a plan: *Provided*, That the master plan  
13 for post-secondary vocational education is subject to  
14 approval by the joint commission for post-secondary  
15 occupational education. The plan shall also address the  
16 roles and missions of private post-secondary education  
17 providers in the state. Each board shall involve the  
18 executive and legislative branches of state government  
19 and the general public in the development of all  
20 segments of the plan for post-secondary education in the  
21 state. The plan shall be established for periods of not less  
22 than five nor more than ten years and shall be period-  
23 ically revised as necessary, including the addition or  
24 deletion of degree programs as in the discretion of the  
25 boards may be necessary. Whenever a state institution  
26 of higher education desires to establish a new degree  
27 program, such program proposal shall not be imple-  
28 mented until the same is filed with both governing  
29 boards. Upon objection thereto within sixty days by  
30 either governing board, such program proposal shall be  
31 filed with the secretary of education and the arts, who  
32 shall approve or disapprove such proposal within one  
33 year of the filing of said program proposal;

34 (3) Prescribe and allocate among the state institutions  
35 of higher education under its jurisdiction, in accordance  
36 with its master plan, specific functions and responsibil-  
37 ities to meet the higher education needs of the state and  
38 to avoid unnecessary duplication;

39 (4) Consult with the executive branch and the Legis-  
40 lature in the establishment of funding parameters,  
41 priorities and goals;

42 (5) Establish guidelines for and direct the preparation  
43 of budget requests for each of the state institutions of  
44 higher education under its jurisdiction, such requests to  
45 relate directly to missions, goals and projections in its  
46 state master plan;

47 (6) Consider, revise and submit to the appropriate

48 agencies of the executive and legislative branches of  
49 state government separate budget requests on behalf of  
50 the state institutions of higher education under its  
51 jurisdiction or a single budget for the state institutions  
52 of higher education under its jurisdiction: *Provided,*  
53 That when a single budget is submitted, that budget  
54 shall be accompanied by a tentative schedule of pro-  
55 posed allocations of funds to the separate state institu-  
56 tions of higher education under its jurisdiction;

57 (7) Prepare and submit to the Speaker of the House  
58 of Delegates and the President of the Senate, no later  
59 than the first day of each regular session of the  
60 Legislature, and to any member of the Legislature upon  
61 request, an analysis of the budget request submitted  
62 under subdivision (6) of this subsection. The analysis  
63 shall summarize all amounts and sources of funds  
64 outside of the general revenue fund anticipated to be  
65 received by each state institution of higher education  
66 under its jurisdiction and the effect of such funds on the  
67 budget request;

68 (8) Prepare and submit to the legislative auditor, no  
69 later than the first day of July of each year, the  
70 approved operating budgets of each state institution of  
71 higher education under its jurisdiction for the fiscal  
72 year beginning on that date and, no later than the first  
73 day of August, a summary of federal and other external  
74 funds received at each such institution during the  
75 previous fiscal year;

76 (9) Establish a system of information and data  
77 management that can be effectively utilized in the  
78 development and management of higher education  
79 policy, mission and goals;

80 (10) Review, at least every five years, all academic  
81 programs offered at the state institutions of higher  
82 education under its jurisdiction. The review shall  
83 address the viability, adequacy and necessity of the  
84 programs in relation to its master plan;

85 (11) Utilize faculty, students, and classified staff in  
86 institutional level planning and decision-making when  
87 those groups are affected;

88 (12) Administer a uniform system of personnel  
89 classification and compensation for all employees other  
90 than faculty and policy level administrators;

91 (13) Establish a uniform system for the hearing of  
92 employee grievances and appeals therefrom, so that  
93 aggrieved parties may be assured of timely and  
94 objective review;

95 (14) Solicit and utilize or expend voluntary support,  
96 including financial contributions and support services,  
97 for the state institutions of higher education;

98 (15) Appoint a president or other administrative head  
99 for each institution of higher education from candidates  
100 submitted by the search and screening committees of  
101 the institutional boards of advisors pursuant to section  
102 one, article six of this chapter;

103 (16) Conduct performance evaluations of each institu-  
104 tion's president in every fourth year of employment as  
105 president, recognizing unique characteristics of the  
106 institution and utilizing institutional personnel, institu-  
107 tional boards of advisors, staff of the appropriate  
108 governing board and persons knowledgeable in higher  
109 education matters who are not otherwise employed by  
110 a governing board;

111 (17) Submit to the joint committee on government and  
112 finance, no later than the first day of December of each  
113 year, an annual report of the performance of the system  
114 of higher education under its jurisdiction during the  
115 previous fiscal year as compared to stated goals in its  
116 master plan and budget appropriations for that fiscal  
117 year.

118 (b) The power herein given to each governing board  
119 to prescribe and allocate among the state institutions of  
120 higher education under its jurisdiction specific functions  
121 and responsibilities to meet the higher educational needs  
122 of the state and avoid unnecessary duplication shall not  
123 be restricted by any provision of law assigning specified  
124 functions and responsibilities to designated state  
125 institutions of higher education, and such power shall  
126 supersede any such provision of law: *Provided*, That

127 each governing board may delegate, with prescribed  
128 standards and limitations, such part of its power and  
129 control over the business affairs of a particular state  
130 institution of higher education to the president or other  
131 administrative head of such state institution of higher  
132 education in any case where it deems such delegation  
133 necessary and prudent in order to enable such institu-  
134 tion to function in a proper and expeditious manner:  
135 *Provided, however,* That such delegation shall not be  
136 interpreted to include classification of employees, lawful  
137 appeals made by students in accordance with the  
138 appropriate governing board's policy, lawful appeals  
139 made by faculty or staff, or final review of new or  
140 established academic or other programs. Any such  
141 delegation of power and control may be rescinded by the  
142 appropriate governing board at any time, in whole or  
143 in part.

**§18B-1-9. Powers and duties of institutional presidents.**

1 Except as is otherwise provided by law or rule, the  
2 president or other administrative head of each state  
3 institution of higher education shall exercise all the  
4 duties and powers conferred by law in the government  
5 of the institution under such person's management and  
6 control and, subject to review by the appropriate  
7 governing board, shall have the authority and respon-  
8 sibility for overseeing the routine matters of the  
9 institution, which include, but are not limited to, travel  
10 approval, sabbaticals, budget oversight and special  
11 student fees. The president or other administrative head  
12 shall assist the chancellors in developing or evaluating  
13 policy options for the governing boards, but not both  
14 developing and evaluating for the same policy, and may  
15 propose policy options for consideration by their  
16 governing board. The president or other administrative  
17 head of each state institution of higher education shall  
18 also be responsible for seeking community advice on  
19 academic or other programs.

**§18B-1-10. Task force on faculty salaries and resource allocation.**

1 Not later than the first day of July, one thousand nine



2 hundred eighty-nine, there shall be established a task  
3 force on faculty salaries and resource allocation which  
4 shall meet, study and make recommendations as herein  
5 provided.

6 The task force shall be composed of two members of  
7 the Senate appointed by the president, two members of  
8 the House of Delegates appointed by the speaker, one  
9 member of the faculty advisory council to the board of  
10 trustees chosen by said council, one member of the  
11 faculty advisory council to the board of directors chosen  
12 by said council, one member of the board of trustees  
13 chosen by said board, one member of the board of  
14 directors chosen by said board, one institutional  
15 president chosen by the presidents under the board of  
16 trustees, one institutional president chosen by the  
17 presidents under the board of supervisors and three  
18 members appointed by the governor to represent the  
19 public interest.

20 The task force shall conduct studies on faculty  
21 salaries, faculty salary schedules, faculty compensation  
22 and specifically on resource allocation models. The task  
23 force shall develop a faculty salary program with the  
24 overall goal that compares average faculty salaries with  
25 similar groups of disciplines at comparable peer  
26 institutions. The task force shall make such recommen-  
27 dations as it deems appropriate to address needs  
28 identified in the studies and shall specifically make  
29 recommendations on the resource allocation model and  
30 the faculty salary schedules to the board of trustees and  
31 the board of supervisors.

32 Additionally, the task force shall file a report with the  
33 Legislature and the governor on or before the first day  
34 of December, one thousand nine hundred eighty-nine.

35 The secretary of the department of education and the  
36 arts shall be responsible for staffing the task force  
37 utilizing existing personnel, equipment and offices of  
38 the board of trustees and the board of directors.

39 In the case of the board of trustees, the task force shall  
40 recommend that the board adopt a faculty salary  
41 schedule with an overall goal that compares average

42 faculty salaries with similar groups of disciplines at  
43 comparable peer institutions (Doctoral I at West  
44 Virginia University; Doctoral III at Marshall Univer-  
45 sity; and appropriate and comparable levels at the  
46 University of West Virginia College of Graduate  
47 Studies, and the West Virginia School of Osteopathic  
48 Medicine, Potomac State College of West Virginia  
49 University and West Virginia University at  
50 Parkersburg).

51 The salary program shall incorporate a minimum  
52 salary schedule, approved by the Legislature, for West  
53 Virginia University, Marshall University, the Univer-  
54 sity of West Virginia College of Graduate Studies and  
55 the West Virginia School of Osteopathic Medicine and  
56 a minimum salary schedule for Potomac State College  
57 of West Virginia University and West Virginia Univer-  
58 sity at Parkersburg. It shall be the goal that these  
59 minimum salary schedules shall be fully in effect within  
60 three years after the effective implementation of those  
61 schedules.

62 Salary funds shall be distributed to all of the  
63 respective institutions based upon legislative intent to  
64 achieve basic improvements in compensation for all  
65 employees with any additional funds being distributed  
66 to the respective institutions based on the proportion  
67 needed to move to parity in relation to the overall goal  
68 described above. If needed, no less than fifty percent of  
69 new salary funds at each institution shall be used to  
70 assure that the appropriate minimum schedule is so  
71 implemented.

## ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

- §18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.
- §18B-2-2. Meetings and compensation.
- §18B-2-3. Additional duties of board of trustees.
- §18B-2-4. Establishment and operation of graduate college; transfer of programs, etc., of Kanawha Valley Graduate Center of West Virginia University.

§18B-2-5. Establishment and operation of a state school of osteopathic medicine; authority and duty to purchase property, expend appropriations and conduct programs of the West Virginia School of Osteopathic Medicine.

**§18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.**

1 (a) The board of trustees shall consist of seventeen  
2 persons, of whom one shall be the chancellor of the  
3 board of directors of the state college system, ex officio,  
4 who shall not be entitled to vote; one shall be the state  
5 superintendent of schools, ex officio, who shall not be  
6 entitled to vote; one shall be the chairman of the  
7 advisory council of students, ex officio, who shall be  
8 entitled to vote; one shall be the chairman of the  
9 advisory council of faculty, ex officio, who shall be  
10 entitled to vote; and one shall be the chairman of the  
11 advisory council of classified employees, ex officio, who  
12 shall be entitled to vote. The other twelve trustees shall  
13 be citizens of the state, appointed by the governor, by  
14 and with the advice and consent of the Senate.

15 Each of the trustees appointed to the board by the  
16 governor shall represent the public interest and shall be  
17 especially qualified in the field of higher education by  
18 virtue of the person's knowledge, learning, experience or  
19 interest in the field.

20 Except for the ex officio trustees, no person shall be  
21 eligible for appointment to membership on the board of  
22 trustees who is an officer, employee or member of an  
23 advisory board of any state college or university, an  
24 officer or member of any political party executive  
25 committee, the holder of any other public office or  
26 public employment under the federal government or  
27 under the government of this state or any of its political  
28 subdivisions, or an appointee or employee of the board  
29 of trustees or the board of directors. Of the twelve  
30 trustees appointed by the governor from the public at  
31 large, not more than six thereof shall belong to the same  
32 political party and at least two trustees shall be  
33 appointed from each congressional district.

34 Except as provided in this section, no other person  
35 may be appointed to the board.

36 (b) The governor shall appoint twelve trustees as soon  
37 after the first day of July, one thousand nine hundred  
38 eighty-nine, as is practicable, and the original terms of  
39 all trustees shall commence on that date.

40 The terms of the trustees appointed by the governor  
41 shall be for overlapping terms of six years, except, of  
42 the original appointments, four shall be appointed to  
43 terms of two years, four shall be appointed to terms of  
44 four years, and four shall be appointed to terms of six  
45 years. Each subsequent appointment which is not for the  
46 purpose of filling a vacancy in an unexpired term shall  
47 be for a term of six years.

48 The governor shall appoint a trustee to fill any  
49 vacancy among the twelve trustees appointed by the  
50 governor, by and with the advice and consent of the  
51 Senate, which trustee appointed to fill such vacancy  
52 shall serve for the unexpired term of the vacating  
53 trustee. The governor shall fill the vacancy within sixty  
54 days of the occurrence of the vacancy.

55 All trustees appointed by the governor shall be  
56 eligible for reappointment: *Provided*, That a person who  
57 has served as a trustee or director during all or any part  
58 of two consecutive terms shall be ineligible to serve as  
59 a trustee or director for a period of three years  
60 immediately following the second of the two consecutive  
61 terms.

62 The chairman of the advisory council of students, ex  
63 officio; the chairman of the advisory council of faculty,  
64 ex officio; and the chairman of the advisory council of  
65 classified employees, ex officio, shall serve the terms for  
66 which they were elected by their respective advisory  
67 councils. These members shall be eligible to succeed  
68 themselves.

69 (c) Before exercising any authority or performing any  
70 duties as a trustee, each trustee shall qualify as such by  
71 taking and subscribing to the oath of office prescribed  
72 by section five, article four of the constitution of West

73 Virginia, and the certificate thereof shall be filed with  
74 the secretary of state.

75 (d) No trustee appointed by the governor shall be  
76 removed from office by the governor except for official  
77 misconduct, incompetence, neglect of duty or gross  
78 immorality, and then only in the manner prescribed by  
79 law for the removal of the state elective officers by the  
80 governor.

#### §18B-2-2. Meetings and compensation.

1 (a) The board of trustees shall hold at least ten  
2 meetings in every fiscal year, including an annual  
3 meeting each June: *Provided*, That an annual meeting  
4 for the purpose of selecting the first chairman shall be  
5 held during July, one thousand nine hundred eighty-  
6 nine. Except for the annual meeting, which may be held  
7 at a location anywhere in the state, the said meetings  
8 shall be held on different campuses of institutions in the  
9 university system on a rotating basis or at the central  
10 office. The board of trustees may set aside time at the  
11 meetings at the campuses to afford administrators,  
12 faculty, students and classified staff at the institution an  
13 opportunity to discuss issues affecting these groups. The  
14 board of trustees shall hold at least one meeting each  
15 year with the advisory council of faculty, the advisory  
16 council of students, and the advisory council of classified  
17 employees, each of these bodies to be met with separ-  
18 ately. Except as otherwise provided in this section,  
19 meetings shall be held on such dates and at such places  
20 as the trustees may prescribe. In addition to the  
21 statutorily required meetings, the trustees may meet at  
22 such other times as may be necessary, such meetings to  
23 be held upon its own resolution or at the written request  
24 of at least three appointed trustees.

25 Of the fifteen voting members of the board of trustees,  
26 eight shall constitute a quorum, and a majority vote of  
27 the quorum shall be necessary to pass upon matters  
28 before the trustees.

29 (b) The trustees shall be reimbursed for actual and  
30 necessary expenses incident to the performance of such  
31 duties upon presentation of an itemized sworn statement

32 thereof. The foregoing reimbursement for actual and  
33 necessary expenses shall be paid from appropriations  
34 made by the Legislature to the trustees.

**§18B-2-3. Additional duties of board of trustees.**

1 (a) The trustees shall govern the University of West  
2 Virginia. The trustees shall develop a master educa-  
3 tional plan for the university system in the state,  
4 establish research policies for the several institutions  
5 within the university system and shall oversee graduate,  
6 professional and medical education at the appropriate  
7 institutions of higher education under their jurisdiction  
8 to the end of avoiding duplication in advanced study,  
9 specialty institutes and research.

10 (b) The board of trustees shall adopt a faculty salary  
11 program with an overall goal that compares average  
12 faculty salaries with similar groups of disciplines at  
13 comparable peer institutions (Doctoral I at West  
14 Virginia University; Doctoral III at Marshall Univer-  
15 sity; and appropriate levels at the University of West  
16 Virginia College of Graduate Studies, Potomac State  
17 College of West Virginia University, West Virginia  
18 University at Parkersburg and the School of Osteopa-  
19 thic Medicine as determined by the Board of Trustees).  
20 Salary funds shall be distributed to the respective  
21 institutions based on the proportion needed to move to  
22 parity in relation to the overall goal described above.  
23 The salary program shall incorporate a minimum salary  
24 schedule which shall be fully in effect within three years  
25 after the effective date of this section. If needed, up to  
26 fifty percent of new salary funds at each institution shall  
27 be used to assure that the minimum schedule is so  
28 implemented. The existing minimum salary schedule as  
29 set forth within the provisions of article eight of this  
30 chapter shall remain in effect until the board of trustees  
31 adopts the salary program mandated herein and is then  
32 repealed.

**§18B-2-4. Establishment and operation of graduate college; transfer of programs, etc., of Kanawha Valley Graduate Center of West Virginia University.**

1       The power of the board of regents, effective July one,  
2 one thousand nine hundred seventy-two, to establish,  
3 name, maintain and operate a graduate college whose  
4 major administrative offices are located in Kanawha  
5 county shall be transferred to the board of trustees  
6 effective July one, one thousand nine hundred eighty-  
7 nine, and shall be known as the "University of West  
8 Virginia College of Graduate Studies". The board of  
9 trustees shall employ a president and such staff and  
10 faculty as determined appropriate for the school,  
11 appoint an advisory board consistent with section one,  
12 article six of this chapter and shall exercise general  
13 determination, control, supervision and management of  
14 the financial, business and educational policies and  
15 affairs of the graduate college. The college shall be  
16 authorized to offer, in their entirety or in cooperation  
17 with other institutions, such curricula, programs,  
18 courses and services and confer such graduate degrees  
19 as may be approved by the board of trustees. The  
20 trustees shall fix tuition and establish and set other fees  
21 to be charged students as it deems appropriate, includ-  
22 ing the establishment of special fees for specific  
23 purposes. Special fees shall be paid into special funds  
24 and used only for the purposes for which collected. The  
25 board of trustees may allocate from the appropriations  
26 for the state university system for the operation and  
27 capital improvement of the graduate college.

28       All programs, activities, operations, accounts, and  
29 resources of the Kanawha Valley Graduate Center of  
30 West Virginia University which were transferred to the  
31 graduate college, and the title to all property of the  
32 Kanawha Valley Graduate Center of West Virginia  
33 University which was transferred to or later vested in  
34 the graduate college, shall be transferred to and remain  
35 vested in the trustees. The trustees are authorized to  
36 enter into contracts on behalf of the graduate college  
37 with public and private educational institutions, agen-  
38 cies and boards; with governmental agencies; and with  
39 corporations, partnerships and individuals for the use of  
40 physical facilities, equipment and for the performance  
41 of instructional or other services.

**§18B-2-5. Establishment and operation of a state school of osteopathic medicine; authority and duty to purchase property, expend appropriations and conduct programs of the West Virginia School of Osteopathic Medicine.**

1 The board of trustees shall operate and maintain the  
2 state school of osteopathy, known as the "West Virginia  
3 School of Osteopathic Medicine" and located in Lewis-  
4 burg, Greenbrier County, as previously established by  
5 the board of regents, as a part of the University of West  
6 Virginia as defined in section two, article one of this  
7 chapter. The title to all the real property and all  
8 facilities and equipment of the West Virginia School of  
9 Osteopathic Medicine and the previously existing  
10 Greenbrier College of Osteopathic Medicine, located at  
11 Lewisburg, Greenbrier County, shall be and remain  
12 vested in the board of trustees. The title to any such  
13 property originally acquired by or vested in the name  
14 of the board of regents is hereby transferred to and shall  
15 remain vested in the board of trustees.

16 The board of trustees shall employ a president and  
17 such staff and faculty as determined appropriate for the  
18 school, appoint an advisory board consistent with section  
19 one, article six of this chapter and exercise general  
20 determination, control, supervision and management of  
21 the financial, business and educational policies and  
22 affairs of the school of osteopathic medicine.

23 The school shall be authorized to offer such curricula,  
24 programs, courses and services and confer such degrees  
25 as may be approved by the board of trustees. The board  
26 of trustees shall fix tuition and establish and set other  
27 fees to be charged students as it deems appropriate,  
28 including the establishment of special fees for specific  
29 purposes. Special fees shall be paid into special funds  
30 and be used only for the purposes for which said fees  
31 were collected.

32 The board of trustees shall expend from the appropri-  
33 ations allocated for the West Virginia School of Osteo-  
34 pathic Medicine such funds as are necessary for the  
35 operation and conduct of programs, the acquisition of  
36 clear title to the property of the Greenbrier College of



37 Osteopathic Medicine, and for necessary capital im-  
38 provements. The title to all property purchased for the  
39 use of the West Virginia School of Osteopathic Medicine  
40 shall be vested in the board of trustees.

41 The board of trustees is authorized to enter into  
42 contracts on behalf of the West Virginia School of  
43 Osteopathic Medicine with public and private educa-  
44 tional institutions, agencies and boards, with govern-  
45 mental agencies and with corporations, partnerships,  
46 and individuals for the performance of instructional or  
47 other services.

48 The board of trustees is hereby specifically authorized  
49 to contract with the West Virginia anatomical board  
50 and the West Virginia anatomical board is hereby  
51 specifically authorized to contract with the board of  
52 trustees on behalf of the West Virginia School of  
53 Osteopathic Medicine for the requisition, use, disposition  
54 and control of any body as may come under the  
55 authority of the anatomical board: *Provided*, That such  
56 body be used exclusively for educational purposes of the  
57 West Virginia School of Osteopathic Medicine.

58 The board of trustees is further authorized to contract  
59 with any other person, corporation or entity for the  
60 purchase of cadavers for educational purposes at the  
61 West Virginia School of Osteopathic Medicine, notwith-  
62 standing any provision of law to the contrary.

### ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18B-3-2. Meetings and compensation.

§18B-3-3. Additional duties of board of directors.

§18B-3-4. Community colleges.

§18B-3-5. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules and regulations; penalty and enforcement.

**§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.**

1 (a) The board of directors of the state college system  
2 shall consist of seventeen persons, of whom one shall be  
3 the chancellor of the university of West Virginia, ex  
4 officio, who shall not be entitled to vote; one shall be the  
5 state superintendent of schools, ex officio, who shall not  
6 be entitled to vote; one shall be the chairman of the  
7 advisory council of students, ex officio, who shall be  
8 entitled to vote; one shall be the chairman of the  
9 advisory council of faculty, ex officio, who shall be  
10 entitled to vote; and one shall be the chairman of the  
11 advisory council of classified employees, ex officio, who  
12 shall be entitled to vote. The other twelve directors shall  
13 be citizens of the state, appointed by the governor, by  
14 and with the advice and consent of the Senate.

15 Each of the directors appointed to the board by the  
16 governor shall represent the public interest and shall be  
17 especially qualified in the field of higher education by  
18 virtue of the person's knowledge, learning, experience or  
19 interest in the field.

20 Except for the ex officio directors, no person shall be  
21 eligible for appointment to membership on the board of  
22 directors who is an officer, employee or member of an  
23 advisory board of any state college or university, an  
24 officer or member of any political party executive  
25 committee, the holder of any other public office or  
26 public employment under the federal government or  
27 under the government of this state or any of its political  
28 subdivisions, or an appointee or employee of the board  
29 of trustees or board of directors. Of the twelve directors  
30 appointed by the governor from the public at large, not  
31 more than six thereof shall belong to the same political  
32 party and at least two directors of the board shall be  
33 appointed from each congressional district.

34 Except as provided in this section, no other person  
35 may be appointed to the board.

36 (b) The governor shall appoint twelve directors as  
37 soon after July one, one thousand nine hundred eighty-  
38 nine, as is practicable, and the original terms of all  
39 directors shall commence on that date. The terms of the  
40 directors appointed by the governor shall be for

41 overlapping terms of six years, except, of the original  
42 appointments, four shall be appointed to terms of two  
43 years, four shall be appointed to terms of four years, and  
44 four shall be appointed to terms of six years. Each  
45 subsequent appointment which is not for the purpose of  
46 filling a vacancy in an unexpired term shall be  
47 appointed to a term of six years.

48 The governor shall appoint a director to fill any  
49 vacancy among the twelve directors appointed by the  
50 governor, by and with the advice and consent of the  
51 Senate, which director appointed to fill such vacancy  
52 shall serve for the unexpired term of the vacating  
53 director. The governor shall fill the vacancy within sixty  
54 days of the occurrence of the vacancy.

55 All directors appointed by the governor shall be  
56 eligible for reappointment: *Provided*, That a person who  
57 has served as a director or trustee during all or any part  
58 of two consecutive terms shall be ineligible to serve as  
59 a director for a period of three years immediately  
60 following the second of the two consecutive terms.

61 The chairman of the advisory council of students, ex  
62 officio; the chairman of the advisory council of faculty,  
63 ex officio; and the chairman of the advisory council of  
64 classified employees, ex officio, shall serve the terms for  
65 which they were elected by their respective advisory  
66 councils. These members shall be eligible to succeed  
67 themselves.

68 (c) Before exercising any authority or performing any  
69 duties as a director, each director shall qualify as such  
70 by taking and subscribing to the oath of office pres-  
71 cribed by section five, article four of the constitution of  
72 West Virginia, and the certificate thereof shall be filed  
73 with the secretary of state.

74 (d) No director appointed by the governor shall be  
75 removed from office by the governor except for official  
76 misconduct, incompetence, neglect of duty or gross  
77 immorality, and then only in the manner prescribed by  
78 law for the removal by the governor of the state elective  
79 officers.

**§18B-3-2. Meetings and compensation.**

1 (a) The board of directors shall hold at least ten  
2 meetings in every fiscal year, including an annual  
3 meeting each June: *Provided*, That an annual meeting  
4 for the purpose of selecting the first chairman shall be  
5 held during July, one thousand nine hundred eighty-  
6 nine. Except for the annual meeting, which may be held  
7 at a location anywhere in the state, the said meetings  
8 shall be held on different campuses of institutions in the  
9 state college system on a rotating basis or at the central  
10 office. The directors may set aside time at these  
11 meetings held at the campuses to afford administrators,  
12 faculty, students and classified staff at these institutions  
13 an opportunity to discuss issues affecting these groups.  
14 The directors shall hold at least one meeting each year  
15 with the advisory council of faculty, the advisory council  
16 of students and the advisory council of classified  
17 employees, each of these bodies to be met with separ-  
18 ately. Except as otherwise provided in this section,  
19 meetings shall be held on such dates and at such places  
20 as the directors may prescribe. In addition to the  
21 statutorily required meetings, the directors may meet at  
22 such other times as may be necessary, such meetings to  
23 be held upon its own resolution or at the written request  
24 of at least five appointed directors.

25 Of the fifteen voting members of the board of  
26 directors, eight shall constitute a quorum, and a  
27 majority vote of the quorum shall be necessary to pass  
28 upon matters before the directors.

29 (b) The directors shall be reimbursed for actual and  
30 necessary expenses incident to the performance of such  
31 duties, upon presentation of an itemized sworn state-  
32 ment thereof. The foregoing reimbursement for actual  
33 and necessary expenses shall be paid from appropria-  
34 tions made by the Legislature to the directors.

**§18B-3-3. Additional duties of board of directors.**

1 (a) The board of directors shall determine programs  
2 to be offered by state institutions of higher education  
3 under its jurisdiction.

4 (b) The directors shall govern community colleges and  
5 shall organize eight community college service areas in  
6 accordance with section four of this article.

7 (c) The board of directors of the state college system  
8 shall govern the state college system. The directors shall  
9 develop by the first day of January, one thousand nine  
10 hundred ninety, a proposed classification plan and  
11 salary plan for full-time faculty based upon the level of  
12 program being taught by said full-time faculty member,  
13 whether baccalaureate programs or associate level  
14 programs. The classification plan and salary plan shall  
15 be submitted to the secretary of education and the arts  
16 for approval.

#### §18B-3-4. Community colleges.

1 (a) Effective the first day of July, one thousand nine  
2 hundred eighty-nine, the following institutions are  
3 hereby established or continued as freestanding com-  
4 munity colleges: Southern West Virginia Community  
5 College and West Virginia Northern Community  
6 College. On or before the first day of July, one thousand  
7 nine hundred ninety, the board of directors may  
8 designate other facilities, centers, locations and schools  
9 as freestanding community colleges. Such freestanding  
10 community colleges shall not be operated as branches or  
11 off-campus locations of any other state institution of  
12 higher education.

13 (b) The directors, in accordance with article two-b,  
14 chapter eighteen of this code, shall cooperate with the  
15 state board of vocational education, the state council of  
16 vocational-technical education, and the joint commission  
17 for post-secondary occupational education to develop a  
18 network of post-secondary vocational, job training and  
19 other educational centers, utilizing existing community  
20 colleges and programs, other existing facilities, and  
21 existing training needs within the service area. The  
22 community colleges shall be organized into eight  
23 community college service areas which shall have the  
24 same boundaries as the regional educational service  
25 agencies established by the state board of education

26 pursuant to section twenty-six, article two, chapter  
27 eighteen of this code: *Provided*, That any community  
28 college and the branches thereof existing on the effective  
29 date of this section may be located in more than one  
30 community college service area created pursuant to this  
31 section and shall not be affected by such service area  
32 boundary.

33 (c) A separate division of community colleges shall be  
34 established under the board of directors and supervised  
35 by the vice chancellor for community colleges. The  
36 community colleges shall be responsible directly to and  
37 subject to the governance of the vice chancellor for  
38 community colleges, who shall regularly convene the  
39 presidents or other administrative heads of the commu-  
40 nity colleges as a community college council.

41 The vice chancellor for community colleges shall  
42 consider (1) existing branch colleges, community college  
43 components, off-campus locations, and, through agree-  
44 ments with the state board of vocational education,  
45 vocational technical centers included within the boun-  
46 daries of the eight community college service areas and  
47 (2) the needs of each such region in determining the  
48 enrollment, programs and functions of all community  
49 colleges, and the names and locations of newly desig-  
50 nated community colleges: *Provided*, That programs at  
51 community colleges shall be two years or less in  
52 duration.

53 (d) The board of directors may fix tuition and  
54 establish and set such other fees to be charged students  
55 as it deems appropriate, and shall pay such tuition and  
56 fees collected into a revolving fund for the partial or full  
57 support, including the making of capital improvements,  
58 of any community college established, continued or  
59 designated hereunder. Funds collected at any such  
60 community college may be used only for the benefit of  
61 that community college. The board of directors may also  
62 establish special fees for such purposes as, including,  
63 but not limited to, health services, student activities,  
64 student recreation, athletics or any other extracurricu-  
65 lar purposes. Such special fees shall be paid into special  
66 funds and used only for the purposes for which collected.

67 Moneys collected at a branch college or off-campus  
68 location of a state institution of higher education which  
69 is subsequently designated as a community college shall  
70 be transferred to and vested in the successor community  
71 college.

72 (e) The board of directors may allocate funds from the  
73 appropriations for the state college system for the  
74 operation and capital improvement of any community  
75 college continued, established or designated under  
76 authority of this section and may accept federal grants  
77 and funds from county boards of education, other local  
78 governmental bodies, corporations or persons. The  
79 directors may enter into memoranda of agreements with  
80 such governmental bodies, corporations or persons for  
81 the use or acceptance of local facilities and/or the  
82 acceptance of grants or contributions toward the cost of  
83 the acquisition or construction of such facilities. Such  
84 local governmental bodies may convey capital improve-  
85 ments, or lease the same without monetary considera-  
86 tion, to the board of directors for the use by the  
87 community college, and the board of directors may  
88 accept such facilities, or the use or lease thereof, and  
89 grants or contributions for such purposes from such  
90 governmental bodies, the federal government or any  
91 corporation or person.

**§18B-3-5. Permits required for correspondence, business,  
occupational and trade schools; surety bonds  
and fees; issuance, renewal and revocation  
of permit; reports; rules and regulations;  
penalty and enforcement.**

1 It shall be unlawful for any person representing a  
2 correspondence, business, occupational or trade school  
3 inside or outside this state to solicit, sell or offer to sell  
4 courses of instruction to any resident of this state for  
5 consideration or remuneration unless the school first  
6 obtains a permit from the West Virginia board of  
7 directors in the manner and on the terms herein  
8 prescribed.

9 The application for a permit shall be made on forms  
10 to be furnished by the board, and a ten dollar fee shall

11 be required. The application shall be accompanied by a  
12 surety bond in the penal sum of thirty-five thousand  
13 dollars for any school which has its physical facilities  
14 located in this state and which has operated in this state  
15 for at least ten years. For any other school a surety bond  
16 in the penal sum of not less than thirty-five thousand  
17 dollars, but not more than one hundred thousand  
18 dollars, shall be required, such amount to be determined  
19 in accordance with the rules of the board of directors.  
20 Schools with more than one campus within the state  
21 shall be required to provide a bond for each of its  
22 campuses in an amount equal to the bond required for  
23 its oldest established campus in this state. The bond may  
24 be continuous and shall be conditioned to provide  
25 indemnification to any student suffering loss as a result  
26 of any fraud or misrepresentation used in procuring the  
27 student's enrollment or failure of the school to meet  
28 contractual obligations. The bond shall be given by the  
29 school itself as a blanket bond covering all of its  
30 representatives. The surety on any such bond may  
31 cancel the same upon giving thirty days' notice in  
32 writing to the principal on said bond and to the state  
33 board of directors and thereafter shall be relieved of  
34 liability for any breach of condition occurring after the  
35 effective date of said cancellation. The ten dollar fee will  
36 entitle a school to register up to two individual solicitors.  
37 Additional solicitors may be registered by paying a five  
38 dollar fee for each registration submitted.

39 A permit shall be valid for one year corresponding to  
40 the effective date of the bond and, upon application,  
41 accompanied by the required fee and the surety bond  
42 as herein required, may be renewed. All fees collected  
43 for the issuance or renewal of such permit shall be  
44 deposited in the state treasury to the credit of the board  
45 of directors.

46 The board may refuse a permit to any school if the  
47 board finds that the school engages in practices which  
48 are inconsistent with this section or with rules and  
49 regulations issued pursuant thereto. A permit issued  
50 hereunder, upon fifteen days' notice and after a hearing,  
51 if a hearing is requested by the school, may be sus-



52    pended or revoked by the board of directors for fraud  
53    or misrepresentation in soliciting or enrolling students,  
54    for failure of the school to fulfill its contract with one  
55    or more students who are residents of West Virginia, or  
56    for violation of or failure to comply with any provision  
57    of this section or with any regulation of the state board  
58    of directors pertinent thereto. Prior to the board taking  
59    any adverse action, including refusal, suspension or  
60    revocation of a permit, the school shall be given  
61    reasonable opportunity to take corrective measures. Any  
62    refusal, suspension or revocation of a permit, or any  
63    other adverse action against a school, shall comply with  
64    all constitutional provisions, including due process,  
65    relating to the protection of property rights.

66    All correspondence, business, occupational or trade  
67    schools which have been issued a permit shall make  
68    annual reports to the board of directors on forms  
69    furnished by the board and shall provide such appropriate  
70    information as the board reasonably may require.  
71    All correspondence, business, occupational or trade  
72    schools which have been issued a permit shall furnish  
73    to the board of directors a list of its official representatives.  
74    Each school shall be issued a certificate of  
75    identification by the board of directors for each of its  
76    official representatives.

77    The issuance of a permit pursuant to this section does  
78    not constitute approval or accreditation of any course or  
79    school. No school nor any representative of a school shall  
80    make any representation stating, asserting or implying  
81    that a permit issued pursuant to this section constitutes  
82    approval or accreditation by the state of West Virginia,  
83    state board of directors or any other department or  
84    agency of the state.

85    The board of directors is hereby authorized to adopt  
86    rules and conduct on-site reviews to evaluate academic  
87    standards maintained by schools for the awarding of  
88    certificates, diplomas and specialized associate degrees,  
89    which standards may include curriculum, personnel,  
90    facilities, materials and equipment: *Provided*, That in  
91    the case of accredited correspondence, business, occupa-  
92    tional and trade schools under permit on the effective

93 date of this section, having their physical facilities  
94 located in this state, and which are accredited by the  
95 appropriate nationally recognized accrediting agency or  
96 association approved by the United States department  
97 of education, the accrediting agency's standards,  
98 procedures and criteria shall be accepted as meeting  
99 applicable laws, standards, rules and regulations of the  
100 board of directors: *Provided, however,* That the board of  
101 directors may authorize an investigation of written  
102 student complaints alleging a violation of this section,  
103 or board's rules or accreditation standards and may take  
104 appropriate action based on the findings of such an  
105 investigation.

106 The board of directors is hereby authorized to adopt  
107 rules for the awarding of any specialized associate  
108 degree by accredited proprietary institutions: *Provided,*  
109 That nothing contained herein shall infringe upon the  
110 rights of accredited West Virginia proprietary schools  
111 operating in West Virginia to confer specialized  
112 associate degrees, diplomas or certificates based on  
113 credit or clock hours in accordance with standards of the  
114 appropriate nationally recognized accrediting agency or  
115 association that is approved by the United States  
116 department of education. For the purposes of this  
117 section, proprietary schools that award specialized  
118 associate degrees shall be defined as institutions of  
119 higher education, and specialized associate degrees shall  
120 mean degrees awarded by such institutions pursuant to  
121 a program of not less than two academic years:  
122 *Provided, however,* That nothing herein shall be  
123 construed to qualify the said proprietary schools for  
124 additional state moneys not otherwise qualified for  
125 under other provisions of the code.

126 In regard to private, proprietary educational institu-  
127 tions operating under this section of the code, accredited  
128 by a national or regional accrediting agency or associ-  
129 ation recognized by the United States Department of  
130 Education and which provide training at a campus  
131 located in this state:

132 (a) Any rule or standard which is authorized by this  
133 or any section of the code or other law, and which is now

134 in effect or promulgated hereafter by the board of  
135 directors (or other agency with jurisdiction) shall be  
136 clearly, specifically, and expressly authorized by  
137 narrowly construed enabling law and shall be unen-  
138 forceable and without legal effect unless authorized by  
139 an act of the Legislature under the provisions of article  
140 three-a, chapter twenty-nine-a of the code;

141 (b) Notwithstanding any other provision of this  
142 section or other law to the contrary, the institution's  
143 accrediting agency standards, procedures, and criteria  
144 shall be accepted as the standards and rules of the board  
145 of directors (or other agency with jurisdiction), and as  
146 meeting other law or legal requirements relating to the  
147 operation of proprietary institutions which such board  
148 or other agency has the legal authority to enforce under  
149 any section of the code or other law: *Provided*, That  
150 nothing in this section shall be construed to deny  
151 students the use of remedies that would otherwise be  
152 available under state or federal consumer laws or  
153 federal law relating to federal college financial assist-  
154 ance programs.

155 (c) Accredited institutions operating hereunder are  
156 hereby recognized as post-secondary. Academic pro-  
157 gress shall be measured and reported in credit hours  
158 and all reports/documents filed on a credit hour basis.

159 A representative of any school violating any provision  
160 of this section shall be guilty of a misdemeanor, and,  
161 upon conviction thereof, shall be fined not more than two  
162 hundred dollars per day of violation, not to exceed a  
163 maximum of two thousand dollars per violation, or  
164 imprisoned in the county jail not more than sixty days,  
165 or both fined and imprisoned. No correspondence,  
166 business, occupational or trade school shall maintain an  
167 action in any court of this state to recover for services  
168 rendered pursuant to a contract solicited by the school  
169 if the school did not hold a valid permit at the time the  
170 contract was signed by any of the parties thereto. The  
171 attorney general or any county prosecuting attorney, at  
172 the request of the board of directors or upon his or her  
173 own motion, may bring any appropriate action or  
174 proceeding in any court of competent jurisdiction for the

175 enforcement of the provisions of this section relating to  
176 permits, bonds and sureties.

**ARTICLE 3A. WEST VIRGINIA JOINT COMMISSION FOR VOCATIONAL-TECHNICAL-OCCUPATIONAL EDUCATION.**

§18B-3A-1. Commission established.

§18B-3A-1a. Department of education and the arts.

§18B-3A-1b. Definitions.

§18B-3A-2. Composition of commission; terms of members; qualifications of members.

§18B-3A-3. Meeting; compensation of members.

§18B-3A-4. Duties and responsibilities.

**§18B-3A-1. Commission established.**

1 The West Virginia Joint Commission for Vocational-  
2 Technical-Occupational Education, hereinafter referred  
3 to in this article as the joint commission, is hereby  
4 created, consisting of thirteen members appointed by  
5 the governor, with the advice and consent of the Senate,  
6 who shall be individuals broadly representative of  
7 citizens and organizations within the state having an  
8 interest in vocational education.

**§18B-3A-1a. Department of education and the arts.**

1 The joint commission herein established shall be  
2 subject to the jurisdiction of the department of education  
3 and the arts pursuant to the provisions of article one,  
4 chapter five-f of this code, and the commission shall be  
5 subject to the supervision of the secretary of the  
6 department of education and the arts.

**§18B-3A-1b. Definitions.**

1 As used in this article:

2 (a) "Secondary vocational education" shall mean any  
3 high school level course or program which results or  
4 may result in a high school diploma or its equivalent,  
5 under the jurisdiction of the state board of education.

6 (b) "Post-secondary vocational education" shall mean  
7 any college-level course or program beyond the high  
8 school level provided through an institution of higher  
9 education which results in or may result in the award-  
10 ing of a two-year associate degree, under the jurisdiction  
11 of the board of directors.

12 (c) "Adult basic education" shall mean adult basic  
13 skills education designed to satisfy the basic literacy  
14 needs of adults; to improve and/or upgrade information  
15 processing skills, communication skills, and computa-  
16 tional skills leading to a high school equivalency  
17 diploma, under the jurisdiction of the state board of  
18 education.

19 (d) "Adult occupational education" shall mean adult  
20 skill training beyond the high school level not leading  
21 to a certificate or college credit, under the jurisdiction  
22 of the joint commission for vocational-technical-occupa-  
23 tional education.

24 (e) "Adult technical preparatory education" shall  
25 mean adult skill training beyond the high school level,  
26 but less than the associate degree, leading to a certif-  
27 icate and/or articulated with post-secondary vocational  
28 education, under the jurisdiction of the joint commission  
29 for vocational-technical-occupational education.

**§18B-3A-2. Composition of commission; terms of  
members; qualifications of members.**

1 The members appointed by the governor shall include  
2 all of the following:

3 (a) Seven individuals who shall be representatives  
4 from business, industry, and agriculture, including one  
5 member representing small business concerns, one  
6 member of whom shall represent the governor's office  
7 of community and industrial development, one member  
8 of whom shall represent proprietary schools and one  
9 member of whom shall represent labor organizations. In  
10 selecting private sector individuals under this subdivi-  
11 sion, the governor shall give due consideration to the  
12 appointment of individuals who serve on a private  
13 industry council or other appropriate state agencies.

14 (b) Six individuals, three of whom shall be represen-  
15 tatives of secondary vocational education appointed by  
16 the state superintendent of schools and three of whom  
17 shall be representatives of post-secondary vocational  
18 education appointed by the chancellor of the board of  
19 directors.

20 In addition to the members appointed by the governor  
21 the state superintendent of schools and the vice chancel-  
22 lor of the board of directors shall serve as ex officio  
23 members.

24 Members of the commission shall serve for overlap-  
25 ping terms of four years, except that the original  
26 appointments to the commission shall be for staggered  
27 terms allocated in the following manner: One member  
28 appointed by the chancellor, one member appointed by  
29 the state superintendent of schools and two members  
30 appointed by the governor for terms of two years; one  
31 member appointed by the chancellor, one member  
32 appointed by the state superintendent of schools and two  
33 members appointed by the governor for terms of three  
34 years; and one member appointed by the state superin-  
35 tendent of schools, one member appointed by the  
36 chancellor and three members appointed by the gover-  
37 nor for terms of four years.

#### **§18B-3A-3. Meeting; compensation of members.**

1 The joint commission shall meet quarterly and may  
2 meet at the request of the president, a majority of the  
3 board or at the call of the secretary of education and  
4 the arts. One such meeting of the joint commission shall  
5 be a public forum for the discussion of the goals and  
6 standards for vocational education in the state. The  
7 members shall elect a president who shall serve a term  
8 of one year.

9 Members of the council shall serve without compen-  
10 sation. Members of the council appointed by the  
11 governor shall receive their actual necessary expenses  
12 incurred in the performance of their duties.

#### **§18B-3A-4. Duties and responsibilities.**

1 The joint commission shall have the duties and  
2 responsibilities set forth in the provisions of section two,  
3 article two-b, chapter eighteen of this code, and in  
4 addition shall:

5 (a) Meet with the state board of education and the

6 board of directors, or their representatives, to advise  
7 them on state plans for vocational education; and

8 (b) Advise the state board of education and the board  
9 of directors, and report to the Legislature by the first  
10 day of December, one thousand nine hundred eighty-  
11 nine, and annually thereafter regarding all of the  
12 following:

13 (1) Policies the state should pursue to strengthen  
14 vocational education with special emphasis on programs  
15 for the handicapped.

16 (2) Programs and methods through which the private  
17 sector could undertake to assist in the modernization of  
18 vocational education programs.

19 (c) Effective July one, one thousand nine hundred  
20 ninety, supervise the governance of all secondary and  
21 post-secondary vocational education programs in the  
22 state, including the programs assisted under the federal  
23 Vocational Education Act and the Job Training Part-  
24 nership Act, and shall implement policies to both  
25 coordinate programs of the state board of education and  
26 the board of directors and to eliminate duplicative  
27 programs of same.

28 (d) Coordinate the delivery of vocational-technical-  
29 occupational education in a manner designed to provide  
30 the greatest yet most reasonable level of accessibility to  
31 students in consideration of the most efficient use of  
32 available public funds.

33 (e) Encourage through articulation the most efficient  
34 utilization of available resources, both public and  
35 private, to meet the needs of vocational-technical-  
36 occupational education students.

37 (f) Analyze and report to the governor and the  
38 Legislature on the distribution of spending for voca-  
39 tional education in the state and on the availability of  
40 vocational education activities and services within the  
41 state.

42 (g) Consult with the state board of education and the  
43 board of directors on evaluation criteria for vocational  
44 education programs in the state.

45 (h) Recommend to the state board of education and  
46 the board of directors on the delivery of vocational  
47 education programs in the state which emphasize the  
48 involvement of business and labor organizations.

49 (i) Assess and report to the governor and Legislature  
50 on the distribution of federal vocational education  
51 funding provided under Public Law 98-524, with an  
52 emphasis on the distribution of financial assistance  
53 among secondary and post-secondary vocational educa-  
54 tion programs.

55 (j) Recommend procedures to the state board of  
56 education and the board of directors to ensure and  
57 enhance public participation in the provision of voca-  
58 tional education at the local level, with an emphasis on  
59 programs which involve the participation of local  
60 employers and labor organizations.

61 (k) Report to the state board of education, the board  
62 of directors, and the Legislature on the extent to which  
63 equal access to quality vocational education programs is  
64 provided to handicapped and disadvantaged individuals,  
65 adults who are in need of training and retraining,  
66 individuals who are single parents or homemakers,  
67 individuals participating in programs designed to  
68 eliminate sexual bias and stereotyping in vocational  
69 education, and criminal offenders serving in correc-  
70 tional institutions.

71 (l) Evaluate at least once every two years:

72 (1) The adequacy and effectiveness of the vocational  
73 educational systems assisted under the federal Voca-  
74 tional Education Act and the Job Training Partnership  
75 Act in achieving the objectives defined in those acts.

76 (2) Develop uniform guidelines for the transferability  
77 of credits among institutions in the state and transfer-  
78 ability of credits between and among the systems of  
79 higher education and the state board of education.

80 (m) Designate lead institutions and do a region by  
81 region study of existing programs, define peculiar needs



82 of each region and devise a statewide plan for secondary  
83 and post-secondary vocational education.

84 (n) The secretary of the department of education and  
85 the arts shall be responsible for staffing the joint  
86 commission, utilizing existing personnel, equipment and  
87 offices of the state board of education and the board of  
88 directors.

#### ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

§18B-4-2. Senior administrator's powers and duties generally.

§18B-4-3. Authority to participate in reciprocal regional and interstate higher educational agreements.

§18B-4-4. State agency for participation in federal and private grants to higher education; related powers and duties.

§18B-4-5. Security officers; appointment; qualifications; authority; compensation and removal.

§18B-4-6. Acquisition, operation and regulation of parking areas and facilities at state institutions of higher education; regulation of parking, speed and flow of traffic on campus roads and driveways; civil and criminal penalties; disposition of revenue.

§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

#### §18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

1 (a) At its annual meeting in June of each year, each  
2 governing board shall elect from its members appointed  
3 by the governor a president and such other officers as  
4 it may deem necessary or desirable: *Provided*, That the  
5 initial annual meeting shall be held during July, one  
6 thousand nine hundred eighty-nine. The president and  
7 such other officers shall be elected for a one-year term  
8 commencing on the first day of July following the  
9 annual meeting and ending on the thirtieth day of June  
10 of the following year. The president of the board shall  
11 serve no more than two consecutive terms.

12 (b) Each governing board shall employ a chancellor  
13 who shall serve at the will and pleasure of the employing  
14 board and shall assist the governing board in the  
15 performance of its duties and responsibilities. No  
16 chancellor may hold or retain any other administrative

17 position within the system of higher education while  
18 employed as chancellor. Each chancellor is responsible  
19 for carrying out the directives of the governing board  
20 by which employed and shall work with such board in  
21 developing policy options. For the purpose of developing  
22 or evaluating policy options, the chancellors may request  
23 the assistance of the presidents of the institutions under  
24 their jurisdiction and their staffs. The respective  
25 chancellors shall jointly agree to, and shall hire, one  
26 senior administrator who shall serve at their will and  
27 pleasure in accordance with section two of this article.

28 (c) The director of health shall serve as the vice  
29 chancellor for health affairs, who shall coordinate the  
30 West Virginia University School of Medicine, the  
31 Marshall University School of Medicine, and the West  
32 Virginia School of Osteopathic Medicine. The vice  
33 chancellor for health affairs shall conduct a special  
34 study of the West Virginia University School of  
35 Medicine, the Marshall University School of Medicine  
36 and the West Virginia School of Osteopathic Medicine  
37 to determine the role and mission of said institutions in  
38 the reorganized system of higher education in the state.  
39 The special study shall include, but is not limited to,  
40 coordinating medical education, training and delivery of  
41 health services in the state; preparing nurse midwives,  
42 nurse practitioners, medical technologists and other  
43 members of the allied health professions; and providing  
44 for rural health care. The vice chancellor shall submit  
45 a report on said study to the governor and to the  
46 Legislature by the first day of December, one thousand  
47 nine hundred eighty-nine.

48 (d) The board of directors of the state college system  
49 shall employ a vice chancellor for community colleges  
50 to coordinate the community colleges.

51 (e) Suitable offices for the senior administrator and  
52 other staff shall be provided in Charleston.

**§18B-4-2. Senior administrator's powers and duties  
generally.**

1 (a) The senior administrator has a ministerial duty, in  
2 consultation with and under direction of the chancellors,

3 to perform such functions, tasks and duties as may be  
4 necessary to carry out the policy directives of the  
5 governing boards and such other duties as may be  
6 prescribed by law.

7 (b) The senior administrator may employ and dis-  
8 charge, and shall supervise, such professional, adminis-  
9 trative, clerical and other employees as may be neces-  
10 sary to these duties and shall delineate staff responsi-  
11 bilities as deemed desirable and appropriate. The senior  
12 administrator shall fix the compensation and emolu-  
13 ments of such employees: *Provided*, That effective the  
14 first day of July, one thousand nine hundred ninety,  
15 those employees whose job duties meet criteria listed in  
16 the system of job classifications as stated in article nine  
17 of this chapter shall be accorded the job title, compen-  
18 sation and rights established in said article as well as  
19 all other rights and privileges accorded classified  
20 employees by the provisions of this code.

21 (c) The senior administrator shall follow state and  
22 national educational trends and gather data on higher  
23 educational needs.

24 (d) The senior administrator, in accordance with  
25 established guidelines and in consultation with and  
26 under the direction of the chancellors, shall administer,  
27 oversee or monitor all state and federal student assist-  
28 ance and support programs administered on the state  
29 level, including those provided for in chapter eighteen-  
30 c of this code.

31 (e) The senior administrator has a fiduciary respon-  
32 sibility to administer the tuition and registration fee  
33 capital improvement revenue bond accounts of the  
34 governing boards.

35 (f) The senior administrator shall administer the  
36 purchasing system or systems of the governing boards.

37 (g) The senior administrator shall be responsible for  
38 the management of the West Virginia network for  
39 educational telecomputing (WVNET). The senior ad-  
40 ministrator shall establish a computer policy board,  
41 which shall be representative of both the university

42 system and the college system. It shall be the respon-  
43 sibility of the computer policy board to recommend to  
44 the secretary of the department of education and the  
45 arts policies for a statewide shared computer system.

46 (h) Any program or service currently administered by  
47 the board of regents and not specifically assigned to the  
48 board of trustees or the board of directors may be  
49 administered by the senior administrator. Such pro-  
50 gram or service may include, but shall not be limited  
51 to, telecommunications activities and other programs  
52 and services provided for under grants and contracts  
53 from federal and other external funding sources.

**§18B-4-3. Authority to participate in reciprocal regional  
and interstate higher educational  
agreements.**

1 In order to provide higher educational opportunities  
2 at minimum cost to students and the state, the govern-  
3 ing boards, on behalf of the state of West Virginia, are  
4 authorized and empowered to participate in the South-  
5 ern Regional Education Board interstate agreement,  
6 namely the Academic Common Market, and in such  
7 other regional and interstate agreements determined to  
8 be mutually beneficial to the citizens of the participat-  
9 ing states and which provide an opportunity for  
10 qualified nonresident students to enroll in selected  
11 programs and curricula on a resident tuition and fee  
12 charge basis. Each governing board is specifically  
13 authorized to waive the collection of nonresident tuition  
14 and fee charges for students from other states enrolled  
15 in programs and curricula under the jurisdiction of and  
16 approved by the governing board as a part of a regional  
17 or interstate agreement.

**§18B-4-4. State agency for participation in federal and  
private grants to higher education; related  
powers and duties.**

1 The governing boards, on behalf of the state of West  
2 Virginia, are authorized and empowered to apply for,  
3 to accept and administer and expend for the purpose or  
4 purposes designated, any funds which now are, or may  
5 be made, available to the governing boards or to any

6 institution under their jurisdiction from federal or  
7 private grants, appropriations, allocations and  
8 programs.

9 The governing boards have the power:

10 (1) To receive and disburse funds appropriated by the  
11 federal government for the construction, equipment, and  
12 improvement of academic facilities of institutions of  
13 higher education as required by the federal Higher  
14 Education Facilities Act of 1963, and any and all  
15 subsequent acts of Congress relating to the same subject;

16 (2) To apply for, receive, and administer, subject to  
17 any applicable regulations or laws of the federal  
18 government or any agency thereof, any federal grants,  
19 appropriations, allocations, and programs for the  
20 development of academic facilities on behalf of the state  
21 of West Virginia, or any institution of higher education,  
22 public or private, within the state;

23 (3) To develop, alter, amend, and submit to the federal  
24 government state plans for participation in federal  
25 grants, appropriations, allocations, and programs for  
26 the development of academic facilities and to formulate  
27 rules, criteria, methods, forms, procedures, and to do all  
28 other things which may be necessary to make possible  
29 the participation of the state in such federal grants,  
30 appropriations, allocations, and programs for the  
31 development of academic facilities;

32 (4) To hold hearings, and render decisions as to the  
33 priority assigned to any project, or as to any other  
34 matter or determination affecting any applicant for  
35 federal grants, appropriations, allocations and programs  
36 for the development of academic facilities;

37 (5) To hire personnel, purchase materials, make  
38 studies and reports, enter into contracts, and do all other  
39 things necessary to accomplish the duties as set forth in  
40 this section within the limits of the funds available.

**§18B-4-5. Security officers; appointment; qualifications;  
authority; compensation and removal.**

1 The governing boards are hereby authorized to

2 appoint bona fide residents of this state to act as security  
3 officers upon any premises owned or leased by the state  
4 of West Virginia and under the jurisdiction of the  
5 governing boards, subject to the conditions and restric-  
6 tions hereinafter imposed. Before performing duties as  
7 a security officer in any county, each person so ap-  
8 pointed shall qualify therefor in the same manner as is  
9 required of county officers by the taking and filing an  
10 oath of office as required by article one, chapter six of  
11 this code and by posting an official bond as required by  
12 article two, chapter six of this code. No security officer  
13 shall have authority to carry a gun or any other  
14 dangerous weapon until a license therefor has been  
15 obtained in the manner prescribed by section two,  
16 article seven, chapter sixty-one of this code.

17 It shall be the duty of any person so appointed and  
18 qualified to preserve law and order on any premises  
19 under the jurisdiction of the governing boards and on  
20 any other street, road or thoroughfare, except controlled  
21 access and open country highways, adjacent to or  
22 passing through such premises, to which the person may  
23 be assigned by the president or other administrative  
24 head of the state institution of higher education. For this  
25 purpose the security officer shall, as to offenses  
26 committed within any area so assigned, have and may  
27 exercise all the powers and authority and shall be  
28 subject to all the responsibilities of a law-enforcement  
29 officer as defined in section one, article twenty-nine,  
30 chapter thirty of this code and shall be eligible for law-  
31 enforcement training at an approved academy under  
32 said article, notwithstanding provisions to the contrary  
33 therein. The assignment of security officers to the duties  
34 authorized by this section shall not be deemed to  
35 supersede in any way the authority or duty of other  
36 peace officers to preserve law and order on such  
37 premises. In addition, the security officers appointed  
38 under provisions of this section shall have authority to  
39 assist local peace officers on public highways in the  
40 control of traffic in and around premises owned by the  
41 state of West Virginia whenever such traffic is gener-  
42 ated as a result of athletic or other activities conducted  
43 or sponsored by a state institution of higher education

44 and when such assistance has been requested by the  
45 local peace officers.

46 The salary of all such security officers shall be paid  
47 by the appropriate governing board. Each state institu-  
48 tion may furnish each such security officer with an  
49 official uniform to be worn while on duty and shall  
50 furnish and require each such officer while on duty to  
51 wear a shield with an appropriate inscription and to  
52 carry credentials certifying to the person's identity and  
53 authority as a security officer.

54 The governing boards may at their pleasure revoke  
55 the authority of any security officer. The president or  
56 other administrative head of the state institution of  
57 higher education shall report the termination of  
58 employment of a security officer by filing a notice to  
59 that effect in the office of the clerk of each county in  
60 which the security officer's oath of office was filed, and  
61 in the case of a security officer licensed to carry a gun  
62 or other dangerous weapon, by notifying the clerk of the  
63 circuit court of the county in which the license therefor  
64 was granted.

**§18B-4-6. Acquisition, operation and regulation of park-  
ing areas and facilities at state institutions of  
higher education; regulation of parking,  
speed and flow of traffic on campus roads  
and driveways; civil and criminal penalties;  
disposition of revenue.**

1 (a) The governing boards are hereby authorized to  
2 construct, maintain and operate automobile parking  
3 facilities or areas upon any premises owned or leased at  
4 any state institution of higher education under their  
5 jurisdiction for use by students, faculty, staff and  
6 visitors. The governing boards may charge fees for use  
7 of the parking facilities or areas under their control. All  
8 moneys collected for the use of the parking facilities or  
9 areas shall be paid to the credit of the state institution  
10 of higher education at which the fees were charged into  
11 a special fund which is hereby created in the state  
12 treasury. The moneys in the fund shall be used first to  
13 pay the cost of maintaining and operating the parking

14 facilities or areas, but any excess not needed for this  
15 purpose may be used for the acquisition of property by  
16 lease or purchase and the construction thereon of  
17 additional parking facilities or areas. Any money in the  
18 fund not needed immediately for the acquisition,  
19 construction, maintenance or operation of the parking  
20 facilities or areas may be temporarily invested by the  
21 governing boards with the state board of investments to  
22 the credit of the state institution of higher education at  
23 which the fees were charged.

24 (b) Notwithstanding any other motor vehicle or traffic  
25 law or regulation to the contrary, the governing boards  
26 are hereby authorized to regulate and control at any  
27 state institution of higher education under their  
28 jurisdiction the speed, flow and parking of vehicles on  
29 campus roads, driveways and parking facilities or areas.  
30 Rules for this purpose shall be promulgated by the  
31 governing boards in the manner prescribed in chapter  
32 twenty-nine-a of this code and when so promulgated  
33 shall have the force and effect of law. In each parking  
34 facility or area a summary of the rules governing the  
35 use of the facility or area including, but not limited to,  
36 the availability of temporary parking permits and  
37 where same may be obtained, and of the penalties which  
38 may be imposed for violations of the rules shall be  
39 conspicuously posted. Along each campus road and  
40 driveway, notice signs pertaining to the speed of  
41 vehicles, spaces available for parking, directional flow  
42 of traffic and penalties which may be imposed for  
43 violations of the rules shall be conspicuously posted.

44 (c) Any person parking any vehicle or operating any  
45 vehicle in violation of the rules shall be issued a citation  
46 describing the offense charged and ordering an appear-  
47 ance within ten days, excluding Saturdays, Sundays and  
48 holidays observed by the college or university, before a  
49 designated official of the state institution of higher  
50 education and, if the person cited fails to appear within  
51 said ten days, ordering an appearance before a magis-  
52 trate located in the county in which the state institution  
53 of higher education is located or before the judge of the  
54 municipal court, if the state institution of higher



55 education is located within a municipality having such  
56 an official.

57 The designated official of the state institution of  
58 higher education shall have exclusive jurisdiction of the  
59 offense during the ten-day period. Any person so cited  
60 may plead no contest to the offense and, by so pleading,  
61 shall be subject to a civil penalty to be determined  
62 uniformly by the designated official and commensurate  
63 with the severity of the offense in an amount not more  
64 than ten dollars for each offense as partial reimburse-  
65 ment to the state institution of higher education for the  
66 cost of regulating traffic and parking. Moneys derived  
67 from civil penalties imposed herein shall be deposited  
68 in the special fund in the state treasury created by this  
69 section and credited to the state institution of higher  
70 education at which the penalty was paid.

71 Upon the expiration of the ten days, or upon a  
72 pleading of not guilty before the designated official of  
73 the state institution of higher education within the ten  
74 days, the magistrate or judge of the municipal court  
75 shall have jurisdiction of the offense, and any person  
76 cited under the provisions of this section, upon a finding  
77 of guilty by the magistrate or municipal judge, shall be  
78 subject to a fine of not less than ten dollars nor more  
79 than twenty dollars for each offense, the amount to be  
80 commensurate with the severity of the offense.

81 Each designated official of the state institution of  
82 higher education presiding over a case under the  
83 provisions of this section shall keep or cause to be kept  
84 a record of every citation which alleges a violation of  
85 such provisions, or the rules promulgated in accordance  
86 therewith, and shall keep a record of every official  
87 action in reference thereto including, but not limited to,  
88 a record of every plea of no contest, conviction or  
89 acquittal of the offense charged and the amount of the  
90 fine or of the civil penalty resulting from each citation.

91 (d) Whenever a vehicle is parked on any state insti-  
92 tution of higher education campus road, driveway or  
93 parking facility or area in a manner which violates  
94 posted rules and substantially impedes the flow of

96 tion may, in addition to the issuing of a citation and  
97 subsequent procedures set forth herein, remove the  
98 vehicle, by towing or otherwise, to an area owned by the  
99 institution or areas designated for this purpose. The  
100 vehicle, having been towed to the designated area or  
101 areas, may be rendered immovable by use of locking  
102 wheel blocks or other device not damaging to the  
103 vehicle. The state institution of higher education shall  
104 maintain any vehicle so towed in the same condition as  
105 it was immediately prior to being towed, but shall not  
106 be liable for any damage to a vehicle towed to, or kept  
107 in, a designated area pursuant to the provisions of this  
108 section. The state institution of higher education shall  
109 pay for the cost of removing the vehicle and shall have  
110 a right to reimbursement from the owner for this cost  
111 and for the reasonable cost of keeping the vehicle in the  
112 designated area. Until payment of these costs, the state  
113 institution of higher education may retain possession of  
114 the vehicle, and the institution shall have a lien on the  
115 vehicle for the amount due. The state institution of  
116 higher education may enforce this lien in the manner  
117 provided in section fourteen, article eleven, chapter  
118 thirty-eight of this code for the enforcement of other  
119 liens.

**§18B-4-7. Accreditation of institutions of higher  
education; standards for degrees.**

1 The appropriate governing board shall make rules for  
2 the accreditation of institutions of higher education in  
3 this state under its jurisdiction and shall determine the  
4 minimum standards for the conferring of degrees. No  
5 institution of higher education may confer any degree  
6 on any basis of work or merit below the minimum  
7 standards prescribed by the appropriate governing  
8 board. Nothing contained herein shall infringe upon the  
9 rights, including rights to award degrees, granted to  
10 any institution by charter given according to law, or by  
11 actions of the governing boards or their predecessors,  
12 prior to the adoption of this section.

13 No charter or other instrument containing the right  
14 to confer degrees of higher educational status shall be  
15 granted by the state of West Virginia to any institution,

16 association or organization within the state, nor shall  
17 any such degree be awarded, until the condition of  
18 conferring such degree has first been approved in  
19 writing by the appropriate governing board.

#### ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-1. Budget appropriations.

§18B-5-2. Allocation of appropriations.

§18B-5-3. Authority to contract for programs, services and facilities.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.

§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

§18B-5-6. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; inventories.

#### §18B-5-1. Budget appropriations.

1 The budget appropriations for the state system of  
2 higher education under this chapter and other provi-  
3 sions of law shall consist of three major areas of  
4 appropriation consisting of (1) an appropriation for the  
5 higher education governing boards which shall be for  
6 the operation of the governing boards, the central office,  
7 the senior administrator and the staff of the senior  
8 administrator, (2) separate control accounts or institu-  
9 tional control accounts, or some combination of such  
10 accounts, for appropriations to the board of trustees to  
11 be allocated to the institutions under the state university  
12 system and to the board of directors to be allocated to  
13 the state college system, and (3) such special tuition and  
14 registration fee special capital improvement funds and  
15 revenue bond funds as may be necessary for the  
16 disposition of tuition and registration fee collections to  
17 protect the interests of all holders of obligations for  
18 which such fees were pledged by the board of regents  
19 and shall remain pledged under the governing boards.

20 The appropriations for the state university system and  
21 the state college system until the first day of July, one

22 thousand nine hundred ninety-one, shall be in the same  
23 percentages of the total of the appropriations to such  
24 accounts as the percentages of the combined institutions  
25 under such systems received in allocations in the fiscal  
26 year one thousand nine hundred eighty-eight—eighty-  
27 nine.

**§18B-5-2. Allocation of appropriations.**

1 From appropriations for the higher education govern-  
2 ing boards, the governing boards shall jointly allocate  
3 funds for the operation of the central office under the  
4 senior administrator and shall share equally the cost of  
5 suitable offices for the senior administrator and other  
6 staff in Charleston.

7 Any tuition and registration fee collections paid into  
8 tuition and registration fee special capital improvement  
9 funds and special revenue bond funds which accrue in  
10 excess of the amounts necessary to protect the interests  
11 of all holders of obligations for which such fees were  
12 pledged by the board of regents and shall remain  
13 pledged under the governing boards, shall be allocated  
14 to each governing board in proportion to the amounts  
15 of such fees collected through the institutions under its  
16 jurisdiction and shall be deposited in special capital  
17 improvement funds in the state treasury under the name  
18 of the governing board for expenditure for capital  
19 improvements at the institutions under the appropriate  
20 board's jurisdiction.

**§18B-5-3. Authority to contract for programs, services and facilities.**

1 The governing boards are authorized and empowered  
2 to enter into contracts and expend funds for programs,  
3 services and facilities provided by public and private  
4 educational institutions, associations, boards, agencies,  
5 consortia, corporations, partnerships, individuals and  
6 local, state and federal governmental bodies within and  
7 outside of West Virginia in order that maximum higher  
8 educational opportunities of high quality may be  
9 provided to the citizens of the state in the most  
10 economical manner: *Provided*, That in no event shall a  
11 contract for such services and facilities be entered into

12 unless the governing boards have determined that such  
13 services and facilities are necessary and that such  
14 services and facilities would be at a savings to the state.

15 Notwithstanding the provisions of this section, nothing  
16 herein contained shall supersede the responsibility and  
17 respective duties of the commissioner of finance and  
18 administration, the director of the purchasing division  
19 of such department and the attorney general for the  
20 execution and approval of the contracts entered into  
21 under this article and such contracts shall be in  
22 complete conformity with the provisions of articles three  
23 and five, chapter five-a of this code.

**§18B-5-4. Purchase or acquisition of materials, supplies,  
equipment and printing.**

1 (a) Each governing board, through the senior admin-  
2 istrator, shall purchase or acquire all materials,  
3 supplies, equipment and printing required for that  
4 board, and the state institutions of higher education  
5 under its jurisdiction. The governing boards shall adopt  
6 rules governing and controlling acquisitions and  
7 purchases in accordance with the provisions of this  
8 section. Such rules shall assure that the governing  
9 board: (1) Shall not preclude any person from partici-  
10 pating and making sales thereof to the board except as  
11 otherwise provided in section five of this article; (2) shall  
12 establish and prescribe specifications, in all proper  
13 cases, for materials, supplies, equipment and printing to  
14 be purchased; (3) shall adopt and prescribe such  
15 purchase order, requisition or other forms as may be  
16 required; (4) shall negotiate for and make purchases and  
17 acquisitions in such quantities, at such times and under  
18 contract, in the open market or through other accepted  
19 methods of governmental purchasing as may be prac-  
20 ticable in accordance with general law; (5) shall  
21 advertise for bids on all purchases exceeding five  
22 thousand dollars, to purchase by means of sealed bids  
23 and competitive bidding or to effect advantageous  
24 purchases through other accepted governmental meth-  
25 ods and practices; and (6) shall post in a public place  
26 in the central office of the governing boards, in the  
27 purchasing office of the specific institution involved in

28 the purchase and in the office of the department of  
29 purchases, available to the public during all business  
30 hours, notices of all acquisitions and purchases for  
31 which competitive bids are being solicited, at least two  
32 weeks prior to making such purchases.

33 The governing boards shall further adopt rules  
34 relating to purchasing in the open market pursuant to  
35 section thirteen, article three, chapter five-a of this code,  
36 and shall further make provision for vendor notification  
37 of bid solicitation and emergency purchasing.

38 Any or all bids may be rejected. However, all  
39 purchases based on advertised bid requests shall be  
40 awarded to the lowest responsible bidder taking into  
41 consideration the qualities of the articles to be supplied,  
42 their conformity with specifications, their suitability to  
43 the requirements of the governing boards and delivery  
44 terms: *Provided*, That the preference for resident  
45 vendors as provided in section forty-four, article three  
46 of said chapter five-a shall apply to the competitive bids  
47 made pursuant to this section.

48 The governing boards shall maintain a purchase file,  
49 which shall be a public record and open for public  
50 inspection. After the award of the order or contract, the  
51 governing boards shall indicate upon the successful bid  
52 that it was the successful bid, and shall further indicate  
53 why bids are rejected and, if the mathematical low  
54 vendor is not awarded the order or contract, the reason  
55 therefor. No records in the purchase file shall be  
56 destroyed without the written consent of the legislative  
57 auditor.

58 (b) The governing boards shall also adopt rules to  
59 prescribe qualifications to be met by any person who,  
60 on and after the effective date of this section, is to be  
61 employed as a buyer pursuant to this section. Such rules  
62 shall provide that no person shall be employed as a  
63 buyer unless such person, at the time of employment,  
64 either is (1) a graduate of an accredited college or  
65 university or (2) has at least four years' experience in  
66 purchasing for any unit of government or for any  
67 business, commercial or industrial enterprise. Any

68 person making purchases and acquisitions pursuant to  
69 this section shall execute a bond in the penalty of fifty  
70 thousand dollars, payable to the state of West Virginia,  
71 with a corporate bonding or surety company authorized  
72 to do business in this state as surety thereon, in form  
73 prescribed by the attorney general and conditioned upon  
74 the faithful performance of all duties in accordance with  
75 sections four through seven of this article and the rules  
76 of the governing boards. In lieu of separate bonds for  
77 such buyers, a blanket surety bond may be obtained.  
78 Any such bond or bonds shall be filed with the secretary  
79 of state. The cost of any such bond or bonds shall be paid  
80 from funds appropriated to the applicable governing  
81 board.

82 (c) All purchases and acquisitions shall be made in  
83 consideration and within limits of available appropri-  
84 ations and funds and in accordance with applicable  
85 provisions of article two, chapter five-a of this code,  
86 relating to expenditure schedules and quarterly allot-  
87 ments of funds and in accordance with section sixteen,  
88 article three of said chapter.

89 The governing boards may make requisitions upon the  
90 auditor for a sum to be known as an advance allowance  
91 account, in no case to exceed five percent of the total  
92 of the appropriations for the board, and the auditor shall  
93 draw a warrant upon the treasurer for such accounts;  
94 and all such advance allowance accounts shall be  
95 accounted for by the applicable governing board once  
96 every thirty days or more often if required by the state  
97 auditor. Such authority shall not be delegated to any  
98 state institution under the control and supervision of the  
99 board.

100 Contracts entered into pursuant to this section shall  
101 be signed by the applicable governing board in the name  
102 of the state and shall be approved as to form by the  
103 attorney general. A contract that requires more than six  
104 months for its fulfillment shall be filed with the state  
105 auditor. The governing board shall prescribe the  
106 amount of deposit or bond to be submitted with a bid  
107 or contract, if any, and the amount of deposit or bond  
108 to be given for the faithful performance of a contract.

109 If the governing board purchases or contracts for  
110 materials, supplies, equipment and printing contrary to  
111 the provisions of sections four through seven of this  
112 article or the rules pursuant thereto, such purchase or  
113 contract shall be void and of no effect.

114 Either governing board may request the director of  
115 purchases to make available, from time to time, the  
116 facilities and services of that department to the board  
117 in the purchase and acquisition of materials, supplies,  
118 equipment and printing, and the director of purchases  
119 shall cooperate with that governing board in all such  
120 purchases and acquisitions upon such request.

121 Each governing board shall permit private institu-  
122 tions of higher education to join as purchasers on  
123 purchase contracts for materials, supplies and equip-  
124 ment entered into by that governing board. Any private  
125 school desiring to join as purchasers on such purchase  
126 contracts shall file with that governing board an  
127 affidavit signed by the president of the institution of  
128 higher education or a designee requesting that it be  
129 authorized to join as purchaser on purchase contracts of  
130 that governing board and agreeing that it will be bound  
131 by such terms and conditions as that governing board  
132 may prescribe, and that it will be responsible for  
133 payment directly to the vendor under each purchase  
134 contract.

**§18B-5-5. Prequalification disclosure by vendors; register  
of vendors; exceptions; suspension of  
vendors.**

1 (a) Every person, firm or corporation selling or  
2 offering to sell to the governing boards, upon compet-  
3 itive bids or otherwise, any materials, equipment,  
4 supplies or printing shall comply with all of the  
5 provisions of section fourteen-a, article three, chapter  
6 five-a of this code and shall file with the director of the  
7 purchasing division of the state of West Virginia the  
8 affidavit required herein: *Provided*, That every such  
9 person, firm or corporation who is presently in com-  
10 pliance with said section shall not be required to  
11 requalify thereunder to be able to transact business with  
12 the governing boards.



13 (b) Any person, firm or corporation failing or refusing  
14 to comply with said statute as herein required shall be  
15 ineligible to sell or offer to sell commodities or printing  
16 to the governing boards as hereinafter set forth:  
17 *Provided*, That any person suspended under the provi-  
18 sions of section thirty-nine of said article three shall not  
19 be eligible to sell or offer to sell commodities or printing  
20 to the governing boards: *Provided, however*, That the  
21 governing boards shall have the power and authority to  
22 suspend, for a period not to exceed one year, the right  
23 and privilege of a person to bid on purchases of the  
24 governing boards when there is reason to believe that  
25 such person has violated any of the provisions in sections  
26 four through seven of this article or the rules of the  
27 governing boards pursuant thereto. Every person whose  
28 right to bid has been so suspended shall be notified  
29 thereof by a letter posted by registered mail containing  
30 the reason for such suspension and shall have the right  
31 to have the appropriate governing board's action  
32 reviewed in accordance with section forty, article three,  
33 chapter five-a of this code.

**§18B-5-6. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.**

1 The provisions of article three, chapter five-a of this  
2 code shall not control or govern the purchase, acquisi-  
3 tion or other disposition of any equipment, materials,  
4 supplies or printing by the governing boards, except as  
5 provided in sections four through seven of this article:  
6 *Provided*, That sections thirty-six, thirty-seven and  
7 thirty-eight, article three of said chapter five-a shall  
8 apply to all purchasing activities of the governing  
9 boards.

10 Neither the governing boards, nor any employee of the  
11 governing boards, shall be financially interested, or  
12 have any beneficial personal interest, directly or  
13 indirectly, in the purchase of any equipment, materials,

14 supplies or printing, nor in any firm, partnership,  
15 corporation or association furnishing them. Neither the  
16 governing boards nor any employee of said boards shall  
17 accept or receive directly or indirectly from any person,  
18 firm or corporation, known by the governing boards or  
19 such employee to be interested in any bid, contract or  
20 purchase, by rebate, gift or otherwise, any money or  
21 other thing of value whatsoever, or any promise,  
22 obligation or contract for future reward, or  
23 compensation.

24 A person who violates any of the provisions of this  
25 section shall be guilty of a misdemeanor and, upon  
26 conviction thereof, shall be imprisoned in jail not less  
27 than three months nor more than one year, or fined not  
28 less than fifty nor more than one thousand dollars, or  
29 both imprisoned and fined, in the discretion of the court:  
30 *Provided*, That any person who violates any of such  
31 provisions by receiving money or other thing of value  
32 under circumstances constituting the crime of bribery  
33 under the provisions of section three, article five-a,  
34 chapter sixty-one of this code, shall, upon conviction of  
35 bribery, be punished as provided in section nine of said  
36 article five-a.

**§18B-5-7. Disposition of obsolete and unusable equip-  
ment, surplus supplies and other unneeded  
materials; inventories.**

1 The governing boards shall dispose of obsolete and  
2 unusable equipment, surplus supplies and other un-  
3 needed materials, either by transfer to other govern-  
4 mental agencies or institutions, by exchange or trade,  
5 or by sale as junk or otherwise. The governing boards  
6 shall adopt rules governing and controlling the disposi-  
7 tion of all such equipment, supplies and materials. At  
8 least ten days prior to the disposition, the governing  
9 boards shall advertise, by newspaper publication as a  
10 Class II legal advertisement in compliance with the  
11 provisions of article three, chapter fifty-nine of this code,  
12 in the county in which the equipment, supplies and  
13 materials are located the availability or sales of such  
14 disposable equipment, supplies and materials and may  
15 sell same, in whole or in part, at public auction, or may

16 transfer, exchange or trade same to other governmental  
17 agencies or institutions (if by exchange or trade, then  
18 without advertising), in whole or in part, as sound  
19 business practices may warrant under existing circum-  
20 stances and conditions. The governing boards shall  
21 inventory all such disposable equipment, supplies and  
22 materials from time to time as quantity and stocks may  
23 warrant, and shall make a complete annual inventory  
24 thereof as of the thirty-first day of March of each year.  
25 The governing boards may report such inventories to the  
26 director of purchases whose services and facilities shall  
27 be available to the governing boards in making advan-  
28 tageous disposition of any part or all of such disposable  
29 equipment, supplies and materials. Such inventories  
30 shall briefly describe the disposable items, the date of  
31 purchase thereof, the vendor to the applicable governing  
32 board, the purchase price paid therefor and the  
33 governing board's order number authorizing disposition  
34 thereof and shall indicate briefly the reason said items  
35 are no longer needed or can no longer be used by the  
36 governing board. All such inventories shall be kept as  
37 public records open to public inspection at one or more  
38 of the institutions under the jurisdiction of the govern-  
39 ing boards for a period of five years and may thereafter  
40 be destroyed: *Provided*, That under no circumstances  
41 shall any of the property described in this section be  
42 sold, transferred or conveyed to any private person, firm  
43 or corporation other than by public auction or as  
44 provided in article eight, chapter five-a of this code.

#### ARTICLE 6. OTHER BOARDS AND ADVISORY COUNCILS.

§18B-6-1. Institutional boards of advisors.

§18B-6-2. Advisory councils of faculty.

§18B-6-3. Advisory councils of students.

§18B-6-4. Advisory councils of classified employees.

§18B-6-5. Creation of advisory council on federal resources; appointment, terms and qualifications of members; vacancies; compensation and expenses; meetings; quorum.

§18B-6-6. Powers and duties relating to anatomical gifts; requisition of bodies; autopsies; transportation of bodies; expenses of preservation; bond required; offenses and penalties.

#### §18B-6-1. Institutional boards of advisors.

1 (a) There shall be established at each state institution

2 of higher education, hereinafter referred to as the  
3 "institution," excluding centers and branches thereof, an  
4 institutional board of advisors. The board of advisors  
5 shall consist of eleven members, including an adminis-  
6 trative officer of the institution appointed by the  
7 president of the institution; a full-time member of the  
8 faculty with the rank of instructor or above duly elected  
9 by the faculty; a member of the student body in good  
10 academic standing, enrolled for college credit work and  
11 duly elected by the student body; a member of the  
12 institutional classified staff duly elected by the classified  
13 staff; and, appointed by the appropriate governing  
14 board, seven lay citizens of the state who have demon-  
15 strated a sincere interest in and concern for the welfare  
16 of that institution and who are representative of its  
17 population and fields of study, including at least two  
18 alumni of the institution. Of the seven lay citizen  
19 members, no more than four may be of the same  
20 political party.

21 The administrative officer, faculty member, student  
22 member and classified staff member shall serve for a  
23 term of one year, and the seven lay citizen members  
24 shall serve terms of four years each. All members shall  
25 be eligible to succeed themselves for no more than one  
26 additional term. A vacancy in an unexpired term of a  
27 member shall be filled within sixty days of the occur-  
28 rence thereof in the same manner as the original  
29 appointment or election. Except in the case of a vacancy,  
30 all elections shall be held and all appointments shall be  
31 made no later than the thirtieth day of April preceding  
32 the commencement of the term.

33 Each board of advisors shall hold a regular meeting  
34 at least quarterly, commencing in July of each year.  
35 Additional meetings may be held upon the call of the  
36 chairman, president of the institution, or upon the  
37 written request of at least four members. A majority of  
38 the members shall constitute a quorum for conducting  
39 the business of the board of advisors.

40 (b) One of the seven lay citizen members shall be  
41 elected as chairman by the board of advisors in July of

42 each year: *Provided*, That no member shall serve as  
43 chairman for more than two consecutive years at a time.

44 The president of the institution shall make available  
45 resources of the institution for conducting the business  
46 of the board of advisors. The members of the board of  
47 advisors shall be reimbursed for all reasonable and  
48 necessary expenses actually incurred in the perfor-  
49 mance of their official duties under this section upon  
50 presentation of an itemized sworn statement thereof. All  
51 expenses incurred by the board of advisors and the  
52 institution under this section shall be paid from funds  
53 allocated to the institution for such purpose.

54 (c) The board of advisors shall review, prior to the  
55 submission by the president to its governing board, all  
56 proposals of the institution in the areas of mission,  
57 academic programs, budget, capital facilities and such  
58 other matters as requested by the president of the  
59 institution or its governing board or otherwise assigned  
60 to it by law. The board of advisors shall comment on  
61 each such proposal in writing, with such recommenda-  
62 tions for concurrence therein or revision or rejection  
63 thereof as it deems proper. Such written comments and  
64 recommendations shall accompany the proposal to the  
65 governing board, and the governing board shall include  
66 such comments and recommendations in its considera-  
67 tion of and action on the proposal. The governing board  
68 shall promptly acknowledge receipt of the comments  
69 and recommendations and shall notify the board of  
70 advisors in writing of any action taken thereon.

71 (d) Upon request therefor in writing by the president  
72 of the institution, the board of advisors may authorize  
73 transfers between items of allocation or appropriation in  
74 accordance with the provisions of section nineteen-a,  
75 article two, chapter five-a of this code.

76 (e) The board of advisors shall review, prior to their  
77 implementation by the president, all proposals regard-  
78 ing institution-wide personnel policies. The board of  
79 advisors may comment on such proposals in writing.

80 (f) Upon the occurrence of a vacancy in the office of  
81 president of the institution, the board of advisors shall

82 serve as a search and screening committee for candi-  
83 dates to fill the vacancy under guidelines established by  
84 its governing board. When serving as a search and  
85 screening committee, the board of advisors and its  
86 governing board are each authorized to appoint up to  
87 three additional persons to serve on the committee as  
88 long as the search and screening process is in effect. The  
89 three additional appointees of the board of advisors shall  
90 be faculty members of the institution. Only for the  
91 purposes of the search and screening process, such  
92 additional members shall possess the same powers and  
93 rights as the regular members of the board of advisors,  
94 including reimbursement for all reasonable and neces-  
95 sary expenses actually incurred. Following the search  
96 and screening process, the committee shall submit the  
97 names of at least three candidates to the governing  
98 board for consideration and appointment. If the govern-  
99 ing board rejects all candidates so submitted, the  
100 committee shall submit the names of at least three  
101 additional candidates, and this process shall be repeated  
102 until the governing board appoints one of the candidates  
103 so submitted. The governing board shall provide all  
104 necessary staff assistance to the board of advisors in its  
105 role as a search and screening committee.

**§18B-6-2. Advisory councils of faculty.**

1 Effective the first day of July, one thousand nine  
2 hundred eighty-nine, each governing board shall be  
3 assisted by an advisory council of faculty.

4 During the month of April of each year, each pres-  
5 ident or other administrative head of a state institution  
6 of higher education, including Potomac State College of  
7 West Virginia University and West Virginia University  
8 at Parkersburg, at the direction of the councils and in  
9 accordance with procedures established by the councils,  
10 shall convene a meeting or otherwise institute a  
11 balloting process to elect one faculty to serve on the  
12 appropriate governing board's advisory council of  
13 faculty, which shall consist of one faculty, so elected,  
14 from each such institution under the appropriate  
15 governing board. Terms of the members of each council  
16 shall be for one year and shall begin on the first day

17 of May of each year, and members of each advisory  
18 council shall be eligible to succeed themselves.

19 The advisory councils of faculty shall meet at least  
20 once each quarter. One of the quarterly meetings shall  
21 be during the month of June, at which meeting each  
22 council shall elect a chairman, who shall be by virtue  
23 of the office a voting member of the appropriate  
24 governing board. No member may vote by proxy at such  
25 election. In the event of a tie in the last vote taken for  
26 such election, a member authorized by the council shall  
27 select the chairman by lot from the names of those  
28 persons tied. Immediately following the election of a  
29 chairman, each council shall elect, in the manner  
30 prescribed by this section for the election of a chairman,  
31 a member of that council to preside over meetings of the  
32 council in the chairman's absence. Should the chairman  
33 vacate the position, the council shall meet and elect a  
34 new chairman to fill the unexpired term within thirty  
35 days following such vacancy.

36 Each advisory council of faculty, through its chairman  
37 and in any other appropriate manner, shall consult and  
38 advise its governing board in matters of higher educa-  
39 tion in which the faculty members may have an interest.

40 Members of each advisory council shall serve without  
41 compensation, but shall be entitled to reimbursement  
42 for actual and necessary expenses incurred in the  
43 performance of their official duties from funds allocated  
44 to the state institution of higher education served.

45 Each governing board shall furnish secretarial  
46 services to its advisory council of faculty, and each  
47 advisory council shall cause to be prepared minutes of  
48 its meetings, which minutes shall be available, upon  
49 request, to any faculty member of a state institution of  
50 higher education represented on the council. Such  
51 minutes shall be forwarded to the advisory council of  
52 faculty serving the other governing board.

### §18B-6-3. Advisory councils of students.

1 Effective the first day of July, one thousand nine

2 hundred eighty-nine, each governing board shall be  
3 assisted by an advisory council of students.

4 The student government organization at each state  
5 institution of higher education shall elect a student, who  
6 may be the elected head or president of such organiza-  
7 tion, to serve on the appropriate governing board's  
8 advisory council of students, which are hereby created,  
9 consisting of the elected representatives of each institu-  
10 tion under the appropriate governing board: *Provided,*  
11 That the student government organization at each  
12 institution in the university system, including Potomac  
13 State College of West Virginia University and West  
14 Virginia University at Parkersburg, shall elect one  
15 student per three thousand students enrolled at each  
16 institution with a minimum of one representative from  
17 each institution. The student government of each  
18 institution shall determine how its representatives shall  
19 be elected. Terms of the members of such council shall  
20 be for one year and shall begin on the first day of May  
21 of each year, and members of the advisory councils shall  
22 be eligible to succeed themselves.

23 Each institution shall have only one vote in all  
24 matters. The advisory councils of students shall meet at  
25 least once each quarter, and shall meet during each  
26 month of June, at which meeting each council shall elect  
27 a chairman, who prior to such elections must be entitled  
28 to vote in the state of West Virginia. By virtue of the  
29 office, the chairman shall be a voting member of the  
30 appropriate governing board. No member may vote by  
31 proxy at such election. In the event of a tie in the last  
32 vote taken for such election, a member authorized by the  
33 council shall select the chairman by lot from the names  
34 of those persons tied. Immediately following the election  
35 of a chairman, each council shall elect, in the manner  
36 prescribed by this section for the election of a chairman,  
37 a member of that council to preside over meetings of the  
38 council in the chairman's absence. Should the chairman  
39 vacate the position, the council shall meet and elect a  
40 new chairman to fill the unexpired term within thirty  
41 days following such vacancy.



42 Each advisory council of students, through its chair-  
43 man and in any other appropriate manner, shall consult  
44 and advise its governing board in matters of higher  
45 education in which the students may have an interest.

46 Members of each advisory council shall serve without  
47 compensation, but shall be entitled to reimbursement  
48 for actual and necessary expenses incurred in the  
49 performance of their official duties from funds allocated  
50 to the state institution of higher education served.

51 Each governing board shall furnish secretarial  
52 services to its advisory council of students, and each  
53 advisory council shall cause to be prepared minutes of  
54 its meetings, which minutes shall be available, upon  
55 request, to any student of a state institution of higher  
56 education represented on the council. Such minutes shall  
57 be forwarded to the advisory council of students serving  
58 the other governing board.

**§18B-6-4. Advisory councils of classified employees.**

1 Effective the first day of July, one thousand nine  
2 hundred eighty-nine, each governing board shall be  
3 assisted by an advisory council of classified employees.

4 During the month of April of each year, each pres-  
5 ident or other administrative head of a state institution  
6 of higher education, including Potomac State College of  
7 West Virginia University and West Virginia University  
8 at Parkersburg, at the direction of the councils and in  
9 accordance with procedures established by the councils,  
10 shall convene a meeting or otherwise institute a  
11 balloting process to elect one classified employee to serve  
12 on the appropriate governing board's advisory council of  
13 classified employees, which shall consist of one classified  
14 employee, so elected, from each such institution under  
15 the appropriate governing board. Terms of the members  
16 of such councils shall be for one year and shall begin  
17 on the first day of May of each year, and members of  
18 the advisory councils shall be eligible to succeed  
19 themselves. For the purpose of this section the term  
20 "institution of higher education" includes the facilities  
21 and staff supervised by the senior administrator  
22 employed by the governing boards, who shall be deemed  
23 a part of the state college system, and the West Virginia

24 network for telecomputing, who shall be deemed a part  
25 of the state university system.

26 Each advisory council of classified employees shall  
27 meet at least once each quarter. One of the quarterly  
28 meetings shall be during the month of June, at which  
29 meeting each council shall elect a chairman, who shall  
30 be by virtue of the office a voting member of the  
31 appropriate governing board: *Provided*, That the board  
32 of directors' advisory council for classified employees'  
33 chairman shall not be a member of the staff supervised  
34 by the central administrative official. No member may  
35 vote by proxy at such election. In the event of a tie in  
36 the last vote taken for such election, a member autho-  
37 rized by the council shall select the chairman by lot  
38 from the names of those persons tied. Immediately  
39 following the election of a chairman, each council shall  
40 elect, in the manner prescribed by this section for the  
41 election of a chairman, a member of the council to  
42 preside over meetings of the council in the chairman's  
43 absence. Should the chairman vacate the position, the  
44 council shall meet and elect a new chairman to fill the  
45 unexpired term within thirty days following such  
46 vacancy.

47 Each advisory council of classified employees, through  
48 its chairman and in any other appropriate manner, shall  
49 consult and advise its governing board in matters of  
50 higher education in which the classified employees may  
51 have an interest.

52 Members of each advisory council shall serve without  
53 compensation, but shall be entitled to reimbursement  
54 for actual and necessary expenses incurred in the  
55 performance of their official duties from funds allocated  
56 to the state institution of higher education served.

57 Each governing board shall furnish secretarial  
58 services to its advisory council of classified employees,  
59 and each advisory council shall cause to be prepared  
60 minutes of its meetings, which minutes shall be  
61 available, upon request, to any classified employee of a  
62 state institution of higher education represented on the  
63 council. Such minutes shall be forwarded to the advisory

64 council of classified employees serving the other  
65 governing board.

**§18B-6-5. Creation of advisory council on federal resources; appointment, terms and qualifications of members; vacancies; compensation and expenses; meetings; quorum.**

1 There is hereby created an advisory council to be  
2 known as the higher education advisory council on  
3 federal resources. The council shall review the state plan  
4 for administration of the federal Higher Education  
5 Facilities Act of 1963 and Titles I and VI of the federal  
6 Higher Education Act of 1965, as amended. The council  
7 shall also evaluate proposals pertaining to the aforementioned  
8 federal acts and shall submit such recommendations  
9 as it deems appropriate to the secretary of  
10 education and the arts. The council shall be involved in  
11 every significant function of the office of the secretary,  
12 including governing boards under the jurisdiction of the  
13 secretary, pertaining to said federal acts.

14 The advisory council shall consist of twelve members  
15 to be appointed as follows: One member of the board of  
16 trustees appointed by the president of the board of  
17 trustees, one member of the board of directors appointed  
18 by the president of the board of directors, two members  
19 appointed by the board of trustees to represent the  
20 public at large, two members appointed by the board  
21 of directors to represent the public at large, two  
22 members appointed by each governing board to represent  
23 the state institutions of higher education under its  
24 control, and one member appointed by each governing  
25 board to represent private institutions of higher  
26 education under its jurisdiction: *Provided*, That the two  
27 members representing private institutions of higher  
28 education shall be presidents of a private institution,  
29 and, of the four members representing public institutions  
30 of higher education, one appointed by each  
31 governing board shall be a president of a state institution  
32 of higher education. The secretary of education and  
33 the arts shall appoint a chairman of the advisory council  
34 who shall be selected from the representatives of the  
35 public at large.

36 The members shall serve for a term of six years,  
37 except that the original appointments shall be as  
38 follows: Four members to serve two years, four  
39 members to serve four years, and four members to serve  
40 six years. Such appointments shall be made no later  
41 than the first day of September, one thousand nine  
42 hundred eighty-nine. The secretary of education and the  
43 arts shall appoint a member to fill any vacancy, which  
44 member shall serve for the unexpired term of the  
45 vacating member. All shall be eligible for  
46 reappointment.

47 The members of the advisory council shall serve  
48 without compensation, but shall be reimbursed for their  
49 necessary expenses actually incurred in the perfor-  
50 mance of their official duties not to exceed twenty-five  
51 dollars per day plus an allowance of twenty cents per  
52 mile actually traveled to and from such meetings.

53 A meeting of the advisory council shall be held on or  
54 before the first day of November, one thousand nine  
55 hundred eighty-nine, and thereafter the advisory council  
56 shall meet at least annually and at such other times as  
57 necessary upon the call of the chairman. Five members  
58 of the advisory council shall constitute a quorum, and  
59 a majority vote of the quorum shall be necessary to pass  
60 upon matters before the council.

**§18B-6-6. Powers and duties relating to anatomical gifts;  
requisition of bodies; autopsies; transporta-  
tion of bodies; expenses of preservation;  
bond required; offenses and penalties.**

1 (a) The board of trustees may appoint one dean of a  
2 school of medicine, one dean of a school of dentistry and  
3 two chairmen of departments of anatomy of schools of  
4 medicine, all of whom shall constitute a board for the  
5 purpose of performing the duties of the board, which is  
6 hereby abolished, formerly known as the "West Virginia  
7 Anatomical Board." This new board shall be known as  
8 the "University of West Virginia Anatomical Board,"  
9 and shall hereinafter be referred to as the "board" for  
10 the purposes of this section. No more than one member  
11 of this board shall be from the same school.

12 The board shall have authority to appoint such

13 officers, employees and agents as may be necessary to  
14 carry out the purposes for which the board is organized.  
15 It shall keep a full and complete record of its transac-  
16 tions, showing, among other things, every dead human  
17 body coming under its authority, giving name, sex, age,  
18 date of death, place from which received, and when and  
19 from whom received, which record shall be open at all  
20 times to the inspection of the attorney general and any  
21 prosecuting attorney in the state.

22 If the board of trustees does not appoint a "university  
23 of West Virginia anatomical board" as herein autho-  
24 rized, then the board of trustees itself shall perform the  
25 duties of the anatomical board as set forth herein.

26 (b) The board shall be responsible for making requi-  
27 sition for, receiving, and making disposition of the dead  
28 human bodies for the scientific uses and purposes of  
29 reputable educational institutions, within the state and  
30 elsewhere, having medical, osteopathy, dentistry or  
31 nursing schools. The board shall have full power to  
32 establish rules for its own government and for the  
33 requisition, use, disposition and control of such bodies  
34 as may come under its authority by way of gift,  
35 pursuant to this section or pursuant to section four,  
36 article nineteen, chapter sixteen of this code.

37 (c) All dead human bodies which may come under the  
38 charge or control of any mortician, any officer or agent  
39 of the department of welfare or of any county commis-  
40 sion or municipality, or any superintendent, officer or  
41 agent having the supervision of any prison, morgue,  
42 hospital, or other public institution in this state, and  
43 which may be required to be buried at public expense,  
44 shall be subject to the requisition of the board as  
45 provided in this section. No such body shall be delivered  
46 to the board if any person related to the deceased by  
47 blood or marriage shall make a statement in writing to  
48 that effect, and shall claim such body for burial, or shall  
49 make affidavit that the relative is unable to bear the  
50 expense of burial and desires that the deceased be  
51 buried at public expense. This statement and affidavit  
52 may be filed by any such relative with the person having

53 charge and control of the body of the person so claimed,  
54 either before or after the death of such person.

55 No autopsy shall be performed on any unclaimed body  
56 without the written permission of the board, except  
57 upon the proper order of a duly authorized law-  
58 enforcement officer.

59 (d) It shall be the duty of any person who has charge  
60 or control of any unclaimed body, subject to requisition  
61 by the board, to give notice to the board of that fact by  
62 telephone or telegraph within twenty-four hours after  
63 such body comes under that person's control. Thereafter,  
64 such person shall hold the body subject to the order of  
65 the board for at least twenty-four hours after the  
66 sending of such notice. If the board makes requisition  
67 for the body within the twenty-four hour period, it shall  
68 be delivered, pursuant to the order of the board, to the  
69 board or its authorized agent for transportation to any  
70 educational institution which the board deems to be in  
71 bona fide need thereof and able to adequately control,  
72 use and dispose of the body. The board shall make  
73 suitable arrangements for the transportation of any  
74 body, or part or parts thereof, which may come under  
75 its authority to such educational institution. All ex-  
76 penses incurred in connection with the preservation,  
77 delivery and transportation of any such body delivered  
78 pursuant to the order of the board shall be paid by the  
79 educational institution receiving the body.

80 (e) No dead body shall be received or requisitioned by  
81 the board until the members of the board have filed a  
82 bond with the clerk of the circuit court of Kanawha  
83 County in a penalty of one thousand dollars, with good  
84 security, signed by a responsible person or persons, or  
85 by some surety company authorized to do business in  
86 this state, or have proved to such clerk that they are  
87 covered by a suitable bond in at least that amount,  
88 conditioned for the faithful performance of their duties.

89 (f) Any person who shall neglect, refuse or fail to  
90 perform any duty required by this section relating to the  
91 board shall be guilty of a misdemeanor, and, upon  
92 conviction thereof, shall be punished by a fine of not

93 more than one hundred dollars or by imprisonment in  
94 the county jail for not more than ten days, or by both  
95 such fine and imprisonment. Any person who fails to  
96 give the required notice that that person has charge of  
97 an unclaimed body subject to requisition by the board  
98 shall also be personally liable for all burial expenses, if  
99 such body was buried at public expense, to the public  
100 agency that paid for the burial.

#### ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

§18B-7-2. Authority to grant sabbatical leaves.

§18B-7-3. Effect of leave of absence on academic tenure, rank, etc.

§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

§18B-7-5. Faculty and classified employee continuing education and development program.

**§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.**

1 (a) All decisions by the appropriate governing board  
2 or their agents at state institutions of higher education  
3 concerning reductions in work force of full-time  
4 classified personnel, whether by temporary furlough or  
5 permanent termination, shall be made in accordance  
6 with this section. Definitions for terms used in this  
7 section shall be in accordance with those provided in  
8 section two, article nine of this chapter except that the  
9 provisions of this section shall apply only to classified  
10 employees whose employment, if continued, shall  
11 accumulate to a minimum total of one thousand forty  
12 hours during a calendar year and extend over at least  
13 nine months of a calendar year.

14 (b) For layoffs by classification for reason of lack of  
15 funds or work, or abolition of position or material  
16 changes in duties or organization and for recall of  
17 employees so laid off, consideration shall be given to an  
18 employee's seniority as measured by permanent employ-  
19 ment in the service of the state system of higher

20 education. In the event that the institution wishes to lay  
21 off a more senior employee, the institution must  
22 demonstrate that the senior employee cannot perform  
23 any other job duties held by less senior employees of that  
24 institution in the same job class, or any other equivalent  
25 or lower job class for which the senior employee is  
26 qualified: *Provided*, That if an employee refuses to  
27 accept a position in a lower job class, such employee  
28 shall retain all rights of recall hereinafter provided. If  
29 two or more employees accumulate identical seniority,  
30 the priority shall be determined by a random selection  
31 system established by the employees and approved by  
32 the institution.

33 (c) Any employee laid off during a furlough or  
34 reduction in work force shall be placed upon a preferred  
35 recall list and shall be recalled to employment by the  
36 institution on the basis of seniority. An employee's  
37 listing with an institution shall remain active for a  
38 period of one calendar year from the date of termination  
39 or furlough, or from the date of the most recent renewal.  
40 If an employee fails to renew the listing with the  
41 institution, the employee's name may be removed from  
42 the list. An employee placed upon the preferred list shall  
43 be recalled to any position opening by the institution  
44 within the classification(s) in which the employee had  
45 previously been employed or to any lateral position for  
46 which the employee is qualified. An employee on the  
47 preferred recall list shall not forfeit the right to recall  
48 by the institution if compelling reasons require such  
49 employee to refuse an offer of reemployment by the  
50 institution.

51 The institution shall be required to notify all em-  
52 ployees maintaining active listings on the preferred  
53 recall list of all position openings that from time to time  
54 exist. Such notice shall be sent by certified mail to the  
55 last known address of the employee. It shall be the duty  
56 of each employee listed to notify the institution of any  
57 change in address and to timely renew the listing with  
58 the institution. No position openings shall be filled by  
59 the institution, whether temporary or permanent, until  
60 all employees on the preferred recall list have been



61 properly notified of existing vacancies and have been  
62 given an opportunity to accept reemployment.

**§18B-7-2. Authority to grant sabbatical leaves.**

1 The appropriate governing board shall have authority  
2 to grant sabbatical leaves to faculty members at state  
3 institutions of higher education for the purpose of  
4 permitting them to engage in graduate study, research  
5 or other activities calculated to improve their teaching  
6 ability. Such leaves shall be granted only in accordance  
7 with a uniform plan adopted by each governing board  
8 and shall be subject to such reasonable rules as each  
9 governing board may prescribe. Any plan adopted by a  
10 governing board shall not provide for the granting of  
11 sabbatical leave to any faculty member who has served  
12 fewer than six years at the institution where presently  
13 employed, nor shall such leave be for more than one half  
14 the contract period at full pay or a full contract period  
15 at half pay. Any faculty member receiving a sabbatical  
16 leave shall be required to return and serve for at least  
17 one year at the institution from which the leave was  
18 granted or to repay to the institution the compensation  
19 received during such leave. Any faculty member  
20 returning from leave shall be reinstated at the academic  
21 rank held prior to such sabbatical unless promoted to  
22 a higher rank and shall be entitled to such salary and  
23 any increases thereto appropriate to the rank and years  
24 of experience of such faculty member. Compensation to  
25 a faculty member on sabbatical leave shall be paid from  
26 the regular personal services appropriations of the  
27 institution where employed.

**§18B-7-3. Effect of leave of absence on academic tenure,  
rank, etc.**

1 Any other provision of law to the contrary notwith-  
2 standing any tenured professional at any state institu-  
3 tion of higher education who shall, with the consent of  
4 the president or other administrative head of the state  
5 institution by which the professional is employed, be  
6 absent from duties at such institution to accept employ-  
7 ment in any nonelected governmental capacity shall be  
8 afforded such benefits of academic tenure, rank and

9 position as if such person had remained continuously in  
10 the position retained and held at such institutions of  
11 higher education immediately preceding any such  
12 absence: *Provided*, That such leave of absence shall not  
13 exceed two years: *Provided, however*, That tenure and  
14 rank may be retained during an absence of more than  
15 two years if the president of the institution from which  
16 such person is on leave of absence submits in writing  
17 during each of such years a request for such retention  
18 to the appropriate governing board, and such board  
19 approves the request for each such year: *Provided*  
20 *further*, That any individual who remains in governmen-  
21 tal employment with leave granted in accordance with  
22 this section shall forfeit all rights to academic tenure,  
23 rank and position formerly held at such institution after  
24 the eighth year of such employment.

**§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.**

1 (a) The president or other administrative head of each  
2 state institution of higher education shall give written  
3 notice to probationary faculty members concerning their  
4 retention or nonretention for the ensuing academic year  
5 (1) not later than the first day of March for those  
6 probationary faculty members who are in their first  
7 academic year of service; (2) not later than the fifteenth  
8 day of December for those probationary faculty  
9 members who are in their second academic year of  
10 service; and (3) at least one year before the expiration  
11 of an appointment for those probationary faculty  
12 members who have been employed two or more years  
13 with the institution. Such notice to those probationary  
14 faculty members not being retained shall be by certified  
15 mail, return receipt requested.

16 (b) Upon request of the probationary faculty member  
17 not retained, the president or other administrative head  
18 of the institution shall within ten days, and by certified  
19 mail, inform the probationary faculty member of the  
20 reasons for nonretention. Any probationary faculty  
21 member who desires to appeal the decision may request  
22 a hearing from the appropriate governing board within  
23 ten days after receiving the statement of reasons. The

24 appropriate governing board shall publish appropriate  
25 rules to govern the conduct of the appeal herein allowed.  
26 Such board shall, by its rules, prescribe either an  
27 unbiased committee of that board or appoint a hearing  
28 examiner to hear such appeals. Such hearing shall be  
29 held at the employing institution and within thirty days  
30 of the request. The rules of evidence shall not strictly  
31 apply. The faculty member shall be accorded substan-  
32 tive and procedural due process, including the right to  
33 produce evidence and witnesses and to cross-examine  
34 witnesses, and to be represented by counsel or other  
35 representative of that faculty member's choice. If the  
36 committee of the board or the hearing examiner shall  
37 conclude that the reasons for nonretention are arbitrary  
38 or capricious or without a factual basis, the faculty  
39 member shall be retained for the ensuing academic  
40 year. The decision shall be rendered within thirty days  
41 after conclusion of the hearing.

42 (c) The term "probationary faculty member" shall be  
43 defined according to rules promulgated by the govern-  
44 ing boards. The rights herein provided to probationary  
45 faculty members are in addition to, and not in lieu of,  
46 other rights afforded them by other rules and other  
47 provisions of law.

**§18B-7-5. Faculty and classified employee continuing  
education and development program.**

1 Each state institution of higher education shall have  
2 the authority to establish and operate a faculty and  
3 classified employee continuing education and develop-  
4 ment program under rules adopted by the appropriate  
5 governing board. Funds allocated or made available  
6 may be used to compensate and pay expenses for faculty  
7 or classified employees who are pursuing additional  
8 academic study or training to better equip themselves  
9 for their duties at the state institutions of higher  
10 education.

11 Rules for this activity may include reasonable provi-  
12 sions for the continuation or return of any faculty or  
13 classified employee receiving the benefits of such  
14 education or training, or for reimbursement by the state

15 for expenditures incurred on behalf of such faculty or  
16 classified employee.

**ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.**

§18B-8-1. Definitions.

§18B-8-2. Higher education minimum salary schedule.

§18B-8-3. Assignment to salary schedule; actual salary.

§18B-8-4. Hirings after July 1, 1989.

§18B-8-5. Merit increases and salary adjustment.

§18B-8-6. Additional employment by mutual agreement.

**§18B-8-1. Definitions.**

1 As used in this article:

2 (a) "Schedule" or "salary schedule" means the grid of  
3 minimum salary figures listed in section two of this  
4 article;

5 (b) "Academic rank" means the position held by a  
6 faculty member as determined by the president,  
7 consistent with policy established by the governing  
8 board, and includes the positions of professor, associate  
9 professor, assistant professor and instructor; all other  
10 ranks are excluded from the provisions of this article;

11 (c) "Years of experience" means the actual number of  
12 years a person has been a full-time faculty member at  
13 an institution of higher education within this state.  
14 Employment for nine months shall equal one year of  
15 experience, but no faculty member may accrue more  
16 than one year of experience during any given academic  
17 year. Employment for less than full time, or less than  
18 nine months during any fiscal year, shall be prorated.  
19 In accordance with rules established by the governing  
20 boards, a faculty member may be granted additional  
21 years of experience for actual years of work or teaching  
22 experience at institutions other than institutions of  
23 higher education within this state;

24 (d) "Doctoral institutions" means West Virginia  
25 University and Marshall University at Huntington.  
26 Doctoral programs at Marshall University shall be  
27 selective and nonduplicative of West Virginia Univer-  
28 sity unless an exception is recommended by both

29 institutions and approved by the board of trustees.  
30 "Master's II institutions" means West Virginia School of  
31 Osteopathic Medicine and the University of West  
32 Virginia College of Graduate Studies; "baccalaureate  
33 and two-year institutions" means Bluefield State  
34 College, Concord College, Fairmont State College,  
35 Glenville State College, Shepherd College, West Liberty  
36 State College, West Virginia Institute of Technology,  
37 West Virginia State College, West Virginia University  
38 at Parkersburg, Southern West Virginia Community  
39 College, West Virginia Northern Community College  
40 and Potomac State College of West Virginia University  
41 and such other institutions as are designated community  
42 colleges by the board of directors;

43 (e) "Salary" means the total nine-month or ten-month  
44 salary paid from state funds to a full-time faculty  
45 member, or if other than nine or ten months, adjusted  
46 to a nine-month base salary;

47 (f) "Full-time faculty" means any faculty member  
48 designated as such by the president, consistent with  
49 approved policy of the appropriate governing board, and  
50 those persons with faculty rank who have research or  
51 administrative responsibilities;

52 (g) "Fiscal year" means twelve calendar months and  
53 begins on the first day of July and ends on the thirtieth  
54 day of June; and

55 (h) "Merit increases and salary adjustments" means  
56 the amount of additional salary increase allowed on a  
57 merit basis or to rectify salary inequities or accommo-  
58 date competitive market conditions, in accordance with  
59 policy established by the appropriate governing board.

#### §18B-8-2. Higher education minimum salary schedule.

1 There is hereby established a state minimum salary  
2 schedule for full-time faculty employed by a governing  
3 board consisting of a minimum salary for each academic  
4 rank in accordance with years of experience: *Provided,*  
5 That it is the intention of the Legislature to create a  
6 schedule of minimum salary goals in higher education  
7 subject to the availability of funds; and with the

8 exception of the placement of all full-time faculty  
 9 members included under the provisions of this article on  
 10 the schedule at zero years of experience, nothing in this  
 11 article shall be construed to guarantee payment to any  
 12 faculty member of the salary indicated on the approp-  
 13 riate schedule at the actual years of experience.

**MINIMUM SALARY SCHEDULE FOR FULL-TIME  
 FACULTY AT BACCALAUREATE AND  
 TWO-YEAR INSTITUTIONS**

	Years of Experience	Instructor	Assistant Professor	Associate Professor	Professor
14	0	14,719	18,042	20,416	24,310
15	1	15,087	18,493	20,926	24,918
16	2	15,464	18,955	21,449	25,541
17	3	15,851	19,429	21,985	26,180
18	4	16,247	19,915	22,535	26,835
19	5	16,653	20,413	23,098	27,506
20	6	17,069	20,923	23,675	28,194
21	7	17,496	21,446	24,267	28,899
22	8	17,933	21,982	24,874	29,621
23	9	18,381	22,532	25,496	30,362
24	10	18,841	23,095	26,133	31,121
25	11		23,672	26,786	31,899
26	12		24,264	27,456	32,696
27	13		24,871	28,142	33,513
28	14		25,493	28,846	34,351
29	15		26,130	29,567	35,210
30	16			30,306	36,090
31	17			31,064	36,992
32	18			31,841	37,917
33	19			32,637	38,865
34	20			33,453	39,837

**MINIMUM SALARY SCHEDULE FOR FULL-TIME  
 FACULTY AT MASTER'S II INSTITUTIONS  
 (WEST VIRGINIA SCHOOL OF  
 OSTEOPATHIC MEDICINE  
 AND THE WEST VIRGINIA COLLEGE  
 OF GRADUATE STUDIES)**

	Years of Experience	Instructor	Assistant Professor	Associate Professor	Professor
35	0	14,719	18,517	23,815	26,203

36	1	15,087	18,980	24,410	26,858
37	2	15,464	19,455	25,020	27,529
38	3	15,851	19,941	25,646	28,217
39	4	16,247	20,440	26,287	28,922
40	5	16,653	20,951	26,944	29,645
41	6	17,069	21,475	27,618	30,386
42	7	17,496	22,012	28,308	31,146
43	8	17,933	22,562	29,016	31,925
44	9	18,381	23,126	29,741	32,723
45	10	18,841	23,704	30,485	33,541
46	11		24,297	31,247	34,380
47	12		24,904	32,028	35,240
48	13		25,527	32,829	36,121
49	14		26,165	33,650	37,024
50	15		26,819	34,491	37,950
51	16			35,353	38,899
52	17			36,237	39,871
53	18			37,143	40,868
54	19			38,072	41,890
55	20			39,024	42,937

**MINIMUM SALARY SCHEDULE FOR  
FULL-TIME FACULTY AT  
DOCTORAL INSTITUTIONS  
(WEST VIRGINIA UNIVERSITY AND  
MARSHALL UNIVERSITY)**

	Years of Experience	Instructor	Assistant Professor	Associate Professor	Professor
56	0	17,092	19,466	25,458	28,285
57	1	17,519	19,953	26,094	28,992
58	2	17,957	20,452	26,746	29,717
59	3	18,406	20,963	27,415	30,460
60	4	18,866	21,487	28,100	31,222
61	5	19,338	22,024	28,803	32,003
62	6	19,821	22,575	29,523	32,803
63	7	20,317	23,139	30,261	33,623
64	8	20,825	23,717	31,018	34,464
65	9	21,346	24,310	31,793	35,326
66	10	21,880	24,918	32,588	36,209
67	11		25,541	33,403	37,114
68	12		26,180	34,238	38,042
69	13		26,835	35,094	38,993

70	14	27,506	35,971	39,968
71	15	28,194	36,870	40,967
72	16		37,792	41,991
73	17		38,737	43,041
74	18		39,705	44,117
75	19		40,698	45,220
76	20		41,715	46,351

**§18B-8-3. Assignment to salary schedule; actual salary.**

1 (a) On or before the first day of July of each year, each  
 2 faculty member then employed shall be given notice by  
 3 the appropriate governing board of the placement on the  
 4 minimum salary schedule which is appropriate to such  
 5 faculty member's years of experience and to which such  
 6 individual has been assigned, notwithstanding the  
 7 actual salary paid under the provisions of this article.

8 (b) Each full-time faculty member employed as of the  
 9 effective date of this section shall receive for full-time  
 10 employment at the same academic rank during the  
 11 academic year one thousand nine hundred eighty-nine—  
 12 ninety, and thereafter, a salary which is no less than the  
 13 salary being paid such faculty member for the academic  
 14 year one thousand nine hundred eighty-eight—eighty-  
 15 nine. No full-time faculty member shall receive a salary  
 16 which is less than the salary for zero years of experience  
 17 for the appropriate academic rank as set forth in section  
 18 two of this article.

19 (c) Effective the first day of January, one thousand  
 20 nine hundred ninety, an amount equal to five percent  
 21 of one-half the amount appropriated and distributed in  
 22 the fiscal year beginning on the first day of July, one  
 23 thousand nine hundred eighty-nine, for salaries for full-  
 24 time faculty members shall be distributed in the  
 25 following manner: Such amount as may be necessary  
 26 shall be distributed to each faculty member who is  
 27 employed on the first day of January, one thousand nine  
 28 hundred ninety, so that each such employee shall receive  
 29 for the same employment at the same academic rank a  
 30 salary which is at least equal to the salary being paid  
 31 such faculty member during the fiscal year one thou-  
 32 sand nine hundred eighty-eight—eighty-nine, and a



33 salary increase equal to two and one-half percent of such  
34 salary. The Legislature may by general appropriation,  
35 or the secretary of the department of education and the  
36 arts may allocate through authority set forth under the  
37 provisions of chapter five-f of this code, funds to be  
38 distributed for the purpose of accommodating market  
39 and equity conditions within the system. Any remaining  
40 funds shall be applied in accordance with the provisions  
41 of subsection (d) of this section.

42 (d) Funds remaining after meeting the salary of each  
43 full-time faculty member in accordance with subsections  
44 (b) and (c) of this section shall be used to pay that  
45 amount that is the difference between such salary and  
46 the appropriate salary for each full-time faculty  
47 member's appropriate placement on the schedule:  
48 *Provided*, That such amount may be reduced proportion-  
49 ately based upon the amount of funds available for such  
50 purpose: *Provided, however*, That in the case of Marshall  
51 University, the difference between the salary paid a full-  
52 time faculty member and the appropriate salary for the  
53 faculty member's appropriate placement on the salary  
54 schedule shall, for fiscal year one thousand nine hundred  
55 eighty-nine—ninety, be calculated using the minimum  
56 salary schedule for full-time faculty at master's II  
57 institutions set forth in section two of this article.

58 (e) The salary of any full-time faculty member shall  
59 not be reduced by the provisions of this article.

60 (f) Upon promotion in rank, placement on the min-  
61 imum salary schedule shall be such as to provide a  
62 salary increase of at least ten percent, and shall be at  
63 least the amount prescribed for the appropriate aca-  
64 demic rank to which promoted at zero years of expe-  
65 rience.

#### §18B-8-4. Hirings after July 1, 1989.

1 Any person hired as a full-time faculty member after  
2 the effective date of this section shall be assigned a  
3 placement on the minimum salary schedule which is  
4 appropriate to such person's academic rank and years  
5 of experience, and such person shall have a salary of at  
6 least zero years of experience at the appropriate

7 academic rank, and such proportionate increases as are  
 8 or may be made from funds available for such purpose  
 9 in accordance with the provisions of this article.

**§18B-8-5. Merit increases and salary adjustment.**

1 Nothing in this article shall be construed to prohibit  
 2 merit increases or salary adjustments that rectify  
 3 inequities or accommodate competitive market condi-  
 4 tions in specific areas of specialty, including inequities  
 5 within the rank of full professors at doctoral and  
 6 master's level institutions: *Provided*, That funds for such  
 7 increases and/or adjustments shall be distributed in  
 8 accordance with rules of the appropriate governing  
 9 board and shall be available to all state institutions of  
 10 higher education on an equitable basis.

**§18B-8-6. Additional employment by mutual agreement.**

1 Any employment for greater than a nine-month  
 2 period, or any responsibilities in excess of full-time  
 3 duties, shall be only by mutual agreement of the  
 4 employee and the institutional president or other  
 5 administrative head, or the designated representative,  
 6 in accordance with rules of the appropriate governing  
 7 board. The terms and conditions of any such agreement  
 8 shall be in writing, signed by both parties, and shall  
 9 state the maximum number of additional employment  
 10 days or credit hours or their equivalent to be worked  
 11 and the amount of compensation to be paid.

**ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND  
 CLASSIFICATION SYSTEM.**

§18B-9-1. Legislative purpose.

§18B-9-2. Definitions.

§18B-9-3. Higher education classified employee monthly salary schedule.

§18B-9-4. Establishment of personnel classification system; assignment to  
 classification and to salary schedule.

§18B-9-5. Classified employee salary.

§18B-9-6. Annual review of classifications and classification system; notice  
 and reports required.

§18B-9-7. Conferences regarding personnel classification.

§18B-9-8. Hirings after effective date.

§18B-9-9. Additional employment by mutual agreement; provision for  
 governing board approval.

**§18B-9-1. Legislative purpose.**

1 The purpose of the Legislature in the enactment of  
 2 this article is to require the governing boards to

3 establish, control, supervise and manage a complete,  
4 uniform system of personnel classification in accordance  
5 with the provisions of this article for all employees other  
6 than faculty and nonclassified employees at state  
7 institutions of higher education.

### §18B-9-2. Definitions.

1 As used in this article:

2 (a) "Classified employee or employee" means any  
3 regular full-time or regular part-time employee of a  
4 governing board, including all employees of the West  
5 Virginia network for educational telecomputing and  
6 beginning the first day of July, one thousand nine  
7 hundred ninety, includes employees at the central office  
8 of the governing boards, who hold a position that is  
9 assigned a particular job title and pay grade in  
10 accordance with the personnel classification system  
11 established by the appropriate governing board and  
12 shall include all employees of the West Virginia network  
13 for educational telecomputing;

14 (b) "Nonclassified employee" means an individual who  
15 is responsible for policy formation at the institutional  
16 level or reports directly to the president: *Provided*, That  
17 the percentage of personnel placed in the category of  
18 "nonclassified" at any given institution shall not exceed  
19 four percent of the total number of employees of that  
20 institution who are eligible for membership in any state  
21 retirement system of the state of West Virginia or other  
22 retirement plan authorized by the state. Final approval  
23 of such placement shall be with the appropriate  
24 governing board;

25 (c) "Job description" means the specific listing of  
26 duties and responsibilities as determined by the approp-  
27 riate governing board and associated with a particular  
28 job title;

29 (d) "Job title" means the name of the position or job  
30 as defined by the appropriate governing board;

31 (e) "Job classification" means a grouping of job titles  
32 with the same name without regard to their numerical

33 designations, or any job title for which there is no  
34 related title of the same name;

35 (f) "Grade of classification" means a job title or  
36 position with its numerical designation which distin-  
37 guishes it from other titles in the same classification;

38 (g) "Merit increases and salary adjustments" means  
39 the amount of additional salary increase allowed on a  
40 merit basis or to rectify salary inequities or accommo-  
41 date competitive market conditions in accordance with  
42 rules established by the appropriate governing board;

43 (h) "Pay grade" means the letter grade assigned by  
44 the appropriate governing board to a particular job title  
45 and refers to the horizontal column heading of the salary  
46 schedule established in section three of this article;

47 (i) "Personnel classification system" means the pro-  
48 cess of job categorization adopted by the appropriate  
49 governing board by which job title, job description, pay  
50 grade and placement on the salary schedule are  
51 determined;

52 (j) "Salary" means the amount of compensation paid  
53 through the state treasury per month to a classified  
54 employee;

55 (k) "Schedule" or "salary schedule" means the grid of  
56 monthly salary figures established in section three of  
57 this article; and

58 (l) "Years of experience" means the number of years  
59 a person has been an employee of the state of West  
60 Virginia and refers to the vertical column heading of the  
61 salary schedule established in section three of this  
62 article. For the purpose of placement on the salary  
63 schedule pursuant to said section three, employment for  
64 nine months or more shall equal one year of experience,  
65 but no classified employee may accrue more than one  
66 year of experience during any given fiscal year.  
67 Employment for less than full time or less than nine  
68 months during any fiscal year shall be prorated. For the  
69 purpose of determining the amount of annual salary  
70 increase pursuant to subsection (b) of section five of this  
71 article, employment for less than twelve months during  
72 any fiscal year shall be prorated. In accordance with

73 rules established by the appropriate governing board, a  
 74 classified employee may be granted additional years of  
 75 experience not to exceed the actual number of years of  
 76 prior, relevant work or experience at accredited  
 77 institutions of higher education other than state institu-  
 78 tions of higher education.

**§18B-9-3. Higher education classified employee monthly salary schedule.**

1 There is hereby established a state monthly salary  
 2 schedule for classified employees consisting of a  
 3 minimum monthly salary for each pay grade in accor-  
 4 dance with years of experience: *Provided*, That payment  
 5 of the minimum salary shall be subject to the availabil-  
 6 ity of funds, and nothing in this article shall be  
 7 construed to guarantee payment to any classified  
 8 employee of the salary indicated on the schedule at the  
 9 actual years of experience. The minimum salary herein  
 10 indicated shall be prorated for regular part-time  
 11 classified employees.

**HIGHER EDUCATION CLASSIFIED  
 EMPLOYEE MONTHLY SALARY SCHEDULE  
 PAY GRADE**

	Years of Experi- ence	A	B	C	D	E	F	G	H	I
12	0	861	921	985	1,054	1,127	1,206	1,294	1,393	1,504
13	1	881	941	1,005	1,074	1,147	1,226	1,334	1,433	1,544
14	2	901	961	1,025	1,094	1,167	1,246	1,374	1,473	1,584
15	3	921	981	1,045	1,114	1,187	1,266	1,414	1,513	1,624
16	4	941	1,001	1,065	1,134	1,207	1,286	1,454	1,553	1,664
17	5	961	1,021	1,085	1,154	1,227	1,306	1,494	1,593	1,704
18	6	981	1,041	1,105	1,174	1,247	1,326	1,534	1,633	1,744
19	7	1,001	1,061	1,125	1,194	1,267	1,346	1,574	1,673	1,784
20	8	1,021	1,081	1,145	1,214	1,287	1,366	1,614	1,713	1,824
21	9	1,041	1,101	1,165	1,234	1,307	1,386	1,654	1,753	1,864
22	10	1,066	1,126	1,190	1,259	1,332	1,411	1,704	1,803	1,914
23	11	1,091	1,151	1,215	1,284	1,357	1,436	1,754	1,853	1,964
24	12	1,116	1,176	1,240	1,309	1,382	1,461	1,804	1,903	2,014
25	13	1,141	1,201	1,265	1,334	1,407	1,486	1,854	1,953	2,064
26	14	1,166	1,226	1,290	1,359	1,432	1,511	1,904	2,003	2,114
27	15	1,191	1,251	1,315	1,384	1,457	1,536	1,954	2,053	2,164
28	16	1,216	1,276	1,340	1,409	1,482	1,561	2,004	2,103	2,214
29	17	1,241	1,301	1,365	1,434	1,507	1,586	2,054	2,153	2,264

30	18	1,266	1,326	1,390	1,459	1,532	1,611	2,104	2,203	2,314
31	19	1,291	1,351	1,415	1,484	1,557	1,636	2,154	2,253	2,364
32	20	1,316	1,376	1,440	1,509	1,582	1,661	2,204	2,303	2,414

**HIGHER EDUCATION CLASSIFIED  
EMPLOYEE MONTHLY SALARY SCHEDULE  
PAY GRADE**

		Years of Experi- ence									
		J	K	L	M	N	O	P	Q	R	
33	0	1,629	1,770	1,929	2,109	2,312	2,543	2,805	3,103	3,443	
34	1	1,669	1,810	1,969	2,169	2,372	2,603	2,865	3,163	3,503	
35	2	1,709	1,850	2,009	2,229	2,432	2,663	2,925	3,223	3,563	
36	3	1,749	1,890	2,049	2,289	2,492	2,723	2,985	3,283	3,623	
37	4	1,789	1,930	2,089	2,349	2,552	2,783	3,045	3,343	3,683	
38	5	1,829	1,970	2,129	2,409	2,612	2,843	3,105	3,403	3,743	
39	6	1,869	2,010	2,169	2,469	2,672	2,903	3,165	3,463	3,803	
40	7	1,909	2,050	2,209	2,529	2,732	2,963	3,225	3,523	3,863	
41	8	1,949	2,090	2,249	2,589	2,792	3,023	3,285	3,583	3,923	
42	9	1,989	2,130	2,289	2,649	2,852	3,083	3,345	3,643	3,983	
43	10	2,039	2,180	2,339	2,724	2,927	3,158	3,420	3,718	4,058	
44	11	2,089	2,230	2,389	2,799	3,002	3,233	3,495	3,793	4,133	
45	12	2,139	2,280	2,439	2,874	3,077	3,308	3,570	3,868	4,208	
46	13	2,189	2,330	2,489	2,949	3,152	3,383	3,645	3,943	4,283	
47	14	2,239	2,380	2,539	3,024	3,227	3,458	3,720	4,018	4,358	
48	15	2,289	2,430	2,589	3,099	3,302	3,533	3,795	4,093	4,433	
49	16	2,339	2,480	2,639	3,174	3,377	3,608	3,870	4,168	4,508	
50	17	2,389	2,530	2,689	3,249	3,452	3,683	3,945	4,243	4,583	
51	18	2,439	2,580	2,739	3,324	3,527	3,758	4,020	4,318	4,658	
52	19	2,489	2,630	2,789	3,399	3,602	3,833	4,095	4,393	4,733	
53	20	2,539	2,680	2,839	3,474	3,677	3,908	4,170	4,468	4,808	

**§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.**

1 Before the first day of July, one thousand nine  
 2 hundred ninety, the governing boards shall establish by  
 3 rule and implement an equitable system of job classi-  
 4 fications, each classification to consist of related job  
 5 titles and corresponding job descriptions for each  
 6 position within a classification, together with the  
 7 designation of an appropriate pay grade for each job  
 8 title, which system shall be the same for corresponding  
 9 positions in institutions under both boards. The system  
 10 of job classifications shall be submitted to the secretary

11 of education and the arts for review and approval prior  
12 to implementation on said date.

13 By such date and with consideration to recommenda-  
14 tions of the institutions, the appropriate governing  
15 board shall furnish each classified employee written  
16 confirmation of the assignment to the appropriate  
17 classification, job title and pay grade and of the proper  
18 placement on the salary schedule pursuant to section  
19 three of this article notwithstanding the actual salary  
20 paid. Such assignment may be appealed in accordance  
21 with article twenty-nine of chapter eighteen of this code:  
22 *Provided*, That nothing herein shall nullify or void any  
23 personnel classification system in effect immediately  
24 prior to the first day of July, one thousand nine hundred  
25 eighty-nine.

**§18B-9-5. Classified employee salary.**

1 (a) Each classified employee who is employed by a  
2 governing board on the first day of July, one thousand  
3 nine hundred eighty-nine, shall receive for the same  
4 employment at the same pay grade during the fiscal  
5 year commencing on such date and thereafter, a  
6 monthly salary which is at least equal to the final  
7 monthly salary paid such classified employee for the  
8 fiscal year commencing on the first day of July, one  
9 thousand nine hundred eighty-eight, to be paid in equal  
10 installments within the regular pay periods.

11 (b) Commencing with the fiscal year beginning on the  
12 first day of July, one thousand nine hundred eighty-nine,  
13 and each fiscal year thereafter, each classified employee  
14 with three or more years of experience shall receive an  
15 annual salary increase equal to thirty-six dollars times  
16 the employee's years of experience, less any incremental  
17 salary increase granted in a prior fiscal year and  
18 actually incorporated into and becoming an integral  
19 part of base salary prior to fiscal year one thousand nine  
20 hundred ninety: *Provided*, That such annual salary  
21 increase shall not exceed the amount granted for the  
22 maximum of twenty years of experience. These incre-  
23 mental increases shall be in lieu of any salary increase  
24 received pursuant to section two, article five, chapter

25 five of this code; shall be in addition to any across-the-  
26 board, cost-of-living or percentage salary increases  
27 which may be granted in any fiscal year by the  
28 Legislature; and shall be paid in equal installments  
29 within the regular pay periods.

30 (c) Each classified employee whose monthly salary  
31 under subsections (a) and (b) of this section is less than  
32 the minimum monthly salary for zero years of expe-  
33 rience for the appropriate pay grade as set forth in  
34 section three of this article shall receive additional  
35 compensation such that the monthly salary is at least the  
36 minimum amount prescribed for the appropriate pay  
37 grade at zero years of experience: *Provided*, That such  
38 amounts may be reduced proportionately based upon the  
39 amount of funds available for such purpose.

40 (d) Any funds remaining after increasing the monthly  
41 salary of each classified employee to at least the  
42 minimum amount prescribed for the appropriate pay  
43 grade at zero years of experience shall be used to place  
44 classified employees on the salary schedule at their  
45 appropriate years of experience: *Provided*, That such  
46 amount may be reduced proportionately based upon the  
47 amount of funds available for such purpose.

48 (e) Any classified employee may receive merit in-  
49 creases and/or salary adjustments in accordance with  
50 policies established by the board: *Provided*, That funds  
51 for such increases and/or adjustments shall be distrib-  
52 uted in accordance with rules of the appropriate  
53 governing board and shall be available to all state  
54 institutions of higher education on an equitable basis.

55 (f) The current monthly salary of any classified  
56 employee may not be reduced by the provisions of this  
57 article nor by any other action inconsistent with the  
58 provisions of this article, and nothing in this article shall  
59 be construed to prohibit promotion of any classified  
60 employee to a job title carrying a higher pay grade if  
61 such promotion is in accordance with the provisions of  
62 this article and the personnel classification system  
63 established by the appropriate governing board.

64 (g) Effective the first day of January, one thousand



65 nine hundred ninety, an amount equal to five percent  
66 of one half the amount appropriated and distributed in  
67 the fiscal year beginning on the first day of July, one  
68 thousand nine hundred eighty-nine, for salaries for full-  
69 time classified employees shall be distributed in the  
70 following manner: Such amount as may be necessary  
71 shall be distributed to each classified employee who is  
72 employed on the first day of January, one thousand nine  
73 hundred ninety, so that each such employee shall receive  
74 for the same employment at the same pay grade a  
75 monthly salary which is at least equal to the final  
76 monthly salary paid such classified employee for the last  
77 month of such employee's employment during the fiscal  
78 year one thousand nine hundred eighty-eight—eighty-  
79 nine, and a salary increase equal to two and one-half  
80 percent of such final monthly salary. Any remaining  
81 funds shall be applied in accordance with the provisions  
82 of this section.

**§18B-9-6. Annual review of classifications and classifica-  
tion system; notice and reports required.**

1 Each institution shall review annually each job  
2 description in relationship to the assigned duties and  
3 responsibilities, current job title and pay grade of each  
4 classified employee of that institution. Based upon the  
5 data collected through such review, each institution  
6 shall determine which, if any, of its classified employees  
7 should be recommended for a change in job title in order  
8 to conform to the personnel classification system of its  
9 governing board: *Provided*, That any classified employee  
10 filling a position or carrying out the duties and  
11 responsibilities of a position normally assigned a higher  
12 pay grade in accordance with the personnel classifica-  
13 tion system established by the appropriate governing  
14 board shall be recommended for a change in job title  
15 or shall be returned immediately to the duties and  
16 responsibilities outlined in the appropriate job  
17 description.

18 Each institution shall submit to the appropriate  
19 governing board by the first day of September, one  
20 thousand nine hundred eighty-nine, and each year  
21 thereafter, a report which shall include the steps being

22 taken to ensure proper employee classification in  
23 accordance with the appropriate job titles and pay  
24 grades as established by its governing board, any  
25 recommended changes in job title, the justification for  
26 such recommendations, the effect of such changes on  
27 existing personnel, and the fiscal impact thereof.

28 Each institution also may submit, as a part of its  
29 annual report to its governing board, recommendation  
30 for alterations in job descriptions or classifications,  
31 changes in corresponding pay grades, or creation of new  
32 job titles or classifications. Such changes, if approved by  
33 its governing board, shall be made a part of the  
34 personnel classification system of the governing board  
35 and shall be applied uniformly at all institutions:  
36 *Provided, That*, when necessary, the governing board  
37 may order changes in classifications or changes in job  
38 titles upon its own authority and shall notify the  
39 institutions of such changes within thirty days.

40 Each governing board, upon receipt and review of the  
41 annual report submitted by each institution under its  
42 control, shall notify the reporting institution by the first  
43 day of December, one thousand nine hundred eighty-  
44 nine, and each year thereafter, of any action taken in  
45 response to recommendations made by the institution.  
46 Immediately upon receipt of notification of any changes  
47 in the personnel classification system by its governing  
48 board, the institution shall post copies of such notice in  
49 prominent campus locations. Changes in classification or  
50 changes in job title, as approved by the appropriate  
51 governing board, shall be effective no later than the first  
52 day of July of each year. When such changes affect  
53 currently employed personnel, each classified employee  
54 so affected shall be notified in writing regarding such  
55 change and the effect thereof.

**§18B-9-7. Conferences regarding personnel classifica-  
tion.**

- 1 (a) The president of the institution or the designees
- 2 charged with responsibility to develop any personnel
- 3 recommendations for inclusion in the institution's
- 4 annual report to its governing board shall meet and

5 confer during development of the recommendations with  
6 any classified employee who (1) may be affected by  
7 proposed recommendations to its governing board; or (2)  
8 has requested a change in job title.

9 (b) In accordance with the provisions of article twenty-  
10 nine, chapter eighteen of this code relating to employee  
11 grievance procedures, a classified employee may appeal  
12 the initial assignment, any change in the assigned  
13 classification or job title, or any change in the system  
14 of classification, whether such change is the result of  
15 action taken by the appropriate governing board upon  
16 its own authority or upon the recommendations of the  
17 institutions.

**§18B-9-8. Hirings after effective date.**

1 Any individual hired as a full-time classified employee  
2 after the effective date of this section shall be assigned  
3 by the appropriate governing board, with consideration  
4 to any recommendations of the institution, to a place-  
5 ment on the salary schedule which is appropriate to such  
6 individual's classification, job title, pay grade and years  
7 of experience: *Provided*, That nothing in this section  
8 shall be construed to guarantee to a newly hired  
9 classified employee payment of the salary prescribed in  
10 section three of this article.

**§18B-9-9. Additional employment by mutual agreement;  
provision for governing board approval.**

1 In accordance with rules established by its governing  
2 board and by mutual agreement, the president of an  
3 institution, or a designated representative, and a  
4 classified employee at such institution may agree on  
5 duties to be performed by such employee in addition to  
6 those duties listed in the job description. The terms and  
7 conditions of any such agreement shall be in writing,  
8 signed by both parties, and shall describe the additional  
9 duties to be performed, the length of time such agree-  
10 ment shall be in force and the additional compensation  
11 to be paid. Such agreement shall be submitted to the  
12 appropriate governing board and shall be in effect  
13 unless and until the institution receives notice of

- 14 nonapproval within ten working days following the  
15 submission thereof.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE  
INSTITUTIONS OF HIGHER EDUCATION.**

- §18B-10-1. Enrollment, tuition and other fees at educational institutions;  
refund of fees.
- §18B-10-2. Higher education resource fee.
- §18B-10-3. Faculty improvement fee.
- §18B-10-4. Medical education fee.
- §18B-10-4a. Health professions education fee.
- §18B-10-5. Fee waivers—Undergraduate schools.
- §18B-10-6. Same—Professional and graduate schools.
- §18B-10-7. Tuition and fee waivers for children and spouses of officers and  
firefighters killed in the line of duty.
- §18B-10-8. Collection; disposition and use of additional registration fee;  
creation of special capital improvements funds; revenue  
bonds.
- §18B-10-9. Authority to excuse students in certain educational programs  
from payment of enrollment fees.
- §18B-10-10. Disposition and use of student union fees; issuance of revenue  
bonds.
- §18B-10-11. Fees and money derived from athletic contests.
- §18B-10-12. Student activity fees.
- §18B-10-13. Fees from operation of dormitories, faculty homes, dining halls  
and cafeterias.
- §18B-10-14. Bookstores.
- §18B-10-15. Authority of educational institutions to provide special services  
and programs; collection and disposition of fees therefor.
- §18B-10-16. Disposition of funds in state treasury.

**§18B-10-1. Enrollment, tuition and other fees at educa-  
tional institutions; refund of fees.**

- 1 (a) Each governing board shall fix tuition and other  
2 fees for each school term for the different classes or  
3 categories of students enrolling at each state institution  
4 of higher education under its jurisdiction and may  
5 include among such fees any one or more of the  
6 following: (1) Health service fees, (2) infirmary fees, (3)  
7 student activities, recreational, athletic and extracurric-  
8 ular fees, which said fees may be used to finance a  
9 student's attorney to perform legal services for students  
10 in civil matters at such institutions: *Provided*, That such  
11 legal services shall be limited to only those types of  
12 cases, programs or services approved by the administra-  
13 tive head of such institution where such legal services  
14 are to be performed; and (4) graduate center fees and

15 branch college fees, or either, if the establishment and  
16 operations of graduate centers or branch colleges are  
17 otherwise authorized by law. All fees collected at any  
18 graduate center or at any branch college shall be paid  
19 into special funds and shall be used solely for the  
20 maintenance and operation of the graduate center or  
21 branch college at which they were collected: *Provided,*  
22 *however,* That the maximum fees to be collected under  
23 this section for resident students shall not exceed five  
24 hundred dollars per semester, and for nonresident  
25 students, one thousand dollars per semester. The  
26 schedule of all fees, and any changes therein, shall be  
27 entered in the minutes of the meeting of the appropriate  
28 governing board, and the board shall file with the  
29 legislative auditor a certified copy of such schedule and  
30 changes.

31 (b) In addition to the fees mentioned in the preceding  
32 paragraph, each governing board may impose and  
33 collect a student union building fee. All such building  
34 fees collected at an institution shall be paid into a special  
35 student union building fund for such institution, which  
36 is hereby created in the state treasury, and shall be used  
37 only for the construction, operation and maintenance of  
38 a student union building or a combination student union  
39 and dining hall building or for the payment of the  
40 principal of and interest on any bond issued to finance  
41 part or all of the construction of a student union  
42 building or a combination student union and dining hall  
43 building or the renovation of an existing structure for  
44 use as a student union building or a combination student  
45 union and dining hall building, all as more fully  
46 provided in section ten of this article. Any moneys in  
47 such funds not immediately needed for such purposes  
48 may be invested in any such bonds or other securities  
49 as are now or hereafter authorized as proper invest-  
50 ments for state funds.

51 (c) Refund, as an erroneous payment, may be made of  
52 any such fees upon the voluntary or involuntary  
53 withdrawal from classes of any student until eight  
54 weeks of the school semester or term have expired, but  
55 no refund may be made thereafter.

**§18B-10-2. Higher education resource fee.**

1 In addition to the fees specifically provided for in  
2 section one of this article, all students enrolled for credit  
3 at a state institution of higher education shall pay a  
4 higher education resource fee. Each governing board  
5 shall fix the fee rates for the various institutions and  
6 classes of students under its jurisdiction and may from  
7 time to time change these rates. The amount of the fee  
8 charged at each institution shall be prorated for part-  
9 time students. The fee imposed by this section is in  
10 addition to the maximum fees allowed to be collected  
11 under the provision of section one of this article and is  
12 not limited thereby. Refunds of such fee may be made  
13 in the same manner as any other fee collected at state  
14 institutions of higher education.

15 Eighty percent of the total fees collected at each  
16 institution pursuant to this section shall be deposited in  
17 a special fund in the state treasury for the institution  
18 at which the fees are collected and may be used by the  
19 institution for libraries and library supplies, including  
20 books, periodicals, subscriptions and audiovisual mate-  
21 rials, instructional equipment and materials; and for the  
22 improvement in quality and scope of student services.  
23 The remaining twenty percent of fee collections shall be  
24 deposited in a special fund and expended or allocated  
25 by the appropriate governing board to meet general  
26 operating expenses, excluding personal services, of the  
27 state university system or state college system from  
28 which the fees were collected: *Provided*, That the board  
29 shall, to the maximum extent practicable, offset the  
30 impact, if any, on financially needy students of any  
31 potential fee increases under this section by allocating  
32 an appropriate amount of such fee revenue to the state  
33 scholarship program to be expended in accordance with  
34 the provisions of article twenty-two-b of chapter  
35 eighteen of this code.

36 Each governing board shall, on or before the first day  
37 of July of each year, provide the legislative auditor with  
38 a report of the projected fee collections for the board and  
39 each of its institutions and the expenditures proposed for  
40 such fee.

**§18B-10-3. Faculty improvement fee.**

1 In addition to the fees specifically provided for in  
2 sections one and two of this article, all students enrolled  
3 for credit at a state institution of higher education shall  
4 pay a faculty improvement fee. Each governing board  
5 shall fix the fee rates for the various institutions and  
6 classes of students under its jurisdiction and may from  
7 time to time change these rates: *Provided*, That the fee  
8 for each class of students shall be uniform throughout  
9 the state and shall be no less than fifteen dollars per  
10 semester for residents and no less than fifty dollars per  
11 semester for out-of-state students. The amount of the fee  
12 charged at each institution shall be prorated for part-  
13 time students. The fee imposed by this section is in  
14 addition to the maximum fees allowed to be collected  
15 under the provisions of section one of this article and is  
16 not limited thereby. Refunds of the fee may be made in  
17 the same manner as any other fee collected at state  
18 institutions of higher education.

19 All faculty improvement fees collected shall be  
20 deposited in a special fund in the state treasury. Each  
21 governing board shall use such fees, including any fees  
22 on deposit as of the effective date of this section, to the  
23 extent available to implement article eight of this  
24 chapter.

25 Each governing board shall, before the first day of  
26 July of each year, provide the legislative auditor with  
27 a report of the projected fee collections for each of its  
28 institutions.

**§18B-10-4. Medical education fee.**

1 In addition to the fees specifically provided for in  
2 sections one, two and three of this article, all medical  
3 students enrolled for credit at the West Virginia  
4 University school of medicine, Marshall University  
5 school of medicine and the West Virginia school of  
6 osteopathic medicine shall pay a medical education fee.  
7 The board of trustees shall fix the fee rates for students  
8 at each institution and may from time to time change  
9 these rates. The fee imposed by this section is in addition  
10 to the maximum fees allowed to be collected under the

11 provisions of section one of this article and is not limited  
12 thereby. Refunds of the fee may be made in the same  
13 manner as any other fee collected at state institutions  
14 of higher education. Medical education fees collected  
15 shall be deposited in a special revenue account which is  
16 hereby created in the state treasury for the school at  
17 which the fees are collected and shall be used by the  
18 school to offset general operating costs: *Provided*, That  
19 the board of trustees may deposit a portion of the total  
20 fees collected therein into the medical student loan fund  
21 account in accordance with the provisions of article two,  
22 chapter eighteen of this code. Before the first day of July  
23 of each year, the board of trustees shall provide the  
24 legislative auditor with a report of the projected fee  
25 collections for each of the schools of medicine.

**\*§18B-10-4a. Health professions education fee.**

1 In addition to the fees specifically provided for in  
2 sections one, two, three and four of this article, all  
3 students enrolled for credit at the West Virginia  
4 University health sciences center, Marshall University  
5 school of medicine and the West Virginia school of  
6 osteopathic medicine, shall pay a health professions  
7 education fee. The board of trustees shall fix the amount  
8 of the fee and may from time to time change that  
9 amount. The fee imposed by this section is in addition  
10 to the maximum fees allowed to be collected under the  
11 provisions of section one of this article and is not limited  
12 thereby. Refunds of the fee may be made in the same  
13 manner as any other fee collected at state institutions  
14 of higher education. All moneys collected from the  
15 health professions education fees shall be deposited in  
16 a special revenue account for the respective school from  
17 which collection is made, said accounts shall be hereby  
18 created in the state treasury for the West Virginia  
19 health sciences center, Marshall University school of  
20 medicine, and the West Virginia school of osteopathic  
21 medicine. The moneys in such fund shall be used to  
22 offset general operating costs for health sciences  
23 education in this state. Before the first day of July

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\* Clerk's Note: Similar provisions of this section also appear in H. B. 2866, §18-24-11, which passed prior to this act.



24 of each year, the board of trustees shall provide the  
25 legislative auditor with a report of the projected fee  
26 collections during the next fiscal year and a report of  
27 fee expenditures for the preceding fiscal year.

**§18B-10-5. Fee waivers — Undergraduate schools.**

1 Each governing board may establish, from time to  
2 time, fee waivers for students in undergraduate studies  
3 at institutions under its jurisdiction entitling recipients  
4 to waiver of enrollment, tuition, registration, higher  
5 education resource and other fees subject to the  
6 following conditions and limitations:

7 (1) No state educational institution may have in effect  
8 at any time undergraduate fee waivers in a number  
9 which exceeds five percent of the number of full-time  
10 equivalent undergraduate students registered during  
11 the fall semester of the immediately preceding academic  
12 year.

13 (2) Each undergraduate fee waiver shall entitle the  
14 recipient thereof to attend a designated state educa-  
15 tional institution without payment of the enrollment,  
16 tuition, registration, higher education resource and  
17 other fees as may be prescribed by the governing board  
18 and be for a period of time not to exceed eight semesters  
19 of undergraduate study.

20 (3) The governing board shall make rules governing  
21 the award of undergraduate fee waivers, the issuance  
22 and cancellation of certificates entitling the recipients  
23 to the benefits thereof, the use of the fee waivers by the  
24 recipients and the rights and duties of the recipients in  
25 respect to the fee waivers. These rules may not be  
26 inconsistent with the provisions of this section.

27 (4) The awarding of undergraduate fee waivers shall  
28 be entered in the minutes of the meetings of the  
29 governing board, and each board shall file with the  
30 legislative auditor a copy of the rules governing the  
31 award of the fee waivers and a list of the names of the  
32 recipients thereof.

**§18B-10-6. Same — Professional and graduate schools.**

1 In addition to the fee waivers heretofore authorized  
2 for undergraduate study by the provisions of section five  
3 of this article, each governing board may establish from  
4 time to time fee waivers for study in graduate and  
5 professional schools under their jurisdiction, including  
6 medicine and dentistry, entitling the recipients to  
7 waiver of enrollment, tuition, registration, higher  
8 education resource and other fees, subject to the  
9 following conditions and limitations:

10 (1) West Virginia University may not have in effect  
11 at any time graduate and professional school fee waivers  
12 in a number which exceeds ten percent of the number  
13 of full-time equivalent graduate and professional  
14 students registered during the corresponding fall  
15 semester, spring semester and summer term of the  
16 immediately preceding academic year. In addition to the  
17 above ten percent, all graduate assistants employed by  
18 West Virginia University shall be granted a fee waiver.  
19 All other institutions of higher education may not have  
20 in effect at any time graduate and professional school  
21 fee waivers in a number which exceeds five percent of  
22 the number of full-time equivalent graduate and  
23 professional students registered during the correspond-  
24 ing fall semester, spring semester and summer term of  
25 the immediately preceding academic year. In addition  
26 to the above five percent, all graduate assistants  
27 employed by the other institutions shall be granted a fee  
28 waiver.

29 (2) Each graduate or professional school fee waiver  
30 shall entitle the recipient to waiver of the enrollment,  
31 tuition, registration, higher education resource and  
32 other fees as may be prescribed by the governing boards  
33 and be for a period of time not to exceed the number  
34 of semesters normally required in the recipient's  
35 academic discipline.

36 (3) The governing boards shall make rules governing  
37 the award of graduate and professional school fee  
38 waivers, the issuance and cancellation of certificates  
39 entitling the recipients to the benefits thereof, the use  
40 of the fee waivers by the recipients and the rights and

41 duties of the recipients in respect to the fee waivers.  
42 These rules may not be inconsistent with the provisions  
43 of this section.

44 (4) The awarding of graduate and professional school  
45 fee waivers shall be entered in the minutes of the  
46 meeting of each governing board, and each board shall  
47 file with the legislative auditor a copy of the rules  
48 governing the award of the fee waiver and a list of the  
49 names of the recipients thereof.

**§18B-10-7. Tuition and fee waivers for children and  
spouses of officers and firefighters killed  
in the line of duty.**

1 Each state institution of higher education shall permit  
2 any person to attend its undergraduate courses and  
3 classes if classroom space is available without charging  
4 such person any tuition or any fees, including those  
5 provided in sections two and three of this article, if such  
6 person is the child or spouse of a law-enforcement officer  
7 as defined in section one, article twenty-nine, chapter  
8 thirty of this code, a correctional officer at a state penal  
9 institution, a conservation officer, or a registered  
10 firefighter, and such officer or firefighter was killed in  
11 the line of duty while employed by the state or any  
12 political subdivision thereof, or such firefighter was a  
13 member of a volunteer fire department serving a  
14 political subdivision of this state: *Provided*, That the  
15 state institution of higher education may require such  
16 person to pay special fees, including any laboratory fees,  
17 if such fees are required of all other students taking a  
18 single or the particular course and may also require  
19 such person to pay for parking. The governing boards  
20 may promulgate rules for determining the availability  
21 of classroom space and other rules as it considers  
22 necessary to implement this section, including rules  
23 regarding qualifications for attendance, which shall not  
24 exceed the qualifications required of other persons.

25 The governing boards may also extend to persons  
26 attending courses and classes under this section any  
27 rights, privileges or benefits extended to other students  
28 which it considers appropriate.

**§18B-10-8. Collection; disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.**

1 (a) In addition to all other fees imposed by the  
2 governing boards, there is hereby imposed and the  
3 governing boards are hereby directed to provide for the  
4 collection of an additional registration fee from all  
5 students enrolled in any state institution of higher  
6 education under its jurisdiction in the amounts hereinaf-  
7 ter provided.

8 For full-time students at each state institution of  
9 higher education, the additional registration fee shall be  
10 fifty dollars per semester. The governing boards shall  
11 have authority to increase such additional registration  
12 fee at institutions of higher education under their  
13 jurisdiction for students who are nonresidents of this  
14 state. For all part-time students and for all summer  
15 school students, the governing boards shall impose and  
16 collect such fee in proportion to, but not exceeding, that  
17 paid by full-time students.

18 The fee imposed by this section shall be in addition  
19 to the maximum fees allowed to be collected under the  
20 provision of section one of this article and shall not be  
21 limited thereby. Refunds of such fee may be made in the  
22 same manner as any other fee collected at state  
23 institutions of higher education.

24 (b) There is created in the state treasury a state  
25 system special capital improvements fund into which  
26 shall be paid all proceeds of the additional registration  
27 fees collected from students at all state institutions of  
28 higher education pursuant to this section to be expended  
29 jointly by the governing boards for the payment of the  
30 principal of or interest on any revenue bonds issued by  
31 the board of regents for which such registration fees  
32 were pledged prior to the enactment of this section.

33 At such time as the commingling of such registration  
34 fees shall no longer be required, all proceeds shall be  
35 paid into the appropriate special capital improvements  
36 fund for each governing board for the benefit of any and  
37 all state institutions of higher education under the  
38 jurisdiction of that governing board.

39 (c) The governing boards may make expenditures  
40 from any of the special capital improvements funds  
41 established in this section to finance, in whole or in part,  
42 together with any federal, state or other grants or  
43 contributions, any one or more of the following projects:  
44 (1) The acquisition of land or any rights or interest  
45 therein, (2) the construction or acquisition of new  
46 buildings, (3) the renovation or construction of additions  
47 to existing buildings, (4) the acquisition of furnishings  
48 and equipment for any such buildings, and (5) the  
49 construction or acquisition of any other capital improve-  
50 ments or capital educational facilities at such state  
51 institutions of higher education, including any roads,  
52 utilities or other properties, real or personal, or for other  
53 purposes necessary, appurtenant or incidental to the  
54 construction, acquisition, financing and placing in  
55 operation of such buildings, capital improvements or  
56 capital educational facilities.

57 Each governing board, in its discretion, may use the  
58 moneys in such special capital improvements funds to  
59 finance the costs of the above purposes on a cash basis,  
60 or may from time to time issue revenue bonds of the  
61 state as provided in this section to finance all or part  
62 of such purposes and pledge all or any part of the  
63 moneys in such special funds for the payment of the  
64 principal of and interest on such revenue bonds, and for  
65 reserves therefor. Any pledge of such special funds for  
66 such revenue bonds shall be a prior and superior charge  
67 on such special funds over the use of any of the moneys  
68 in such funds to pay for the cost of any of such purposes  
69 on a cash basis: *Provided*, That any expenditures from  
70 such special funds, other than for the retirement of  
71 revenue bonds, may only be made by the governing  
72 board to meet the cost of a predetermined capital  
73 improvements program for one or more of the state  
74 institutions of higher education, in such order of priority  
75 as shall have been agreed upon by the governing board  
76 and presented to the governor for inclusion in the annual  
77 budget bill, and only with the approval of the Legisla-  
78 ture as indicated by direct appropriation for the  
79 purpose.

80 Such revenue bonds may be authorized and issued

81 from time to time by the governing board to finance in  
82 whole or in part the purposes provided in this section  
83 in an aggregate principal amount not exceeding the  
84 amount which the governing board shall determine can  
85 be paid as to both principal and interest and reasonable  
86 margins for a reserve therefor from the moneys in such  
87 special funds.

88 The issuance of such revenue bonds shall be autho-  
89 rized by a resolution adopted by the governing board,  
90 and such revenue bonds shall bear such date or dates,  
91 mature at such time or times not exceeding forty years  
92 from their respective dates; be in such form either  
93 coupon or registered, with such exchangeability and  
94 interchangeability privileges; be payable in such  
95 medium of payment and at such place or places, within  
96 or without the state; be subject to such terms of prior  
97 redemption at such prices not exceeding one hundred  
98 five per centum of the principal amount thereof; and  
99 shall have such other terms and provisions as the  
100 governing board shall determine. Such revenue bonds  
101 shall be signed by the governor and by the president of  
102 the governing board authorizing the issuance thereof,  
103 under the great seal of the state, attested by the  
104 secretary of state, and the coupons attached thereto shall  
105 bear the facsimile signature of the president of the  
106 governing board. Such revenue bonds shall be sold in  
107 such manner as the governing board may determine to  
108 be for the best interests of the state.

109 The governing board may enter into trust agreements  
110 with banks or trust companies, within or without the  
111 state, and in such trust agreements or the resolutions  
112 authorizing the issuance of such bonds may enter into  
113 valid and legally binding covenants with the holders of  
114 such revenue bonds as to the custody, safeguarding and  
115 disposition of the proceeds of such revenue bonds, the  
116 moneys in such special funds, sinking funds, reserve  
117 funds, or any other moneys or funds; as to the rank and  
118 priority, if any, of different issues of revenue bonds by  
119 the governing board under the provisions of this section;  
120 as to the maintenance or revision of the amounts of such  
121 additional registration fees, and the terms and condi-  
122 tions, if any, under which such additional registration

123 fees may be reduced; and as to any other matters or  
124 provisions which are deemed necessary and advisable by  
125 the governing board in the best interests of the state and  
126 to enhance the marketability of such revenue bonds.

127 After the issuance of any of such revenue bonds, the  
128 additional registration fees at the state institutions of  
129 higher education shall not be reduced as long as any of  
130 such revenue bonds are outstanding and unpaid except  
131 under such terms, provisions and conditions as shall be  
132 contained in the resolution, trust agreement or other  
133 proceedings under which such revenue bonds were  
134 issued.

135 Such revenue bonds shall be and constitute negotiable  
136 instruments under the Uniform Commercial Code of  
137 this state; shall, together with the interest thereon, be  
138 exempt from all taxation by the state of West Virginia,  
139 or by any county, school district, municipality or  
140 political subdivision thereof; and such revenue bonds  
141 shall not be deemed to be obligations or debts of the  
142 state, and the credit or taxing power of the state shall  
143 not be pledged therefor, but such revenue bonds shall  
144 be payable only from the revenue pledged therefor as  
145 provided in this section.

**§18B-10-9. Authority to excuse students in certain  
educational programs from payment of  
enrollment fees.**

1 Whenever the cost of any institute, workshop, special  
2 course, or other educational program is wholly financed  
3 by a grant from any federal agency or from any  
4 foundation, corporation, or other association or person,  
5 except for indirect costs of administration and other  
6 overhead expenses, such as the cost of providing  
7 classrooms and other facilities, the governing board of  
8 the state educational institution administering such  
9 program shall have the authority to excuse all students  
10 enrolled in such program from the payment of tuition,  
11 registration and other enrollment fees.

**§18B-10-10. Disposition and use of student union fees;  
issuance of revenue bonds.**

1 Whenever the term "student union building" is used

2 in this section, the same shall mean a student union  
3 building or a combination student union building and  
4 dining hall building; and wherever the term "building  
5 fund" is used in this section the same shall mean the  
6 respective special student union building funds created  
7 as provided in section one of this article for each state  
8 educational institution which has imposed student union  
9 fees pursuant to section one of this article, to be  
10 expended by the appropriate governing board for the  
11 benefit of the state institutions of higher education  
12 under its jurisdiction.

13 Each governing board may make expenditures from  
14 such building funds at the various state institutions of  
15 higher education under its jurisdiction to finance in  
16 whole or in part together with any federal, state or other  
17 grants or contributions, any one or more of the following  
18 purposes:

19 (1) The construction and acquisition of new student  
20 union buildings;

21 (2) The acquisition, renovation and improvement of  
22 existing buildings to be used as student union buildings;

23 (3) The construction of additions, extensions and  
24 improvements to existing student union buildings;

25 (4) The acquisition of furnishings and equipment for  
26 any existing student union buildings or student union  
27 buildings to be constructed or acquired, or the construc-  
28 tion of any roads, utilities or other properties, real or  
29 personal, or for any other purposes necessary, appurte-  
30 nant or incidental to the construction, acquisition,  
31 financing and placing in operation of such student union  
32 buildings; and

33 (5) The payment of the cost of operation and mainte-  
34 nance of such student union buildings, subject however  
35 to any covenants or agreements made with the holders  
36 of revenue bonds heretofore and hereafter issued  
37 pursuant to this section or pursuant to section one of this  
38 article.

39 Each governing board, at its discretion, may use the  
40 moneys in such building funds to finance the costs of the  
41 above purposes on a cash basis, or may from time to



42 time issue revenue bonds of the state as provided in this  
43 section to finance all or part of such purposes and pledge  
44 all or any part of the moneys in such building funds for  
45 the payment of the principal of and interest on such  
46 revenue bonds, and for reserves therefor. Any pledge of  
47 such building funds for such revenue bonds shall be a  
48 prior and superior charge on such special funds over the  
49 use of any of the moneys in such funds to pay for the  
50 cost of any of such purposes on a cash basis, or for the  
51 payment of the cost of operation and maintenance, or  
52 any part thereof, of such student union buildings, under  
53 such terms and conditions as shall be provided in the  
54 proceedings which authorized the issuance of such  
55 revenue bonds.

56 Such revenue bonds may be authorized and issued  
57 from time to time by a governing board to finance in  
58 whole or in part the projects at any state institution of  
59 higher education under its jurisdiction provided for in  
60 this section in an aggregate principal amount not  
61 exceeding the amount which the board shall determine  
62 can be paid as to both principal and interest and  
63 reasonable margins for a reserve therefor from the  
64 moneys in such building funds.

65 The issuance of such revenue bonds shall be autho-  
66 rized by a resolution adopted by the governing board,  
67 and such revenue bonds shall bear such date or dates;  
68 mature at such time or times not exceeding forty years  
69 from their respective dates; bear interest at such rate  
70 or rates, not exceeding twelve per centum per annum;  
71 be in such form either coupon or registered, with such  
72 exchangeability and interchangeability privileges; be  
73 payable in such medium of payment and at such place  
74 or places, within or without the state; be subject to such  
75 terms of prior redemption at such prices not exceeding  
76 one hundred five per centum of the principal amount  
77 thereof; and shall have such other terms and provisions  
78 as the board shall determine. Such revenue bonds shall  
79 be signed by the governor and by the president of the  
80 governing board, under the great seal of the state,  
81 attested by the secretary of state, and the coupons  
82 attached thereto shall bear the facsimile signature of the  
83 president of the governing board. Such revenue bonds

84 shall be sold in such manner as the governing board  
85 may determine to be for the best interests of the state.

86 The governing board may enter into trust agreements  
87 with banks or trust companies, within or without the  
88 state, and in such trust agreements or the resolutions  
89 authorizing the issuance of such bonds may enter into  
90 valid and legally binding covenants with the holders of  
91 such revenue bonds as to the custody, safeguarding and  
92 disposition of the proceeds of such revenue bonds, the  
93 moneys in such building funds, sinking funds, reserve  
94 funds, or any other moneys or funds; as to the rank and  
95 priority, if any, of different issues of revenue bonds  
96 issued by the governing board for the same educational  
97 institution under the provisions of this section; as to the  
98 maintenance or revision of the amounts of such student  
99 union fees, and the terms and conditions, if any, under  
100 which any of such student union fees may be reduced;  
101 and as to any other matters or provisions which are  
102 deemed necessary and advisable by the governing board  
103 in the best interests of the state and to enhance the  
104 marketability of such revenue bonds.

105 Any revenues or income derived from the operation  
106 of such student union buildings may, in the discretion  
107 of the governing board, be used to pay the cost of the  
108 operation and maintenance of such student union  
109 buildings, or for the debt service on any bonds issued  
110 pursuant to this section or pursuant to any other law.

111 After the issuance of any of such revenue bonds, the  
112 student union fees at the state institution of higher  
113 education for which such revenue bonds were issued  
114 shall not be reduced as long as any of such revenue  
115 bonds are outstanding and unpaid except under such  
116 terms, provisions and conditions as shall be contained in  
117 the resolution, trust agreement or other proceedings  
118 under which such revenue bonds were issued.

119 Such revenue bonds shall be and constitute negotiable  
120 instruments under the Uniform Commercial Code of the  
121 state and shall, together with the interest thereon, be  
122 exempt from all taxation by the state of West Virginia,  
123 or by any county, school district, municipality or  
124 political subdivision thereof; and such revenue bonds

125 shall not be deemed to be obligations or debts of the  
126 state, and the credit or taxing power of the state shall  
127 not be pledged therefor, but such revenue bonds shall  
128 be payable only from the student union fees pledged  
129 therefor as provided in this section.

130 The provisions of this section shall constitute an  
131 additional, alternative and complete authority for the  
132 exercise of the powers and the issuance of the bonds  
133 provided for in this section, but shall not prevent the  
134 governing boards from exercising similar or related  
135 powers or issuing bonds therefor under any other law  
136 or laws, but the governing board, in exercising the  
137 powers and issuing the bonds provided for in this  
138 section, shall only be required to comply with the  
139 provisions of this section and shall not be required to  
140 comply with or be subject to the provisions of any other  
141 law or laws.

**§18B-10-11. Fees and money derived from athletic contests.**

1 The directors of athletics at state institutions of higher  
2 education may fix and charge admission fees to athletic  
3 contests at state institutions of higher education and  
4 may enter into contracts and spend and receive money  
5 under such contracts for the student athletic teams of  
6 state institutions of higher education to contest with  
7 other athletic teams inside or outside the state. All  
8 money received from such fees and contracts shall be  
9 deposited into the athletic accounts of the state institu-  
10 tions of higher education.

11 All money derived from such fees and under such  
12 contracts shall be used to defray the cost of maintaining  
13 the athletic department and athletic program of such  
14 institutions. The operation of training camps and  
15 training tables and providing room accommodations for  
16 participants in the athletic program of such institutions  
17 shall be recognized and considered as a proper part of  
18 such maintenance, but the specific mention of training  
19 camps and training tables and providing room accom-  
20 modations shall not be construed or understood to limit  
21 in any way the general power and authority otherwise  
22 granted and conferred by this section: *Provided*, That

23 (1) one percent of the total gross receipts deposited into  
24 the athletic accounts and (2) not less than twenty-five  
25 percent of the net receipts from televised athletic events,  
26 bowl games and post-season tournaments deposited into  
27 the athletic accounts shall be transferred into a separate  
28 and distinct special revenue account for each individual  
29 state institution of higher education, which special  
30 revenue account shall be designated "athletic facilities  
31 construction, repair or replacement reserve account," in  
32 the state treasury. Such revenues shall be used only for  
33 construction, repair or replacement of athletic facilities  
34 at the same individual state institution of higher  
35 education to which such special revenue account is  
36 credited. Notwithstanding any other provision in this  
37 section to the contrary, in the year in which they are  
38 received, no more than twenty-five percent of the net  
39 receipts from televised athletic events, bowl games and  
40 post-season tournaments deposited into athletic accounts  
41 may be transferred into other accounts of the same state  
42 institution of higher education having such receipts for  
43 the support of academic programs to meet an occasional  
44 rather than recurrent need or expense, and in accord  
45 with legislative rules promulgated by the appropriate  
46 governing board in accordance with chapter twenty-  
47 nine-a of this code, notwithstanding any other provision  
48 of this code to the contrary.

**§18B-10-12. Student activity fees.**

1 The president or other administrative head of any  
2 state institution of higher education may authorize the  
3 collection of fees from students for the support of  
4 extracurricular activities of the students, and after  
5 authorizing the collection of such fees, the president or  
6 other administrative head shall file with the state  
7 auditor and state budget director a certified detailed  
8 statement of the fees authorized to be collected and the  
9 purpose for which they are to be spent.

**§18B-10-13. Fees from operation of dormitories, faculty homes, dining halls and cafeterias.**

1 The appropriate governing board of each state  
2 institution of higher education shall fix the fees to be  
3 charged students and faculty members for rooms, board

4 and meals at the dormitories, faculty homes, dining  
5 halls and cafeterias operated by such board at the  
6 institution. Such fees shall be commensurate with the  
7 complete cost of such services.

8 All fees collected for such services shall be used first  
9 to pay the operating and maintenance costs of the  
10 dormitories, faculty homes, dining halls and cafeterias  
11 and to meet interest, principal and sinking fund  
12 requirements due on any outstanding revenue bonds for  
13 which such receipts may have been pledged as security.  
14 Any such receipts not needed for these purposes may be  
15 expended by the appropriate governing board to defray  
16 the costs in whole or in part for the construction of any  
17 such facility.

**§18B-10-14. Bookstores.**

1 The appropriate governing board of each state  
2 institution of higher education shall have the authority  
3 to establish and operate a bookstore at the institution.  
4 The bookstore shall be operated for the use of the  
5 institution itself, including each of its schools and  
6 departments, in making purchases of books, stationery  
7 and other school and office supplies generally carried in  
8 college stores, and for the benefit of students and faculty  
9 members in purchasing such products for their own use,  
10 but no sales shall be made to the general public. The  
11 prices to be charged the institution, the students and the  
12 faculty for such products shall be fixed by the governing  
13 board, shall not be less than the prices fixed by any fair  
14 trade agreements, and shall in all cases include in  
15 addition to the purchase price paid by the bookstore a  
16 sufficient handling charge to cover all expenses in-  
17 curred for personal and other services, supplies and  
18 equipment, storage, and other operating expenses, to the  
19 end that the prices charged shall be commensurate with  
20 the total cost to the state of operating the bookstore.

21 All moneys derived from the operation of the store  
22 shall be paid into a special revenue fund as provided in  
23 section two, article two, chapter twelve of this code.  
24 Each governing board shall, subject to the approval of  
25 the governor, fix and from time to time change the  
26 amount of the revolving fund necessary for the proper  
27 and efficient operation of each bookstore.

28 Moneys derived from the operation of the bookstore  
29 shall be used first to replenish the stock of goods and  
30 to pay the costs of operating and maintaining the store.  
31 From any balance in the Marshall University bookstore  
32 fund not needed for operation and maintenance and  
33 replenishing the stock of goods, the governing board of  
34 that institution shall have authority to expend a sum not  
35 to exceed two hundred thousand dollars for the construc-  
36 tion of quarters to house the bookstore in the university  
37 center at Marshall University. Until such quarters for  
38 housing the bookstore are completed, the governing  
39 board of Marshall University and the governor shall  
40 take this authorization into account in fixing the amount  
41 of the revolving fund for the Marshall University  
42 bookstore.

**§18B-10-15. Authority of educational institutions to  
provide special services and programs;  
collection and disposition of fees  
therefor.**

1 The appropriate governing board of each state  
2 institution of higher education shall have authority to  
3 provide special services and special programs at such  
4 institutions and may fix and collect special fees or  
5 charges therefor. Such special services and special  
6 programs may include any one or more of the following:

7 (1) The conduct of music camps and band, orchestra,  
8 or voice clinics for secondary school students or other  
9 youth groups, summer tutoring programs for primary  
10 and secondary school students, speech therapy clinics  
11 and services, educational and psychological testing  
12 programs, student guidance programs, and statistical  
13 studies and calculations by an electronic computer  
14 service.

15 (2) Rental of lockers or other storage facilities and the  
16 maintenance and operation of parking facilities for use  
17 by students, faculty, staff, and visitors.

18 (3) Rental of musical recordings, educational films,  
19 slides, and other audiovisual aids.

20 (4) Microfilming or other mechanical reproduction of  
21 records and noncopyrighted library reference materials.

22 (5) Institutes, conferences, workshops, postgraduate  
23 and refresher noncredit courses, and any other special  
24 program or special service customarily provided by  
25 institutions of higher education.

26 (6) Motor pools, consisting of motor vehicles for the  
27 use of their employees when carrying on the business  
28 and affairs of the institutions.

29 All fees or charges collected for any such special  
30 services or programs shall be paid into a special fund  
31 and shall be expended solely for the maintenance,  
32 operation and support of such services and programs.

33 Whenever any such special service is provided by one  
34 school, division or department of a state institution of  
35 higher education for the benefit of any other school,  
36 division or department in the same institution, the cost  
37 shall be paid by the school, division or department  
38 requesting the service and shall be deposited and  
39 expended as provided above. Whenever a motor pool is  
40 provided by the governing board of a state institution  
41 of higher education, such board may charge any school,  
42 college, department or division of such institution for  
43 which a vehicle is used a reasonable amount for such  
44 use, which amount shall be paid by such school, college,  
45 department or division and shall be deposited and  
46 expended as above provided.

#### **§18B-10-16. Disposition of funds in state treasury.**

1 Except as may be provided for in any bond resolution  
2 in effect, funds in the state treasury heretofore collected  
3 from any of the sources defined in the foregoing sections  
4 shall remain in the state treasury for use by the  
5 institution where collected. Any interest revenue  
6 generated by a special student fee account shall only be  
7 expended at or for the institution where such fee was  
8 collected.

#### **ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.**

§18B-11-1. Center for regional progress created; director powers; mission and purpose.

§18B-11-2. Institute for public affairs; creation and purposes.

§18B-11-3. Institute for international trade development; creation and purpose.

**§18B-11-1. Center for regional progress created; director powers; mission and purpose.**

1 (a) There is hereby created an economic development  
2 entity known as the "center for regional progress" at  
3 Marshall University. The center shall be under the  
4 control and supervision of a director, which position is  
5 to be filled by an individual qualified by experience and  
6 education. The director shall be appointed by the  
7 president of Marshall University. The director may  
8 employ such staff as is necessary to accomplish the  
9 center's mission and purpose. The director shall have  
10 administrative control and supervision of the center.  
11 The center shall emphasize the creation of new jobs and  
12 the retention of existing jobs as the foundation necessary  
13 for the economic development of West Virginia. The  
14 center shall provide basic and applied research and  
15 technical assistance; counseling and referral service;  
16 graduate research and cooperative education programs;  
17 management and marketing assistance; continuing  
18 education, seminars, workshops; courses to meet both  
19 employer and employee educational needs; and such  
20 other activities as are necessary to carry out the  
21 provisions of this article. The center shall provide  
22 research and technical assistance to meet the economic  
23 and community development needs of local, municipal,  
24 county and state governments.

25 (b) The center shall upon request respond to public  
26 policy needs of the Legislature and the executive; and  
27 apply for and obtain grants or funds from all available  
28 sources, private and public, state, federal, and other-  
29 wise. The center shall maintain a roster of faculty and  
30 staff at Marshall University and other institutions of  
31 higher education from which specific expertise may be  
32 drawn.

**§18B-11-2. Institute for public affairs; creation and purposes.**

1 (a) There is hereby created as an independent entity  
2 the institute for public affairs, to be located and  
3 operated at West Virginia University. The institute  
4 shall be under the control and supervision of a director,  
5 which position is to be filled by an individual whose



6 credentials include accomplishments in the interdiscipli-  
7 nary academic fields and government. The director shall  
8 be appointed by the president of West Virginia Univer-  
9 sity. The institute shall engage faculty from institutions  
10 of higher education throughout the state and shall  
11 cooperatively develop a program with other such  
12 institutions. The terms of such participation may be by  
13 contract, loan, part-time basis or other such  
14 arrangement.

15 (b) The institute is directed to conduct independent  
16 research and propose strategies and options on public  
17 issues and policies upon its own initiative or as may be  
18 requested by the executive or the Legislature.

19 (c) The institute is directed to seek all other funds,  
20 grants, and other sources of assistance from other  
21 agencies of government as well as the private sector.

22 (d) The director shall have administrative control and  
23 supervision of the institute.

**§18B-11-3. Institute for international trade development;  
creation and purpose.**

1 There is hereby created as an independent entity the  
2 institute for international trade development, to be  
3 located and operated at Marshall University. The  
4 institute is established to facilitate faculty involvement  
5 in the formation and continuation of international  
6 market entry and development strategy, to provide  
7 assistance to state businesses in exporting and attract-  
8 ing foreign investment, and to engage in other activities  
9 designed to promote, develop and stimulate export  
10 expansion and foreign direct investment. The institute  
11 shall be under the control and supervision of a director,  
12 who shall be appointed from among the faculty by the  
13 president of Marshall University. The institute shall  
14 engage faculty from institutions of higher education  
15 throughout the state and shall cooperatively develop an  
16 export program with the other such institutions. The  
17 terms of such participation may be by contract, loan,  
18 part-time basis, or other such arrangement. The  
19 institute shall develop with the board of trustees and the  
20 governor a program of student internships in interna-  
21 tional business to place qualified students for academic

22 credit with businesses in West Virginia to help develop  
 23 export awareness and potential. The institute shall  
 24 further provide research and analysis on matters of  
 25 international trade upon request of the executive or the  
 26 Legislature; initiate partnership grants, and proposals  
 27 in the area of international trade in accordance with the  
 28 provisions of article two-a, chapter five-b of this code;  
 29 and apply for and obtain grants or funds from all  
 30 available sources, private and public.

**ARTICLE 12. RESEARCH AND DEVELOPMENT AGREEMENTS  
 FOR STATE INSTITUTIONS OF HIGHER  
 EDUCATION.**

§18B-12-1. Definitions.

§18B-12-2. Legislative findings and purpose.

§18B-12-3. Boards authorized to contract with corporations; characteristics  
 of corporations.

§18B-12-4. Agreement; required provisions.

§18B-12-5. Audit.

§18B-12-6. Conflicts of interest.

§18B-12-7. No waiver of sovereign immunity.

§18B-12-8. Not obligation of the state.

§18B-12-9. Sections and provisions severable.

**§18B-12-1. Definitions.**

1 The following words used in this article shall, unless  
 2 the context clearly indicates a different meaning, be  
 3 construed as follows:

4 (a) "Agreement" means any agreement being entered  
 5 into between a governing board and a corporation  
 6 pursuant to section four of this article.

7 (b) "Corporation" means a nonstock, not-for-profit  
 8 corporation established under the general corporation  
 9 laws of the state which meets the description presented  
 10 by section three of this article.

11 (c) "Corporate directors" means the board of directors  
 12 of a corporation.

**§18B-12-2. Legislative findings and purpose.**

1 (a) The Legislature finds and determines that the  
 2 future economic development in the state will depend in  
 3 part upon research developed at the state institutions of  
 4 higher education, and enhanced research opportunities  
 5 for state institutions of higher education will promote

6 the general economic welfare of the citizens of the state.  
7 In order to enhance the competitive position of state  
8 institutions of higher education in the current environ-  
9 ment for research and development, expenditures for  
10 equipment and material for research projects must be  
11 handled in an expeditious fashion, and the acquisition  
12 and utilization of research grants can be simplified and  
13 expedited through the utilization of corporations.

14 (b) The interest of the citizens of the state will be best  
15 met by agreements entered into and carried out by the  
16 governing boards and corporations to provide research  
17 assistance for state institutions of higher education.  
18 Therefore, in order to facilitate research and develop-  
19 ment grants and opportunities for state institutions of  
20 higher education, it is appropriate to authorize the  
21 governing boards to contract with corporations organ-  
22 ized for the purpose of providing such services to state  
23 institutions of higher education.

**§18B-12-3. Boards authorized to contract with corpora-  
tions; characteristics of corporations.**

1 Each governing board for a state institution of higher  
2 education is hereby authorized to enter into agreements  
3 and any other contractual relationships with one or  
4 more corporations formed with respect to such state  
5 institution of higher education, but only if each such  
6 corporation meets the following descriptions:

7 (1) The president and the president's appointees from  
8 the institution shall constitute a majority of the voting  
9 corporate directors.

10 (2) The corporation must be organized as a nonprofit,  
11 nonstock corporation under the general corporation  
12 laws of the state exclusively for charitable, educational  
13 or scientific purposes within the meaning of section  
14 501(c) of the Internal Revenue Code of 1986, as  
15 amended, to foster and support research at the respec-  
16 tive state institution of higher education and to provide  
17 evaluation, development, patenting, management and  
18 marketing services for inventions of the faculty, staff  
19 and students of such state institution of higher educa-  
20 tion.

21 (3) The meetings of the corporate directors shall be  
22 subject to the provisions of section three, article nine-  
23 a, chapter six of this code.

24 (4) Upon dissolution of the corporation, the assets of  
25 the corporation shall be transferred to such entity as the  
26 appropriate governing board shall designate for the  
27 benefit of the state institution of higher education:  
28 *Provided*, That such recipient shall be an organization  
29 operated exclusively for charitable, educational or  
30 scientific purposes as shall at such time qualify as an  
31 exempt organization under section 501(c)(3) of the  
32 Internal Revenue Code of 1986, as amended.

**§18B-12-4. Agreement; required provisions.**

1 (a) Notwithstanding section ten, article three, chapter  
2 twelve of this code or any other provision of law to the  
3 contrary, each governing board is hereby authorized to  
4 enter into an agreement with a corporation, which  
5 agreement shall be for the benefit of such state  
6 institution of higher education and contain the following  
7 provisions, subject to further specification as shall be  
8 mutually agreed upon by the appropriate governing  
9 board and the corporation:

10 (1) On the effective date of the agreement, the  
11 corporation shall be charged with the responsibility of  
12 serving as fiscal agent for sponsored projects conducted  
13 by the faculty, staff and students of the state institution  
14 of higher education, and grants shall be accepted by the  
15 corporation on behalf of the institution and assigned to  
16 the corporation for fiscal management.

17 (2) The corporation shall provide evaluation, develop-  
18 ment, patenting, licensing, management and marketing  
19 services for inventions, processes, trademarks, copy-  
20 rights or any other intellectual property developed by  
21 faculty, staff and students of any state institution of  
22 higher education.

23 (3) The corporation shall have the right to determine  
24 the application of the proceeds from any invention,  
25 process, trademark, copyright or any other intellectual  
26 property developed by the faculty, staff or students of  
27 a state institution of higher education among the

28 corporation, the inventor or developer, and the  
29 institution.

30 (4) The corporation shall have such additional respon-  
31 sibilities related to the administration of research and  
32 development at the state institution of higher education  
33 as are necessary or desirable to facilitate the develop-  
34 ment of research at the institution.

35 (b) Upon termination of the agreement, the funds or  
36 grants paid or held by the corporation shall be paid to  
37 the state institution of higher education or its designee  
38 as the appropriate governing board shall direct.

39 (c) A corporation may utilize both corporation em-  
40 ployees and personnel of the state institution of higher  
41 education, provided, however, that the corporation may  
42 pay the costs incurred by the state institution of higher  
43 education including personnel funded on grants and  
44 contracts, fringe benefits of personnel funded on grants  
45 and contracts, administrative support costs and other  
46 costs which may require reimbursement and may  
47 include as costs any applicable overhead and fringe  
48 benefit assessments necessary to recover the costs  
49 expended by the state institution of higher education  
50 pursuant to the terms of the agreement, it being the  
51 intention that a board may be reimbursed for expenses  
52 incurred by it pursuant to the agreement.

#### §18B-12-5. Audit.

1 The operations of the corporation shall be subject to  
2 an audit by an independent auditor.

#### §18B-12-6. Conflicts of interest.

1 Notwithstanding any other provision of this code to  
2 the contrary, officers and employees of a governing  
3 board and the affected state institution of higher  
4 education may hold appointments to offices of the  
5 corporation and be corporate directors or officers or  
6 employees of other entities contracting with either the  
7 corporation or a governing board of a state institution  
8 of higher education. The executive director of the  
9 corporation shall have dual appointment with the state  
10 institution of higher education. The governing board of  
11 a state institution of higher education and the corporate

12 directors must be informed of such appointments  
13 annually.

**§18B-12-7. No waiver of sovereign immunity.**

1 Nothing contained in this article shall be deemed or  
2 construed to waive or abrogate in any way the sovereign  
3 immunity of the state or to deprive a governing board  
4 of a state institution of higher education, a state  
5 institution of higher education or any officer or em-  
6 ployee thereof of sovereign immunity.

**§18B-12-8. Not obligation of the state.**

1 Obligations of a corporation shall not constitute debts  
2 or obligations of a state institution of higher education,  
3 the governing board thereof or the state.

**§18B-12-9. Sections and provisions severable.**

1 The sections of this article, and the provisions and  
2 parts of said sections, are severable, and it is the  
3 intention to enact the whole or any part of the powers  
4 provided for in this article, and, if any of said sections,  
5 or the provisions or parts of any said sections, or the  
6 application thereof to any person or circumstance, are  
7 for any reason held unconstitutional or invalid, it is the  
8 intention that the remaining sections of this article, and  
9 the remaining provisions or parts of any said sections,  
10 shall remain in full force and effect.

**ARTICLE 13. HIGHER EDUCATION-INDUSTRY PARTNERSHIPS.**

§18B-13-1. Legislative purpose.

§18B-13-2. The West Virginia foundation for science and technology.

§18B-13-3. Higher education-industry collaboration and technical assist-  
ance.

§18B-13-4. High-Tech 2000 program for research and technical assistance.

§18B-13-5. Special High-Tech 2000 Fund.

§18B-13-6. High-Tech 2000 board; grants; authority.

§18B-13-7. Powers and duties.

§18B-13-8. Appointment of the director.

§18B-13-9. Annual reports.

§18B-13-10. High-Tech 2000 research zones and parks.

§18B-13-11. Research park or zone tax exemptions.

§18B-13-12. Use of state property and equipment; faculty.

**§18B-13-1. Legislative purpose.**

1 A pressing need exists for collaborative research and  
2 development between institutions of higher education

3 and industry. This need also extends to assisting  
4 companies to develop and adapt to new technology. A  
5 commitment by the state to support cooperative univer-  
6 sity-industry partnerships will preserve existing jobs  
7 and create new jobs; promote development of business  
8 enterprises and help them become competitive; and  
9 enable West Virginia to achieve the goals of economic  
10 growth and full employment by revitalizing and  
11 diversifying the West Virginia economy. Focused  
12 research and technical assistance efforts related to West  
13 Virginia industry will speed such development, improve  
14 technology transfer, assist companies in becoming  
15 growth leaders and link basic research and technolog-  
16 ical developments to economic advancement.

17 It is the purpose of the Legislature to establish the  
18 West Virginia foundation for science and technology to  
19 have as its goals the movement of the state of West  
20 Virginia into the forefront of science and technology by  
21 the year two thousand; the attraction of business, federal  
22 contracts and industry; and the creation of jobs for the  
23 people of this state, through applied science and  
24 technology and partnership programs as set forth in this  
25 article.

**§18B-13-2. The West Virginia foundation for science and  
technology.**

1 There is hereby created the West Virginia foundation  
2 for science and technology for the purpose of developing  
3 and implementing the High-Tech 2000 fund as set forth  
4 in this article, and for the awarding of grants and other  
5 assistance as provided herein. Grants shall concentrate  
6 on targeted job-creating industries, processes and  
7 research as determined by the High-Tech 2000 board of  
8 trustees according to the strategic comprehensive plan  
9 and grant program required in this article, but shall  
10 include immediate priority for the topics of computer  
11 software, federal contract procurement, flexible manu-  
12 facturing, materials handling and distribution, and  
13 hardwood manufacturing.

**§18B-13-3. Higher education-industry collaboration and  
technical assistance.**

1 Institutions of higher education shall develop a plan

2 to engage in collaborative projects designed to assist  
3 business to adapt or develop new technology under this  
4 article and shall be eligible to receive financial support  
5 through the matching grant programs defined in this  
6 article.

7 The foundation is authorized and empowered to solicit  
8 and accept financial support from sources, including  
9 federal funds, other than the state. Any institution of  
10 higher education making application for financial  
11 support from the foundation may deposit all or any part  
12 of funds received from the special High-Tech 2000 fund  
13 into a special revenue account in the state treasury  
14 which may be established.

**§18B-13-4. High-Tech 2000 program for research and  
technical assistance.**

1 The High-Tech 2000 board shall have the authority to  
2 allocate any funds available to higher education-  
3 industry projects operating under the provisions of this  
4 article. The amount of the grant may not exceed the  
5 level of contribution from all other sources combined.

6 The High-Tech 2000 board shall negotiate a contract  
7 for all grants, the terms of which should, if practicable,  
8 provide for payment of negotiated royalties, royalty  
9 sharing arrangements, loans, hybrid-debt equity arrange-  
10 ments, stock purchase arrangements or other pay-  
11 ments to the fund, established in section five of this  
12 article.

13 The grant program shall bring together, through  
14 challenge or matching grants, partners from the  
15 business, industry, public and educational sectors to  
16 develop and apply technologies which will strengthen  
17 existing business and stimulate the formation of new  
18 firms and products including:

19 (1) *Joint partnership research and development pro-*  
20 *jects.*—Such projects shall require a joint effort of a West  
21 Virginia business or businesses and an institution of  
22 higher education in this state with the purpose of  
23 preserving or creating jobs in this state;

24 (2) *Education and training projects.*—Such projects  
25 shall include employment training or retraining, labor



26 market and occupational analysis, new courses, sharing  
27 of costly equipment, and educational or technical  
28 assistance with small business innovation centers; and

29 (3) *Entrepreneurial development projects.*—Such pro-  
30 jects shall include technical assistance, development of  
31 business plans, management counseling, technology  
32 transfer, and venture capital assistance, with emphasis  
33 on establishing new projects, processes or services.

#### §18B-13-5. Special High-Tech 2000 Fund.

1 There is hereby established a special High-Tech 2000  
2 Fund to which shall be credited any state appropria-  
3 tions, gifts, grants or other moneys available to the fund.

#### §18B-13-6. High-Tech 2000 board; grants; authority.

1 There is hereby created a High-Tech 2000 board  
2 consisting of the governor or a designee, the president  
3 of West Virginia University or a designee, the president  
4 of Marshall University or a designee, the president of  
5 West Virginia Institute of Technology or a designee, the  
6 president of Shepherd College or a designee, the director  
7 of the governor's office of economic and community  
8 development, or a designee, and four persons from the  
9 private sector who are representative of each of the  
10 congressional districts of the state, and which such  
11 private sector members shall be appointed to staggered  
12 four-year terms by the governor with the advice and  
13 consent of the Senate.

14 The High-Tech 2000 board shall have the authority to  
15 review and approve all applications for grants or funds  
16 from the special High-Tech 2000 fund established  
17 pursuant to section five of this article and to establish  
18 rules for the administration of the fund.

19 Board members representing the private sector shall  
20 be reimbursed for all necessary expenses incurred in  
21 connection with the performance of their duties as  
22 members.

#### §18B-13-7. Powers and duties.

1 The High-Tech 2000 board is hereby authorized and  
2 directed to develop a strategic comprehensive plan and  
3 grant program to attract new science and high technol-

4 ogy industries, to retain and expand current state  
5 industries through technology and other processes, and  
6 to increase research grants, contracts, matching funds  
7 and procurement arrangements from the federal  
8 government, private industry and other agencies. Such  
9 initial, and annually updated, strategic comprehensive  
10 plan shall be developed and annually filed with the  
11 governor and Legislature. The High-Tech 2000 board  
12 shall consult with business, labor and other agencies of  
13 government, including institutions of higher education,  
14 for the purpose of determining such initial, and annually  
15 updated, strategic comprehensive plan.

16 The High-Tech 2000 board shall establish a grant  
17 program, to be known as the High-Tech 2000 program,  
18 to implement the strategic comprehensive plan.

19 The High-Tech 2000 board shall establish criteria for  
20 the grant program, and applications provided for  
21 herein, together with contractual provisions to protect  
22 the state's interest and financial commitment to such  
23 grant program.

24 The High-Tech 2000 board shall review the work and  
25 projects undertaken by the center of regional progress,  
26 the center for economic research, the institute for  
27 international trade development and the West Virginia  
28 foundation for science and technology.

#### **§18B-13-8. Appointment of the director.**

1 The director of the foundation shall be appointed by  
2 the governor, with the advice and consent of the Senate,  
3 from a list of three persons submitted by the High-Tech  
4 2000 board. The High-Tech 2000 board shall appoint a  
5 search committee of representatives of the educational,  
6 government, business and labor sectors to solicit and  
7 interview candidates for the position of director, who  
8 shall be qualified by knowledge and experience in the  
9 field of business and industry. The search committee  
10 shall present a list of three nominations to the governor.  
11 The director of the governor's office of community and  
12 industrial development shall act as director of the  
13 foundation until the governor shall appoint a director.

14 The High-Tech 2000 board shall establish a salary for

15 the director at a level sufficient to attract and retain an  
16 individual of knowledge and experience in the field.

**§18B-13-9. Annual reports.**

1 On the first day of January of each year, the director  
2 shall submit a report on the operation of the foundation,  
3 including expenditures from the special High-Tech 2000  
4 Fund, to the governor and to the Legislature. Such  
5 report shall include a summary of the expenditures  
6 from the subject fund and a complete statement of  
7 grants made hereunder.

**§18B-13-10. High-Tech 2000 research zones and parks.**

1 (a) The governor's office of community and industrial  
2 development shall work with the county commissions,  
3 the municipalities and local development authorities  
4 where state colleges and universities are located, and  
5 shall develop a plan and program for the establishment  
6 and operation of qualifying High-Tech 2000 research  
7 zones, parks and technology centers on or near the  
8 campuses of selected universities and colleges to attract  
9 local business and industry engaged in science and  
10 technology related research.

11 (b) The governor's office of community and industrial  
12 development shall coordinate the development of such  
13 plan and program, which shall include qualifications for  
14 eligible High-Tech 2000 research zones, parks and  
15 research centers and which qualifications shall require  
16 a minimum partnership commitment from the private  
17 sector either in the construction, operation or location of  
18 the research parks or zones or technology centers; and  
19 the West Virginia economic development authority shall  
20 have authority to enter into agreements with state  
21 institutions of higher education, private developers or  
22 other interested businesses or persons to acquire,  
23 finance, construct, operate, own, lease or otherwise  
24 manage any research park or zone and to collect rentals  
25 or other forms of payment for the operation of the  
26 research parks or zones or technology centers.  
27 Ownership of the research park or zone shall be in the  
28 state of West Virginia, the West Virginia industry and  
29 jobs development corporation or a governing board.

30 The West Virginia economic development authority is  
31 hereby authorized either singularly or in conjunction  
32 with any county commission, municipality or local  
33 development authority, to issue special High-Tech 2000  
34 bonds for the purpose of this section, including, but not  
35 limited to, special project revenue bonds and special  
36 user bonds limited to the actual cost of construction and  
37 start-up of any qualifying and approved research park  
38 or zone or technology centers, and improvements  
39 necessary thereto, pursuant to article twelve-b, chapter  
40 eighteen of this code.

**§18B-13-11. Research park or zone tax exemptions.**

1 Notwithstanding any other provision of this code to  
2 the contrary relating to any other exemptions or credits  
3 to which any business may be entitled under this code,  
4 the following exemptions shall apply to any qualified,  
5 approved High-Tech 2000 research park or zone or  
6 technology center:

7 (a) The enterprise zone tax exemptions as provided in  
8 section five, article two-b, chapter five-b of this code;

9 (b) A tax credit for qualified business, in the amount  
10 of the workers' compensation premium paid in accor-  
11 dance with article two, chapter twenty-three of this  
12 code, which credit shall be credited against any  
13 corporate net income tax or personal income tax of the  
14 qualified business or liability of the owners of the  
15 qualified business which is a proprietorship or a  
16 partnership;

17 (c) The deferral for qualified business of all state  
18 corporate net income tax, business and occupation tax,  
19 telecommunications tax, severance tax, business fran-  
20 chise tax, or other state income tax liability for the start-  
21 up period of the business not to exceed three years, and  
22 qualified business shall be entitled to an exemption from  
23 any such deferred tax if such business both employs at  
24 least seven persons on a full-time basis as of the due date  
25 of the deferred tax liability, and the qualified business  
26 maintains an average employment of at least seven full-  
27 time employees over the last two years of the three year  
28 start-up period.

**§18B-13-12. Use of state property and equipment; faculty.**

1 (a) The governing boards are authorized to provide  
2 for the low cost and economical use and sharing of state  
3 property and equipment, including computers, research  
4 labs and other scientific and necessary equipment to  
5 assist any qualified business within an approved  
6 research park or zone or technology center. The  
7 governing boards shall approve a schedule of nominal  
8 or reduced cost reimbursements to the state for such  
9 use.

10 (b) The governing boards shall develop and provide  
11 for a program of release time, sabbaticals or other forms  
12 of faculty involvement or participation with any  
13 qualifying business.

14 (c) The Legislature finds that cooperation, commun-  
15 ication and coordination are integral components of  
16 higher education's involvement in economic develop-  
17 ment. In order to proceed in a manner that is cost  
18 effective and time efficient, it shall be the duty of the  
19 governing boards to review and coordinate such aspects  
20 of the programs administered by the governing boards.  
21 Such review and coordination shall not operate so as to  
22 adversely affect sources of funding nor shall it affect any  
23 statutory characterization of any program as an  
24 independent entity. The governing boards shall report  
25 on an annual basis to the Legislature and the governor.  
26 The report shall contain the following information:

27 (1) The number of seminars and workshops  
28 conducted;

29 (2) The subject matter addressed in each seminar and  
30 workshop;

31 (3) The number of feasibility studies conducted and  
32 the subject matter contained in each study; and

33 (4) An accounting of the cost of all travel expenses,  
34 seminars, workshops and feasibility studies.

**ARTICLE 14. MISCELLANEOUS.**

§18B-14-1. Authorization to sell West Virginia University poultry farm properties located in Morgantown.

§18B-14-2. Authorization to sell West Virginia University vacant lot located in Morgantown and biological research station located in Terra Alta.

**§18B-14-1. Authorization to sell West Virginia University poultry farm properties located in Morgantown.**

1 (a) The board of trustees is hereby authorized and  
2 empowered to sell those parcels of land situate on the  
3 Van Voorhis Road in Monongalia County, West Virgi-  
4 nia, bounded and described as follows:

5 Beginning at a post standing south of the center line  
6 of the said Van Voorhis Road, in the line of property  
7 now or formerly of Vandervort, 170.0 feet, thence from  
8 said post, S. 75 degrees 34' E. 1190.6 feet to a white oak  
9 stump, corner to land now or formerly of Gorman,  
10 Goodwin, Baker and Hawkins; thence with a line of the  
11 said corner to land of J. D. Harless, and with his said  
12 line, N. 58 degrees 18' W. 279.7 feet to a point in the  
13 center line of said Van Voorhis Road; thence with the  
14 center line of said road, S. 56 degrees 25' W. 946.1 feet  
15 to a point in the center of said road; thence S. 10 degrees  
16 34' E. 170.0 feet to the place of beginning, containing  
17 15.71 acres, as surveyed and platted by B. W. Reynolds,  
18 Surveyor, October 28, 1946.

19 And, beginning at a stake in a line of Charles Baker  
20 and 27.96 feet from the corner of Charles Baker and D.  
21 L. Hartman; thence N. 26 degrees 26' E. 150 feet to a  
22 stake; thence S. 63 degrees 34' E. 70 feet to a stake;  
23 thence S. 26 degrees 26' thence N. 36 degrees 58' W. 7.29  
24 feet to the place of beginning, containing .28 acres, more  
25 or less. And, beginning at a stake in a line of Charles  
26 Baker and on a corner of land of Virginia May Burruss  
27 and A. J. W. Headlee; thence N. 26 degrees 26' E. 160  
28 feet to a stake; thence S. 63 degrees 34' E. 70 feet to  
29 a stake; thence S. 26 degrees 26' W. 160 feet to a stake  
30 on a corner of land of Virginia May Burruss and A. J.  
31 W. Headlee; thence N. 63 degrees 34' W. 75 feet to the  
32 place of beginning, containing .257 acres, more or less.

33 And, beginning at a stone corner of the lands of W.  
34 W. McClure and L. O. Starkey, and running Southwest  
35 a distance of 660 feet (40 poles) to a point or corner of  
36 lands of L. O. Starkey and Emma Hill; thence westward  
37 a distance of 587.4 feet (35.35 poles) to a white oak tree,  
38 corner to lands of the said Emma Hill and Charles M.  
39 Baker; thence northwest a distance of 610.5 (37 poles)  
40 to a walnut tree, corner to lands of Charles M. Baker

41 and Martin L. Goodwin; thence in an easterly directiona  
42 distance of 990 feet (60 poles) to the cornerstone herein-  
43 before mentioned as the place of beginning, containing  
44 12 3/4 acres, more or less.

45 And, beginning at a point in the line of property  
46 formerly belonging to James Gorman, being the prop-  
47 erty formerly occupied by S. S. Ivill, which said  
48 beginning point is N. 9 1/2 degrees W. 739 feet from  
49 the center of Chestnut Ridge Road; thence with the line  
50 of property formerly belonging to Coleman Vandervort  
51 and now belonging to Headlee, and thence with a line  
52 of Headlee, S. 80 degrees E. 535 feet, more or less, to  
53 the corner of Baker; and thence with Baker two lines  
54 in a Southerly direction with the line of Baker, 645 feet  
55 to a point and 576 feet to a point in the line of Baker,  
56 which said last mentioned point is 754 feet in a northerly  
57 direction from the center of said Chestnut Ridge Road;  
58 and thence with an arbitrary line through the property  
59 formerly belonging to Adam W. Thompson in a Wes-  
60 terly direction 570 feet to the place of beginning,  
61 containing 16 acres, more or less; and being the same  
62 real estate conveyed to the grantor, Lee Moore, by deed  
63 from Benjamin G. Reeder and Marie F. Reeder, his  
64 wife, dated February 28, 1956, and recorded in the  
65 office of the clerk of the County of Monongalia, West  
66 Virginia, at a public auction: *Provided*, That prior to  
67 such action the board of trustees shall have the property  
68 appraised by two licensed appraisers and shall not sell  
69 the property for less than the average of the two  
70 appraisals.

71 (b) The proceeds from the sale of the property  
72 referred to shall be deposited in a special revenue  
73 account from which the board of trustees is hereby  
74 authorized to expend funds to relocate the West Virginia  
75 University poultry facility with such surplus as may be  
76 left being used for improvements to the college of  
77 agriculture and forestry facilities or deposited in a  
78 special medical school fund heretofore created in the  
79 state treasury under the provisions of section two, article  
80 nineteen, chapter eleven of this code, for educationally  
81 related projects.

**§18B-14-2. Authorization to sell West Virginia University vacant lot located in Morgantown and biological research station located in Terra Alta.**

1 (a) The board of trustees is hereby authorized and  
2 empowered to sell those parcels of land situate on the  
3 Chestnut Ridge Road in Monongalia County, West  
4 Virginia, bounded and described as follows:

5 Beginning at a hub in the edge of the Chestnut Ridge  
6 Road along the boundary formerly belonging to Sam  
7 Ivill; thence with Ivill, N 10 degrees 01' W 260.04 feet  
8 to a hub, corner to the lands of Blanche Sayre found in  
9 Deed Book No. 481, at Page 95; thence with Sayre, S  
10 89 degrees 36' E 295.45 feet to a hub, corner to W. V.  
11 Board of Regents in Deed Book No. 584, at Page 1;  
12 thence with W. V. Board of Regents S O degrees 55' W  
13 255.82 feet to a hub at the northern edge of the Chestnut  
14 Ridge Road; thence along the northern edge of the  
15 Chestnut Ridge Road, N 89 degrees 36' W 254.00 feet  
16 to the place of beginning, containing 1.61 acres, more  
17 or less, as surveyed by Triad Engineering Consultants  
18 on 6/27/79.

19 (b) The board of trustees is hereby further authorized  
20 and empowered to sell those parcels of land situate in  
21 Terra Alta, Preston County, West Virginia, bounded  
22 and described as follows:

23 Those lots or parcels of real estate situated in Portland  
24 District, Preston County, West Virginia, containing  
25 48.28 acres recorded under Book 283, Page 217.

26 (c) Such sale shall be by public auction: *Provided,*  
27 That prior to such action the board of trustees shall have  
28 the property appraised by two licensed appraisers and  
29 shall not sell the property for less than the average of  
30 the appraisals.

31 (d) The proceeds from the sale of the property  
32 referred to shall be deposited in a special revenue  
33 account from which the board of trustees is hereby  
34 authorized to expend the funds therefrom for develop-  
35 ment of the Downtown Campus, at West Virginia  
36 University, in Morgantown.



## CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

### Article

1. Financial Assistance Generally.
2. Guaranteed Student Loan Program.
3. Health Professionals Student Loan Programs.

### ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

§18C-1-1. Administration generally.

§18C-1-2. Definitions.

§18C-1-3. Transfer of obligations.

#### §18C-1-1. Administration generally.

1 The senior administrator jointly employed by the  
2 chancellors of the board of trustees and the board of  
3 directors shall, as provided in section two, article four,  
4 chapter eighteen-b of this code, have a ministerial duty  
5 to administer, oversee or monitor all state and federal  
6 student loan, scholarship and state aid programs which  
7 are administered at the state level in accordance with  
8 established guidelines, in consultation with and under  
9 the direction of the governing boards.

10 Such programs include, but are not limited to: The  
11 guaranteed student loan program under this article,  
12 which may be administered by a private nonprofit  
13 agency; the medical student loan program under article  
14 three of this chapter; the Underwood-Smith teacher  
15 scholarship program under article twenty-one, chapter  
16 eighteen of this code; the state scholarship program,  
17 commonly known as the West Virginia higher education  
18 grant program, under article twenty-two-b, chapter  
19 eighteen of this code; the higher education student  
20 assistance loan program under article twenty-two-d,  
21 chapter eighteen of this code; the West Virginia higher  
22 education tuition trust act under article thirty, chapter  
23 eighteen of this code, which shall be administered by the  
24 state treasurer as provided in said article; the state aid  
25 programs for students of optometry, under article three  
26 of this chapter; the state aid programs for students of  
27 veterinary medicine under section six-a, article eleven,  
28 chapter eighteen of this code; any reciprocal program  
29 and contract program for student aid under sections  
30 three and four, article four of chapter eighteen-b of this  
31 code; any other state level student aid program under

32 this code; and any federal grant or contract student  
 33 assistance or support programs administered at the  
 34 state level.

### §18C-1-2. Definitions.

1 The definitions used in this chapter, unless the context  
 2 clearly indicates otherwise, shall be the definitions  
 3 provided in section two, article one, chapter eighteen-b  
 4 of this code.

5 The term "board" or "governing board" in the singular  
 6 or plural as used in this chapter shall be deemed to  
 7 mean the senior administrator employed by the govern-  
 8 ing boards when a power or duty assigned to a govern-  
 9 ing board is delegated by it to the senior administrator.

### §18C-1-3. Transfer of obligations.

1 As of the first day of July, one thousand nine hundred  
 2 eighty-nine, any obligations of the board of regents  
 3 pertaining to student loans, scholarships or state aid  
 4 shall be transferred and deemed the obligations of the  
 5 governing boards.

## ARTICLE 2. GUARANTEED STUDENT LOAN PROGRAM.

§18C-2-1. Purpose of provisions of article relating to guaranteed student loan program; loan program to be administered by senior administrator of governing boards.

§18C-2-2. "Act," "undertaking" and "obligations" defined.

§18C-2-3. Authority to buy and sell certain student obligations; undertakings not to constitute state debt; undertakings limited to available funds.

§18C-2-4. Powers and duties of senior administrator regarding loan program.

§18C-2-5. Title to property.

§18C-2-6. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.

§18C-2-7. Terms of acquisitions.

§18C-2-8. Trust fund established; limitations on use of fund; duties of treasurer in connection therewith; special account created.

§18C-2-9. Construction of provisions of article relating to loan program.

### §18C-2-1. Purpose of provisions of article relating to guaranteed student loan program; loan program to be administered by senior administrator of governing boards.

1 The Legislature enacts the provisions of this article  
 2 which relate to the establishment of the guaranteed

3 student loan program to continue and encourage  
4 education of citizens of this state who are in need of  
5 financial assistance, such assistance and education being  
6 for the welfare of this state, and the Legislature hereby  
7 declares such to be a public purpose.

8 The guaranteed student loan program established and  
9 authorized by this article shall be administered by the  
10 senior administrator of the board of trustees and board  
11 of directors acting under their direction.

**§18C-2-2. "Act," "undertaking" and "obligations" defined.**

1 As used in this article, the following words and terms  
2 shall have the following meanings, unless the context  
3 shall indicate another or different meaning or intent:

4 (a) The words "act" or "undertaking" shall mean the  
5 official act of the governing boards, or senior adminis-  
6 trator acting under the direction of the boards, in  
7 connection with the acquisition or disposition of all or  
8 any part of obligations or interest therein which the  
9 governing boards are authorized to buy or sell  
10 hereunder.

11 (b) The word "obligations" shall mean those evidences  
12 of debt which the governing boards may buy, sell,  
13 endorse, or guarantee under the provisions of this  
14 article.

**§18C-2-3. Authority to buy and sell certain student  
obligations; undertakings not to constitute  
state debt; undertakings limited to available  
funds.**

1 In order to facilitate the education of residents in this  
2 state and promote the industrial and economic develop-  
3 ment of the state, the governing boards are hereby  
4 authorized and empowered to buy and sell obligations  
5 of students who are residents of West Virginia, and who  
6 have been residents of this state for at least one year and  
7 are students or have been accepted as students at state  
8 supported or private institutions of higher education, or  
9 vocational schools accredited by a nationally recognized  
10 accrediting agency or by a state agency designated by  
11 the governor and representing loans made to such  
12 students who have met the requirement of financial  
13 need as determined by the governing boards, such loans  
14 having been made for the purpose of an education.

15 No act or undertaking of the governing boards shall  
16 be deemed to constitute a debt of the state or of any  
17 political subdivision thereof or a pledge of the faith and  
18 credit of the state or of any such political subdivision,  
19 and shall be payable solely from the funds of the  
20 governing boards specifically appropriated for the  
21 guaranteed student loan program. All such acts and  
22 undertakings shall contain on the face thereof a  
23 statement to the effect that neither the state nor the  
24 governing boards shall be obligated to pay the same or  
25 the interest thereon except from revenues of the  
26 governing boards and that neither the faith and credit  
27 nor the taxing power of the state or of any political  
28 subdivision thereof is pledged to the payment of the  
29 principal of or the interest on such acts and  
30 undertakings.

31 All expenses incurred in carrying out the provisions  
32 of this article dealing with the guaranteed student loan  
33 program shall be payable solely from funds provided for  
34 the purpose and no liability or obligation shall be  
35 incurred by the governing boards hereunder beyond the  
36 extent to which money shall have been provided under  
37 the applicable provisions of this article for the guaran-  
38 teed student loan program.

**§18C-2-4. Powers and duties of senior administrator  
regarding loan program.**

1 The senior administrator acting under direction of the  
2 governing boards is hereby authorized and empowered:

3 (1) To fix and revise from time to time and charge  
4 and collect fees for its acts and undertakings;

5 (2) To establish rules concerning the acts and  
6 undertakings;

7 (3) To acquire, hold and dispose of personal property  
8 in the exercise of its powers and the performance of its  
9 duties;

10 (4) To make and enter into all contracts and agree-  
11 ments necessary or incidental to the performance of its  
12 duties and the execution of its powers under this article;

13 (5) To employ in its discretion such employees as it  
14 may deem necessary to carry out its powers and duties  
15 as enumerated in this article;

16 (6) To receive and accept from any federal or private  
17 agency, corporation, association or person, grants to be  
18 expended in accomplishing the objectives of this article  
19 and to receive and accept from the state, from any  
20 municipality, county or other political subdivision  
21 thereof and from any other source, aid or contributions  
22 of either money, property, or other things of value to be  
23 held, used and applied only for the purposes for which  
24 such grants and contributions may be made;

25 (7) To sue and be sued as provided by law;

26 (8) To do all other acts and things necessary or  
27 convenient to carry out the powers expressly granted by  
28 the provisions of this article which relate to the  
29 guaranteed student loan program. Nothing in this  
30 article shall be construed to empower the governing  
31 boards to engage in the business of banking or insu-  
32 rance.

**§18C-2-5. Title to property.**

1 Title to any property acquired by the governing  
2 boards under the provisions of this article which relate  
3 to the guaranteed student loan program shall be taken  
4 and held in the name of the governing boards.

**§18C-2-6. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.**

1 With funds available to the governing boards for pur-  
2 poses other than the payment of compensation to per-  
3 sonnel and the lease or rental of offices or equipment, the  
4 governing boards may acquire from any bank or other  
5 lending institution of this state a contingent interest in  
6 student obligations. The total contingent interest of the  
7 governing boards on all such obligations shall not exceed  
8 at any one time a sum of twelve and one-half times the  
9 total funds which the governing boards can employ to  
10 acquire such contingent interests. When a governing  
11 board acquires any such contingent interest, it may  
12 require the payment to it of a portion of the interest  
13 payable upon any such obligation. In each such acqui-  
14 sition, the governing board shall provide that at such  
15 time as the obligation becomes delinquent, the bank or  
16 other lending institution shall notify the governing  
17 board forthwith and shall transfer forthwith to the

18 governing board, by assignment or otherwise, an  
19 interest in such obligation equal to the contingent  
20 interest of the governing board therein. The bank or  
21 other lending institution and the governing board shall  
22 forthwith take such steps as may be necessary to recover  
23 the balance due upon any such obligation, and such  
24 recovery shall be apportioned between the governing  
25 board and the bank or other lending institution as their  
26 respective interests may appear.

**§18C-2-7. Terms of acquisitions.**

1 Each governing board shall prescribe the terms,  
2 conditions and limitations upon which it will acquire a  
3 contingent or direct interest in any obligation and such  
4 terms, conditions and limitations shall include, but  
5 without limiting the generality thereof, the terms for  
6 payment of principal and interest, applicable life or  
7 other insurance which may be required in connection  
8 with any such obligation and who shall pay the premi-  
9 ums thereon, the safekeeping of assets pledged to secure  
10 any such undertaking, and any and all matters in  
11 connection with the foregoing as will protect the assets  
12 of the governing board.

**§18C-2-8. Trust fund established; limitations on use of  
fund; duties of treasurer in connection  
therewith; special account created.**

1 The appropriation made to the governing boards  
2 under the provisions of this article which relate to the  
3 guaranteed student loan program shall be used exclu-  
4 sively for the purpose of acquiring contingent or vested  
5 rights in obligations which it may acquire under this  
6 article, and such appropriation, payments, revenue and  
7 interest, as well as other income received in connection  
8 with such obligations, is hereby established as a trust  
9 fund. Such fund shall be used for the purposes of the  
10 governing boards other than for maintenance and  
11 operation.

12 The maintenance and operating expenses of the  
13 governing board shall be paid from funds specifically  
14 appropriated for such purposes. No part of the trust  
15 fund established under this section shall be expended for  
16 such purposes.

17 The governing board shall be the trustee of the trust

18 fund hereby created, and all investments to be made  
19 from the assets of such trust shall be made by the state  
20 treasurer in the manner provided by law. For the  
21 purposes of this article, there is hereby created in the  
22 treasury of this state a special revolving account for  
23 deposits and withdrawals as herein provided. The state  
24 treasurer shall be the custodian of the assets of the  
25 board. All payments from the accounts thereof shall be  
26 made by the treasurer upon warrants issued by the  
27 auditor and upon vouchers signed by such persons as are  
28 designated by the governing board. A duly attested copy  
29 of a resolution of the governing board designating such  
30 persons shall be filed with the state treasurer as the  
31 authority for issuing warrants upon such vouchers.

**§18C-2-9. Construction of provisions of article relating to loan program.**

1 The provisions of this article which relate to the  
2 guaranteed student loan program shall be liberally  
3 construed to the end that its beneficial purposes may be  
4 effectuated.

**ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.**

§18C-3-1. Medical student loan program; establishment; administration; eligibility; loan forgiveness.

§18C-3-2. State aid for students of optometry.

**§18C-3-1. Medical student loan program; establishment; administration; eligibility; loan forgiveness.**

1 (a) There is hereby created a medical student loan  
2 program to be administered by the senior administrator.  
3 The purpose of this program is to provide loans to state  
4 residents who demonstrate financial need, meet aca-  
5 demic standards and are enrolled or accepted for  
6 enrollment at the West Virginia University school of  
7 medicine, Marshall University school of medicine or the  
8 West Virginia school of osteopathic medicine.

9 (b) There is hereby established a special revolving  
10 fund account under the board of trustees in the state  
11 treasury to be known as the medical student loan fund  
12 which shall be used to carry out the purposes of this  
13 section. The fund shall consist of: (1) Amounts allocated  
14 by the board of trustees from the medical education fee  
15 as established by section four, article ten of chapter

16 eighteen-b of this code: *Provided*, That the board of  
17 trustees may transfer to this fund for student loans an  
18 amount not to exceed thirty-three percent of the total  
19 collections from the medical education fee in any one  
20 year; (2) appropriations provided by the Legislature;  
21 (3) principal and interest repaid by medical student  
22 loan recipients; and (4) other amounts which may be  
23 available from external sources. Balances remaining in  
24 the fund at the end of the fiscal year shall not expire  
25 or revert. All costs associated with the administration  
26 of this section shall be paid from the medical student  
27 loan fund.

28 (c) The board shall promulgate rules for the admin-  
29 istration of the medical student loan program. Such  
30 rules shall include, but not be limited to, the areas of  
31 academic standards, financial need loan amounts,  
32 residency requirements, loan repayment requirements,  
33 loan forgiveness provisions, interest rates, collection  
34 procedures and financial management. Loans shall be  
35 awarded at the institutional level in a manner consistent  
36 with rules promulgated by the board of trustees.

37 (d) An individual shall be eligible for loan consider-  
38 ation if the individual is a resident of this state as  
39 defined by the trustees, demonstrates financial need,  
40 meets established academic standards and is enrolled or  
41 accepted for enrollment at one of the aforementioned  
42 schools of medicine in a program leading to the degree  
43 of medical doctor (M. D.) or doctor of osteopathy (D. O.):  
44 *Provided*, That the individual has not yet received one  
45 of these degrees and is not in default of any previous  
46 student loan.

47 (e) The board, in conjunction with the state depart-  
48 ment of health, shall determine qualifying medically  
49 underserved areas and medical specialties in which  
50 there is a shortage of physicians.

51 At the end of each fiscal year, any individual who has  
52 received a medical student loan and who has actually  
53 rendered services as a medical doctor or doctor of  
54 osteopathy in this state in a designated medically  
55 underserved area or in a designated medical specialty  
56 in which there is a shortage of physicians, may submit  
57 to the trustees a statement of service on a form provided  
58 for that purpose. Upon receipt of such statement in



59 proper form, the trustees shall cancel appropriate  
60 portions of the outstanding loan or loans, in accordance  
61 with rules promulgated by the trustees.

**§18C-3-2. State aid for students of optometry.**

1 The board of trustees is hereby authorized to enter  
2 into a contract with an educational institution or  
3 institutions outside the state that offer training in  
4 optometry, by the terms of which the board of trustees  
5 may obligate itself to pay such institution, within the  
6 limits of any appropriation made for the purpose, a  
7 stated amount per year for each West Virginia student  
8 the institution will agree to accept for training in  
9 optometry.

10 The board of trustees shall each year send to any  
11 institution with which such contract is made a certified  
12 list of all persons applying to the trustees for training  
13 in optometry who are bona fide citizens and residents  
14 of this state prior to the filing of their applications, and  
15 who have completed either within or without the state  
16 the course of study required by such institution as a  
17 prerequisite to the study of optometry.

18 Any person who receives state aid under this section  
19 shall, upon graduation from an educational institution  
20 for study of optometry, be required to practice optome-  
21 try for a period of two years in this state, or in lieu  
22 thereof shall, within sixty days from the date of  
23 graduation, reimburse the board of trustees for any  
24 tuition advanced to such person by the trustees.

**CHAPTER 61. CRIMES AND THEIR  
PUNISHMENT.**

**ARTICLE 3B. TRESPASS.**

**§61-3B-4. Trespass on student residence premises or  
student facility premises of an institution of  
higher education.**

1 (a) For the purposes of this section:

2 (1) "Residence hall" means housing or a unit of  
3 housing provided primarily for students as a temporary  
4 or permanent dwelling place or abode and owned,  
5 operated or controlled by an institution of higher  
6 education.

7 (2) "Student facility" means a facility owned, operated  
8 or controlled by an institution of higher education at  
9 which alcoholic liquor or nonintoxicating beer is  
10 purchased, sold or served to students enrolled at such  
11 institution, but shall not include facilities at which  
12 athletic events are regularly scheduled and an admis-  
13 sion fee is generally charged.

14 (3) "Institution of higher education" means any state  
15 university, state college or state community college  
16 under the control, supervision and management of the  
17 West Virginia board of trustees or West Virginia board  
18 of directors, or any other university, college or institu-  
19 tion of higher education in the state subject to rules for  
20 accreditation under the provisions of section seven,  
21 article four, chapter eighteen-b of this code.

22 (4) "Person authorized to have access to a residence  
23 hall or student facility" means:

24 (A) A student who resides or dwells in the residence  
25 hall; or

26 (B) An invited guest of a student who resides or  
27 dwells in the residence hall; or

28 (C) A parent, guardian or person who has legal  
29 custody of a student who resides or dwells in the  
30 residence hall; or

31 (D) An employee of the institution of higher education  
32 who is required by such employment by such institution  
33 to be in the residence hall or student facility and who  
34 is acting within the scope of his or her employment; or

35 (E) A delivery person, repair person or other such  
36 person who is not an employee of the institution of  
37 higher education but who nonetheless has a legitimate  
38 commercial reason to be in the residence hall or student  
39 facility and who is acting pursuant to such legitimate  
40 commercial reason.

41 (b) If a person authorized to have access to a residence  
42 hall or a student facility enters such residence hall or  
43 student facility and by such presence or acts interferes  
44 with the peaceful or orderly operation of such residence  
45 hall or student facility, such person may be asked to  
46 leave such residence hall or student facility. If a person

47 not authorized to have access to a residence hall or  
48 student facility enters such a residence hall or student  
49 facility, that person may be asked to leave such  
50 residence hall or student facility notwithstanding the  
51 fact that he or she has not interfered with the peaceful  
52 or orderly operation of such residence hall or student  
53 facility or otherwise committed a breach of the peace or  
54 violated any statute or ordinance. Such request to leave  
55 may be made by the president or other administrative  
56 head of the institution of higher education, an employee  
57 designated by the president to maintain order in the  
58 residence hall or student facility, a security officer  
59 appointed pursuant to the provisions of section five,  
60 article four, chapter eighteen-b of this code, or a  
61 municipal police officer, a sheriff or deputy sheriff, or  
62 a member of the department of public safety.

63 (c) It shall be unlawful for a person to remain in a  
64 residence hall or student facility after being asked to  
65 leave as provided for in subsection (b) of this section.

66 (d) Any person who violates the provisions of subsec-  
67 tion (c) of this section shall be guilty of a misdemeanor,  
68 and, upon conviction thereof, shall be fined fifteen  
69 dollars. For any second or subsequent conviction for a  
70 violation occurring within one year after a previous  
71 violation for similar conduct, such person shall be fined  
72 an amount not to exceed one hundred dollars.

73 (e) This section shall not be construed to be in  
74 derogation of the common law, nor shall the provisions  
75 of this section contravene or infringe upon existing  
76 statutes related to the same subject.

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## CHAPTER 65

(Com. Sub. for H. B. 2697—By Delegates Kiss and Basham)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section six, article twenty-two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to

further amend chapter eighteen of said code by adding thereto a new article, designated article twenty-two-e, all relating to higher education; providing for investment by colleges and universities which receive moneys from the eminent scholars endowment fund; providing legislative findings with respect to establishment of distinguished professors trust fund; providing definitions; establishing the distinguished professors endowment trust fund and board of directors; providing corporate powers and duties of board of regents; providing for fund administration and the creation of distinguished professorships; requiring board of regents to establish criteria for selection of distinguished professorships; authorizing solicitation of private funds; and requiring annual reports.

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

That section six, article twenty-two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter eighteen of said code be further amended by adding thereto a new article, designated article twenty-two-e, all to read as follows:

## CHAPTER 18. EDUCATION.

### Article

22A. Eminent Scholars Endowment Trust Fund Act.

22E. Distinguished Professors Endowment Trust Fund Act.

### ARTICLE 22A. EMINENT SCHOLARS ENDOWMENT TRUST FUND ACT.

#### §18-22A-6. Administration of fund.

1       (a) The board shall use any state moneys appropriated  
2 to the fund solely for the purpose of establishing  
3 endowed chairs at state colleges and universities.

4       The board may allocate state appropriations to an  
5 account only when private moneys have also been  
6 allocated to that account. The board shall endeavor,  
7 whenever possible, to allocate one dollar of state  
8 appropriations for every two dollars of private moneys  
9 allocated. The board may also allocate only private  
10 moneys to an account.

11 Unless otherwise directed by executive order, the  
12 payment of state appropriations to the fund shall be  
13 made in twelve equal monthly installments, beginning  
14 on the last day of the first month of the fiscal year.

15 (b) The board may, for purposes of investment,  
16 commingle any moneys constituting principal received  
17 from whatever source to the extent allowed under the  
18 terms of the granting of such moneys and shall endeavor  
19 to obtain the highest possible rate of return consistent  
20 with the preservation of the principal. Consistent with  
21 the terms of the appropriation, grant, gift or bequest,  
22 and the provisions of this section, the board may use any  
23 income, principal or combination of income and princi-  
24 pal as it may deem prudent to finance the establishment  
25 of each endowed chair. However, the board shall notify  
26 the recipient college or university of any money received  
27 for donations to such institution.

28 (c) The board shall designate endowed chairs at the  
29 various colleges and universities as it may deem  
30 appropriate. For each chair so established it shall  
31 designate a separate account administered by the board  
32 to which moneys from the fund shall be deposited. Such  
33 moneys may continue to be deemed principal for  
34 purposes of investment and commingling pursuant to  
35 subsection (b) of this section, and any income, loss or  
36 gain, or increase or decrease in value may be allocated  
37 by the board on such reasonable basis as is prescribed  
38 by the board.

39 (d) For the purpose of encouraging the donation of  
40 private moneys to the fund, the board may designate  
41 specific chairs or specific areas of academic study as  
42 subjects of challenge grants. A specific chair, or a chair  
43 in a designated academic area, shall be established  
44 whenever the total amount of principal and interest  
45 dedicated to it reaches one hundred fifty thousand  
46 dollars, with at least one half of the principal being from  
47 private sources. On demand of the college or university  
48 where such chair shall be established, the board shall  
49 return to it the private funds in the chair's account to  
50 be held in an account established in a federally insured  
51 depository by such college or university. The private

52 funds heretofore deposited in accounts in the treasury  
53 shall be returned to such college or university: *Provided,*  
54 That regardless whether such moneys are held in the  
55 fund established in section three of this article or in  
56 accounts established by a college or university pursuant  
57 to this subsection, the matching provisions in this article  
58 shall apply: *Provided, however,* That these funds may  
59 only be expended in accordance with this article.

60 When one hundred fifty thousand dollars has accum-  
61 ulated in the account dedicated to any one chair, the  
62 board shall notify the president of the appropriate  
63 college or university that an appointment to that chair  
64 shall be made.

65 (e) The president of the college or university shall use  
66 at least two thirds of the income from moneys allocated  
67 to an account to supplement the salary of the person  
68 appointed to the endowed chair created by such account.  
69 The sum paid from the fund to the person so appointed  
70 shall be in addition to the contract salary except as  
71 otherwise provided in this section. Such president may  
72 allocate one third or any part thereof to provide or assist  
73 in providing secretarial or other support services for the  
74 endowed chair or may return one third or any part  
75 thereof to the board with the direction that such amount  
76 be added to the principal amount in the account of the  
77 endowed chair from which such income was derived to  
78 protect its future yield.

79 (f) Whenever the endowed chair's salary supplement  
80 received pursuant to this subsection equals fifty percent  
81 of the contract salary, the president of the college or  
82 university may return all or a portion of the excess  
83 amount to the fund, and the board shall designate a new  
84 account for the purpose of establishing another chair at  
85 the same institution or an existing account at the same  
86 institution for receipt of the moneys so returned:  
87 *Provided,* That when the principal amount of any chair  
88 reaches the sum of one million dollars or more, no state  
89 salary may be paid to the holder of the chair, but such  
90 person's entire salary shall be paid from the interest  
91 income.

92 (g) When the total allocations designated for a chair  
93 from both public and private sources do not equal or  
94 exceed one hundred fifty thousand dollars within five  
95 years from the date of the establishment of the account,  
96 the board may designate a new or existing chair as the  
97 recipient of the moneys, regardless of the terms of the  
98 appropriation, grant, gift or bequest, except where  
99 return of the moneys is required by the terms of the  
100 grant, gift or bequest.

101 (h) The governing body of the institution shall  
102 promulgate rules and regulations to insure that any  
103 money deposited in any federally insured depository  
104 shall be backed by federally guaranteed securities to the  
105 extent that the balance in any account in said depository  
106 exceeds the amounts guaranteed by the Federal Depos-  
107 itory Insurance Corporation or the Federal Savings and  
108 Loan Insurance Corporation.

#### ARTICLE 22E. DISTINGUISHED PROFESSORS ENDOWMENT TRUST FUND ACT.

§18-22E-1. Legislative findings.

§18-22E-2. Definitions.

§18-22E-3. Establishment of fund; corporation to administer; board of directors.

§18-22E-4. Corporate powers.

§18-22E-5. Duties of board of regents.

§18-22E-6. Administration of fund.

§18-22E-7. Selection of distinguished professors.

§18-22E-8. Authorization to solicit private moneys; terms of grants; reports to board of directors; handling of moneys.

§18-22E-9. Annual reports.

#### §18-22E-1. Legislative findings.

1 The Legislature hereby finds that the essence of  
2 excellence in higher education is the attraction and  
3 retention of outstanding faculty; that however necessary  
4 modern facilities and efficient and effective administra-  
5 tion may be, the faculty provides the catalyst by which  
6 all the elements of higher education combine to offer a  
7 quality education. The Legislature further finds that the  
8 attraction and retention of outstanding faculty at all  
9 state colleges and universities, particularly those who  
10 have attained distinction as scholars and teachers,  
11 requires a long-term and permanent commitment from

12 both public and private sources, that private support  
13 will help strengthen the commitment of citizens and  
14 organizations to the promotion of excellence in higher  
15 education and will provide moneys for salaries compet-  
16 itive with those paid to scholars of similar distinction  
17 working for this country's leading colleges and  
18 universities.

19 The Legislature further finds that the appropriation  
20 of public moneys to attract and retain outstanding  
21 faculty and to encourage the commitment of private  
22 moneys with a view toward the accumulation of such  
23 moneys in a trust fund for such purposes is a proper  
24 annual expense of the state, and that the establishment  
25 of a distinguished professors trust fund is a proper  
26 means of providing for the advancement of public  
27 higher education in this state.

#### **§18-22E-2. Definitions.**

1 Whenever the following terms are used in this article,  
2 they have the meanings described below:

3 (a) "Board of directors" or "board" means the  
4 members of the board of directors of the distinguished  
5 professors endowment trust fund;

6 (b) "Contract salary" means that portion of the  
7 distinguished professor's financial compensation paid  
8 from state moneys but does not include moneys from the  
9 distinguished professors endowment trust fund;

10 (c) "Distinguished professorship" means the position  
11 created pursuant to section six of this article to which  
12 a professor is appointed; and

13 (d) "Fund" means the distinguished professors endow-  
14 ment trust fund.

#### **§18-22E-3. Establishment of fund; corporation to admin- ister; board of directors.**

1 There is hereby established the distinguished profes-  
2 sors endowment trust fund, a public corporation, for the  
3 purpose of administering the fund described in this  
4 article. The board of directors of this corporation are  
5 those persons appointed and serving as members of the  
6 board of regents.



**§18-22E-4. Corporate powers.**

1 (a) The officers of the corporation are the officers of  
2 the board of regents. The procedural rules of the board  
3 of regents shall be used in conducting meetings.

4 (b) The corporation is hereby expressly authorized to  
5 receive appropriations of public moneys and private or  
6 public grants, gifts or bequests. It may hold, invest or  
7 reinvest such moneys and expend the income therefrom  
8 as hereinafter provided. The board may determine  
9 which of the properties and moneys received by it, other  
10 than public appropriations, grants, bequests and  
11 specific gifts, are income and which are additions to  
12 principal.

13 (c) The board is exempt from liability for any loss or  
14 decrease in value of the assets or income of the fund,  
15 except as such losses or decreases in value are shown  
16 to be the result of bad faith, gross negligence or  
17 intentional misconduct.

18 For the purpose of valuing assets, the board may use  
19 any commonly accepted techniques of appraisal or  
20 commonly accepted principles of accounting. No agency  
21 of government nor any person, natural or corporate,  
22 may receive any part of the principal or income from  
23 any appropriation, grant, gift or bequest as a fee for the  
24 acquisition or administration of the appropriation,  
25 grant, gift or bequest.

26 (d) The board shall adhere at all times to the terms  
27 and limitations of any appropriation, grant, gift or  
28 bequest received. However, the board may refuse to  
29 receive any grant, gift or bequest which incorporates  
30 terms and limitations which they deem to be  
31 unacceptable.

32 (e) The board may in its sole discretion borrow money  
33 when necessary in order to avoid the untimely sale of  
34 assets. At no time, however, may the board incur any  
35 debt obligation for such purposes which exceeds twelve  
36 months in duration.

**§18-22E-5. Duties of board of regents.**

1 The board of regents shall provide to the fund all  
2 necessary secretarial services, office space, staff and  
3 other assistance required without charge or appropria-  
4 tion therefor.

**§18-22E-6. Administration of fund.**

1 (a) Moneys from the general revenue of the state shall  
2 be appropriated by separate line item in the budget for  
3 faculty endowments to be used solely for the purposes  
4 of this article and of article twenty-two-a of this chapter.  
5 The board shall allocate the appropriation in accordance  
6 with policies which shall be adopted for this purpose,  
7 and any funds allocated and not utilized to establish  
8 distinguished professorships at state colleges and  
9 universities under this article may be reallocated in  
10 accordance with such board policies for the sole purpose  
11 of establishing endowed chairs for eminent scholars at  
12 state colleges and universities pursuant to article  
13 twenty-two-a.

14 The board may allocate state appropriations to an  
15 account only when private moneys have also been  
16 allocated to that account and shall require a minimum  
17 of one private dollar for each dollar of allocation from  
18 state appropriation. The board shall endeavor, whenever  
19 possible, to allocate one dollar of state appropriations for  
20 every two dollars of private moneys allocated. The board  
21 may also allocate only private moneys to an account.

22 Unless otherwise directed by executive order, the  
23 payment of state appropriations to the fund shall be  
24 made in twelve equal monthly installments, beginning  
25 on the last day of the first month of the fiscal year.

26 (b) The board may, for purposes of investment,  
27 commingle any moneys constituting principal received  
28 from whatever source to the extent allowed under the  
29 terms of the granting of such moneys and shall endeavor  
30 to obtain the highest possible rate of return consistent  
31 with the preservation of the principal. Consistent with  
32 the terms of the appropriation, grant, gift or bequest,  
33 and the provisions of this section, the board may use any

34 income, principal or combination of income and princi-  
35 pal as it may deem prudent to finance the establishment  
36 of each distinguished professorship.

37 (c) The board shall designate distinguished professor-  
38 ships at the various colleges and universities as it  
39 considers appropriate. For each professorship so  
40 established it shall designate a separate account  
41 administered by the board to which moneys from the  
42 fund shall be deposited. Such moneys may continue to  
43 be considered principal for purposes of investment and  
44 commingling pursuant to subsection (b) of this section,  
45 and any income, loss or gain, or increase or decrease in  
46 value may be allocated by the board on such reasonable  
47 basis as is prescribed by the board.

48 (d) For the purpose of encouraging the donation of  
49 private moneys to the fund, the board may designate or  
50 specify areas as subjects of challenge grants. A specific  
51 professorship in a designated academic area shall be  
52 established whenever the total amount of principal and  
53 interest dedicated to it reaches thirty thousand dollars,  
54 with at least one half of the principal being from private  
55 sources.

56 When thirty thousand dollars has accumulated in the  
57 account dedicated to any one professorship, the board  
58 shall notify the president of the appropriate college or  
59 university that an appointment to that professorship  
60 may be made.

61 (e) The president of the college or university may use  
62 the income and up to ten percent of that portion of the  
63 principal of moneys allocated to an account that is in  
64 excess of the amount that is the sum of the total state  
65 appropriation to that account plus an equal amount  
66 contributed from private sources. The president of the  
67 college or university may use such moneys to supple-  
68 ment the salary of the person appointed to the distin-  
69 guished professorship created by such account. The sum  
70 paid from the fund to the person so appointed shall be  
71 in addition to the contract salary except as otherwise  
72 provided in this section. Such president may allocate an  
73 additional ten percent or any part thereof of such excess

74 principal to provide or assist in providing secretarial or  
 75 other support services for the distinguished  
 76 professorship.

77 (f) Whenever the account for a distinguished profes-  
 78 sorship equals one hundred fifty thousand dollars, the  
 79 board, on recommendation of the president of the college  
 80 or university, may convert the account to an eminent  
 81 scholars account pursuant to the provisions of article  
 82 twenty-two-a of this chapter: *Provided*, That when the  
 83 principal amount of any account reaches the sum of one  
 84 million dollars or more, no state salary may be paid to  
 85 the holder of the professorship, but such person's entire  
 86 salary shall be paid from the interest income.

87 (g) When the total allocations designated for a  
 88 distinguished professorship from both public and  
 89 private sources do not equal or exceed thirty thousand  
 90 dollars within five years from the date of the establish-  
 91 ment of the account, the board may designate a new or  
 92 existing professorship at the institution wherein the  
 93 fund was established as the recipient of the moneys,  
 94 regardless of the terms of the appropriation, grant, gift  
 95 or bequest, except where return of the moneys is  
 96 required by the terms of the grant, gift or bequest.

**§18-22E-7. Selection of distinguished professors.**

1 The board of regents shall establish criteria for the  
 2 selection of persons to be appointed as distinguished  
 3 professors established pursuant to this article. Such  
 4 professorships may be filled from either within or  
 5 outside the faculty of the college or university, and  
 6 outstanding teaching ability shall be part of the criteria  
 7 for appointment. The board may establish criteria  
 8 which exceeds the provisions of this section.

**§18-22E-8. Authorization to solicit private moneys; terms  
 of grants; reports to board of directors;  
 handling of moneys.**

1 Each college and university, and each dean and  
 2 department chair within each college or university, is  
 3 hereby authorized to solicit moneys for distinguished  
 4 professorships pursuant to this article. In order to

5 maximize the effective use of moneys raised, persons or  
6 institutions soliciting moneys shall endeavor, insofar as  
7 is possible, to secure private grants, gifts or bequests  
8 which are unlimited as to their use. All persons and  
9 institutions engaged in soliciting moneys shall apprise  
10 the board of their actions and provide periodic reports,  
11 at least once each fiscal year, regarding the amounts  
12 secured and, upon receipt of any moneys, shall forward  
13 them forthwith to the board for deposit in accordance  
14 with section six of this article.

**§18-22E-9. Annual reports.**

1 The board shall make an annual report to the joint  
2 committee on government and finance of the West Virginia  
3 Legislature no later than the first day of December of each  
4 year setting forth with specificity the sources of all moneys,  
5 the allocations of all moneys and such other information  
6 as the joint committee may require.

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## CHAPTER 66

(H. B. 2866—By Delegates Farley and Houvouras)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven, relating to fees and other money collected at state institutions of higher education; providing for an additional fee to be imposed upon health sciences students at West Virginia University, Marshall University School of Medicine and West Virginia School of Osteopathic Medicine for offsetting the cost of health sciences education at these schools of medicine; and providing for special accounts in the state treasury and appropriations by the Legislature.

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

That article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eleven, to read as follows:

**ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.****\*§18-24-11. Health professions education fee.**

1 In addition to the fees specifically provided for in  
2 sections one, one-a, one-b and one-c of this article, all  
3 students enrolled for credit at the West Virginia  
4 University health sciences center, Marshall University  
5 School of Medicine and the West Virginia School of  
6 Osteopathic Medicine, shall pay a health professions  
7 education fee. The board of trustees shall fix the amount  
8 of the fee and may from time to time change that  
9 amount. The fee imposed by this section is in addition  
10 to the maximum fees allowed to be collected under the  
11 provisions of section one of this article and is not limited  
12 thereby. Refunds of the fee may be made in the same  
13 manner as any other fee collected at state institutions  
14 of higher education. All moneys collected from the  
15 health professions education fees shall be deposited in  
16 a special revenue account for the respective school from  
17 which collection is made, said accounts shall be hereby  
18 created in the state treasury for the West Virginia  
19 health sciences center, Marshall University School of  
20 Medicine, and the West Virginia School of Osteopathic  
21 Medicine. The moneys in such fund shall be used to  
22 offset general operating costs for health sciences  
23 education in this state. Before the first day of July of  
24 each year, the board of trustees shall provide the  
25 legislative auditor with a report of the projected fee  
26 collections during the next fiscal year and a report of  
27 fee expenditures for the preceding fiscal year.

\*Clerk's Note: Similar provisions of this section also appear in S.B. 420, §18B-10-4a, which passed subsequent to this act.

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## CHAPTER 67

(H. B. 2293—By Delegate Ashcraft)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article twenty-eight, chapter eighteen of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to standardized testing requirements of nonpublic schools.

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

That section three, article twenty-eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH SCHOOLS, OR SCHOOLS OF A RELIGIOUS ORDER.**

**§18-28-3. Standardized testing requirements.**

1 Each private, parochial or church school or school of  
2 a religious order or other nonpublic school electing to  
3 operate under this statute in lieu of the approval  
4 requirements set forth as part of section one, article  
5 eight, chapter eighteen, exemption A shall administer  
6 on an annual basis during each school year to every  
7 child enrolled therein between the ages of seven and  
8 sixteen years either the comprehensive test of basic  
9 skills, the California achievement test, the Stanford  
10 achievement test or the Iowa tests of basic skills/tests  
11 of achievement and proficiency, which test will be  
12 selected by the chief administrative officer of each  
13 school in the subjects of English, grammar, reading,  
14 social studies, science and mathematics; and shall be  
15 administered under standardized conditions as set forth  
16 by the published instructions of the selected test.

17 Each child's testing results and the school composite  
18 test results shall be made available to such child's  
19 parents or legal guardians. Upon request of a duly  
20 authorized representative of the West Virginia depart-  
21 ment of education, the school composite test results shall  
22 be furnished by the school or by a parents organization  
23 composed of the parents or guardians of children  
24 enrolled in said school to the state superintendent of  
25 schools.

26 Each school to which this article applies shall:

27 (a) Establish curriculum objectives, the attainment of  
28 which will enable students to develop the potential for  
29 becoming literate citizens.

30 (b) Provide an instructional program that will make  
31 possible the acquisition of competencies necessary to  
32 become a literate citizen.

33 If such school composite test results for any single  
34 year for English, grammar, reading, social studies,  
35 science and mathematics fall below the fortieth percen-  
36 tile on the selected tests, the school as herein described  
37 shall initiate a remedial program to foster achievement  
38 above that level. If after two consecutive calendar years  
39 school composite test results are not above the fortieth  
40 percentile level, attendance at the school may no longer  
41 satisfy the compulsory school attendance requirement  
42 exemption of exemption K, section one, article eight,  
43 chapter eighteen, until such time as the percentile  
44 standards herein set forth are met.

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## CHAPTER 68

(Com. Sub. for S. B. 553—By Senators Tucker,  
Mr. President, J. Manchin and Warner)

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[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-one, relating to the governing boards of state institutions of higher education; authorizing the boards to enter into contracts and agreements with corporations created to facilitate research and development activities for such state institutions of higher education; setting forth the terms and conditions of such contracts and agreements; and providing for audits of such corporations.

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

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-one, all to read as follows:



**ARTICLE 31. RESEARCH AND DEVELOPMENT AGREEMENTS  
FOR STATE INSTITUTIONS OF HIGHER  
EDUCATION.**

§18-31-1. Definitions.

§18-31-2. Legislative findings and purpose.

§18-31-3. Boards authorized to contract with corporations; characteristics of corporations.

§18-31-4. Agreement; required provisions.

§18-31-5. Audit.

§18-31-6. Conflicts of interest.

§18-31-7. No waiver of sovereign immunity.

§18-31-8. Not obligation of the state.

§18-31-9. Sections and provisions severable.

**§18-31-1. Definitions.**

The following words used in this article shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "Agreement" means any agreement being entered into between a governing board and a corporation pursuant to section four of this article.

(b) "Corporation" means a nonstock, not-for-profit corporation established under the general corporation laws of the state which meets the description presented by section three of this article.

(c) "Corporate directors" means the board of directors of a corporation.

**§18-31-2. Legislative findings and purpose.**

1 (a) The Legislature finds and determines that the  
2 future economic development in the state will depend in  
3 part upon research developed at the state institutions of  
4 higher education, and enhanced research opportunities  
5 for state institutions of higher education will promote  
6 the general economic welfare of the citizens of the state.  
7 In order to enhance the competitive position of state  
8 institutions of higher education in the current environ-  
9 ment for research and development, expenditures for  
10 equipment and material for research projects must be  
11 handled in an expeditious fashion, and the acquisition  
12 and utilization of research grants can be simplified and  
13 expedited through the utilization of corporations.

14 (b) The interest of the citizens of the state will be best  
15 met by agreements entered into and carried out by the  
16 governing boards and corporations to provide research  
17 assistance for state institutions of higher education.  
18 Therefore, in order to facilitate research and develop-  
19 ment grants and opportunities for state institutions of  
20 higher education, it is appropriate to authorize the  
21 governing boards to contract with corporations organ-  
22 ized for the purpose of providing such services to state  
23 institutions of higher education.

**§18-31-3. Boards authorized to contract with corpora-  
tions; characteristics of corporations.**

1 Each governing board for a state institution of higher  
2 education is hereby authorized to enter into agreements  
3 and any other contractual relationships with one or  
4 more corporations formed with respect to such state  
5 institution of higher education, but only if each such  
6 corporation meets the following descriptions:

7 (a) The president and the president's appointees from  
8 the institution shall constitute a majority of the voting  
9 corporate directors.

10 (b) The corporation must be organized as a nonprofit,  
11 nonstock corporation under the general corporation laws  
12 of the state exclusively for charitable, educational or  
13 scientific purposes within the meaning of section  
14 501(c) of the Internal Revenue Code of 1986, as  
15 amended, to foster and support research at the respec-  
16 tive state institution of higher education and to provide  
17 evaluation, development, patenting, management and  
18 marketing services for inventions of the faculty, staff  
19 and students of such state institution of higher  
20 education.

21 (c) The meetings of the corporate directors shall be  
22 subject to the provisions of section three, article nine-  
23 a, chapter six of this code.

24 (d) Upon dissolution of the corporation, the assets of  
25 the corporation shall be transferred to such entity as the  
26 appropriate governing board shall designate for the  
27 benefit of the state institution of higher education:

28 *Provided*, That such recipient shall be an organization  
29 operated exclusively for charitable, educational or  
30 scientific purposes as shall at such time qualify as an  
31 exempt organization under section 501(c)(3) of the  
32 Internal Revenue Code of 1986, as amended.

**§18-31-4. Agreement; required provisions.**

1 (a) Notwithstanding section ten, article three, chapter  
2 twelve of this code or any other provision of law to the  
3 contrary, each governing board is hereby authorized to  
4 enter into an agreement with a corporation, which  
5 agreement shall be for the benefit of such state  
6 institution of higher education and contain the following  
7 provisions, subject to further specification as shall be  
8 mutually agreed upon by the appropriate governing  
9 board and the corporation:

10 (1) On the effective date of the agreement, the  
11 corporation shall be charged with the responsibility of  
12 serving as fiscal agent for sponsored projects conducted  
13 by the faculty, staff and students of the state institution  
14 of higher education, and grants shall be accepted by the  
15 corporation on behalf of the institution and assigned to  
16 the corporation for fiscal management.

17 (2) The corporation shall provide evaluation, develop-  
18 ment, patenting, licensing, management and marketing  
19 services for inventions, processes, trademarks, copy-  
20 rights or any other intellectual property developed by  
21 faculty, staff and students of any state institution of  
22 higher education.

23 (3) The corporation shall have the right to determine  
24 the application of the proceeds from any invention,  
25 process, trademark, copyright or any other intellectual  
26 property developed by the faculty, staff or students of  
27 a state institution of higher education among the  
28 corporation, the inventor or developer, and the  
29 institution.

30 (4) The corporation shall have such additional respon-  
31 sibilities related to the administration of research and  
32 development at the state institution of higher education  
33 as are necessary or desirable to facilitate the develop-  
34 ment of research at the institution.

35 (b) Upon termination of the agreement, the funds or  
36 grants paid or held by the corporation shall be paid to  
37 the state institution of higher education or its designee  
38 as the appropriate governing board shall direct.

39 (c) A corporation may utilize both corporation em-  
40 ployees and personnel of the state institution of higher  
41 education: *Provided*, That the corporation may pay the  
42 costs incurred by the state institution of higher educa-  
43 tion including personnel funded on grants and contracts,  
44 fringe benefits of personnel funded on grants and  
45 contracts, administrative support costs and other costs  
46 which may require reimbursement and may include as  
47 costs any applicable overhead and fringe benefit  
48 assessments necessary to recover the costs expended by  
49 the state institution of higher education pursuant to the  
50 terms of the agreement, it being the intention that a  
51 board may be reimbursed for expenses incurred by it  
52 pursuant to the agreement.

**§18-31-5. Audit.**

1 The operations of the corporation shall be subject to  
2 an audit by an independent auditor.

**§18-31-6. Conflicts of interest.**

1 Notwithstanding any other provision of this code to  
2 the contrary, officers and employees of a governing  
3 board and the affected state institution of higher  
4 education may hold appointments to offices of the  
5 corporation and be corporate directors or officers or  
6 employees of other entities contracting with either the  
7 corporation or a governing board of a state institution  
8 of higher education. The executive director of the  
9 corporation shall have dual appointment with the state  
10 institution of higher education. The governing board of  
11 a state institution of higher education and the corporate  
12 directors must be informed of such appointments  
13 annually.

**§18-31-7. No waiver of sovereign immunity.**

1 Nothing contained in this article shall be deemed or  
2 construed to waive or abrogate in any way the sovereign

3 immunity of the state or to deprive a governing board  
4 of a state institution of higher education, a state  
5 institution of higher education or any officer or em-  
6 ployee thereof of sovereign immunity.

**§18-31-8. Not obligation of the state.**

1 Obligations of a corporation shall not constitute debts  
2 or obligations of a state institution of higher education,  
3 the governing board thereof or the state.

**§18-31-9. Sections and provisions severable.**

1 The sections of this article, and the provisions and  
2 parts of said sections, are severable, and it is the  
3 intention to enact the whole or any part of the powers  
4 provided for in this article, and, if any of said sections,  
5 or the provisions or parts of any said sections, or the  
6 application thereof to any person or circumstance, are  
7 for any reason held unconstitutional or invalid, it is the  
8 intention that the remaining sections of this article, and  
9 the remaining provisions or parts of any said sections,  
10 shall remain in full force and effect.

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## CHAPTER 69

(Com. Sub. for H. B. 2616—By Delegates Whitt and Reid)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact section nine, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school principals; providing for the assignment of principals to each school; and restricting the assignment of teaching duties.

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

That section nine, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

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

8       Under the supervision of the superintendent and in  
9       accordance with the rules and regulations of the county  
10      board of education, the principal shall assume adminis-  
11      trative and instructional supervisory responsibility for  
12      the planning, management, operation and evaluation of  
13      the total educational program of the school or schools to  
14      which he is assigned.

15      The principal may submit recommendations to the  
16      superintendent regarding the appointment, assignment,  
17      promotion, transfer and dismissal of all personnel  
18      assigned to the school or schools under said principal's  
19      control. Such recommendation shall be submitted in  
20      writing as prescribed by the superintendent.

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

24      Upon recommendation of the county superintendent of  
25      schools, the county board of education shall, when  
26      needed, employ and assign, through written contract,  
27      assistant principals who shall work under the direction  
28      of the school principal. Such assistant principals shall  
29      hold valid administrative certificates appropriate for  
30      their assignments.

31      On or before the first day of July, one thousand nine  
32      hundred eighty-nine and continuing thereafter, each  
33      county board of education shall assign a certificated  
34      principal to each school and no principal may be  
35      assigned more than two schools: *Provided, That where*

36 enrollment exceeds four hundred students there will be  
37 no additional schools assigned to that principal.

38 No principal assigned to more than one school may be  
39 assigned any teaching duties except on a temporary  
40 emergency basis. No county shall have more teaching  
41 principalships or multi-school principalships than was  
42 present on the first day of January, one thousand nine  
43 hundred eighty-eight.

44 On or before the first day of July, one thousand nine  
45 hundred ninety-three and continuing thereafter, each  
46 county board of education shall employ a full-time  
47 supervising principal at each school whose net enrol-  
48 lment equals or exceeds one hundred seventy students.  
49 A principal assigned to a school with a net enrollment  
50 equal to or greater than one hundred seventy students  
51 may not be assigned any teaching duties except on a  
52 temporary emergency basis. When a principal is  
53 assigned on a full-time basis to a school whose net  
54 enrollment is more than seventy-five students but less  
55 than one hundred seventy students, such principal shall  
56 have a minimum of twenty hours per week for nonteach-  
57 ing duties. A principal assigned on a full-time basis to  
58 a school with seventy-five students or less shall have a  
59 minimum of ten hours per week for nonteaching duties:  
60 *Provided*, That nothing in this section prohibits a county  
61 board of education from assigning a full-time supervis-  
62 ing principal to a school with a net enrollment of less  
63 than one hundred seventy students.

64 Nothing contained in this section shall be construed  
65 to reduce or limit the rights and privileges of principals  
66 and assistant principals as teachers under the provisions  
67 of section one, article one, chapter eighteen of the code  
68 of West Virginia as amended; section one, article one,  
69 chapter eighteen-a; and other provisions of this code:  
70 *Provided*, That on or before the first day of July, one  
71 thousand nine hundred ninety-three, the state board of  
72 education shall not deny a county board of education the  
73 right to place a principal in a school with less than one  
74 hundred seventy students.

## CHAPTER 70

(Com. Sub. for S. B. 183—By Senators Whitlow and M. Manchin)

[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, ten, eleven, twenty-two and thirty, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the registration of voters; changing the date by which the county clerk must commence the cancellation of registrations; setting forth the basis for cancellation of registrations; restating the misdemeanor crime for the failure of election officials to perform duties and incorporating the penalty therefor by reference; changing the hours of registration within the county clerk's office; authorizing the county commission to appoint registrars for purposes other than biennial checkups; setting forth the minimum amount of hours in which temporary registration offices must remain open; authorizing the county commission to establish additional temporary registration offices; and expanding the time in which incomplete postcard registrations may be corrected.

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

That sections three, ten, eleven, twenty-two and thirty, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 2. REGISTRATION OF VOTERS.

- §3-2-3. Registration, cancellation and reinstatement; and criminal penalty.
- §3-2-10. County commission's duties and powers; hours during registration period.
- §3-2-11. Appointment of registrars; qualifications and duties.
- §3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons; temporary registration offices.
- §3-2-30. Time of registration prior to election; changes.

#### **§3-2-3. Registration, cancellation and reinstatement; and criminal penalty.**

- 1 A permanent registration system shall hereby be



2 established which shall be uniform throughout the state  
3 and all of its subdivisions. No voter so registered shall  
4 be required to register again for any election while he  
5 continues to reside at the same address, or, having  
6 moved from such address, is properly transferred  
7 according to the provisions of section twenty-seven or  
8 forty-one of this article, unless his registration is  
9 canceled as provided in this article.

10 Within one hundred and twenty days following any  
11 election, the clerk of the county commission shall, as  
12 evidenced by the presence or absence of signatures on  
13 the pollbooks for such election, correct any errors or  
14 omissions on the voter registration records pertaining to  
15 the election resulting from the poll clerks erroneously  
16 checking or failing to check the registration records as  
17 required by the provisions of section thirty-four, article  
18 one of this chapter.

19 Within one hundred twenty days following the general  
20 election, the clerk shall cancel the registration of each  
21 person who has failed to vote at least once in any  
22 statewide, special or municipal election held after the  
23 statewide general election held four years previously as  
24 indicated by his or her registration record. Any clerk  
25 failing to perform such duty is guilty of a misdemeanor  
26 as provided in section thirty-six of this article. The clerk  
27 of the county commission shall notify by mail each  
28 person whose registration is canceled for failure to vote.  
29 The notice shall inform the voter that:

30 (a) In order to be reinstated he or she must:

31 (1) Register again, either in person at the county  
32 clerk's office or by mail, according to the provisions of  
33 section three or forty-one of this article; or

34 (2) Execute and file an affidavit of reinstatement of  
35 registration at the same residence address not later than  
36 thirty days before the next primary or general election,  
37 except that reinstatement by affidavit shall not be  
38 permitted if the voter registration in question was  
39 canceled because the voter failed to make his first vote  
40 in person as required by the provisions of subsection (e),  
41 section forty-one of this article; and

42 (b) That the last day to register to vote in any election  
43 is thirty days before that election.

44 A blank copy of the affidavit form shall be included  
45 with the notice to the voter.

46 The clerk shall replace the registration card of any  
47 voter who files a completed affidavit of reinstatement in  
48 the registration records.

**§3-2-10. County commission's duties and powers; hours during registration period.**

1 Subject to the authority of the secretary of state, the  
2 county commission shall be chief registration authority  
3 in each respective county and all subdivisions therein,  
4 and shall supervise the county clerk and registrars in  
5 the performance of their respective duties.

6 The county commission shall have power on its own  
7 motion to summon and to interrogate any person  
8 concerning the registration of voters, to investigate any  
9 irregularities in registration, to summon and examine  
10 witnesses, to require the production of any relevant  
11 books and papers, and to conduct hearings on any  
12 matters relating to registration of voters.

13 Notwithstanding any provision of any other section of  
14 this code, the office of the clerk of the county commission  
15 shall remain open from 9:00 a.m. until 8:00 p.m. on the  
16 Friday and Monday, and from 9:00 a.m. until 5:00 p.m.  
17 on the Saturday prior to the close of the registration  
18 periods for statewide primary and general elections.

**§3-2-11. Appointment of registrars; qualifications and duties.**

1 The county commission of each county may appoint  
2 registrars to make a biennial checkup or to conduct  
3 other authorized registration activities allowed by this  
4 article. Two persons of opposite political parties shall  
5 together serve as registrars for from one to ten  
6 precincts.

7 No person is eligible to be appointed a registrar, or  
8 in any way act as such, if he or she has been convicted  
9 of a felony; or if he or she holds, or is a candidate for,

10 any elective or appointive office; or is a public employee,  
11 under the laws of this state or of the United States; or  
12 cannot read or write the English language. If any  
13 registrar fails or refuses to serve or is properly  
14 dismissed, the vacancy shall be filled either by the  
15 county commission or by the clerk thereof in vacation,  
16 in the manner provided for the appointment of regis-  
17 trars. Each registrar, before entering upon the dis-  
18 charge of his or her duties, shall take an oath that he  
19 or she will perform the duties of the office to the best  
20 of his or her ability, which oath shall be filed in the  
21 office of the clerk of the county commission.

22 An equal number of such registrars shall be selected  
23 from the two major political parties. The county  
24 commission shall, at least four weeks prior to making  
25 such appointment, request the county executive commit-  
26 tee of each of the two political parties to submit a list  
27 of names, equal to one half of the total number to be  
28 appointed, of persons qualified to act as registrars; and  
29 the county commission shall, if such lists are submitted,  
30 appoint the qualified persons recommended and shall  
31 notify each registrar of his or her appointment. Every  
32 list so presented shall be filed and preserved for one  
33 year by the clerk of the county commission. Any and  
34 every act performed by any registrar under the  
35 provisions of this article is void unless performed in  
36 conjunction with a registrar of the opposite political  
37 party at the same time and place.

38 Before acting, all such registrars shall attend a  
39 session, or sessions, of instruction by the clerk of the  
40 county commission, or some person designated by him  
41 or her, concerning the performance of their duties.

42 Immediately following such instruction the clerk of  
43 the county commission shall give to the registrars a copy  
44 of the laws and regulations relating to registration of  
45 voters, written instructions for performing their duties,  
46 and all necessary forms and other supplies, including  
47 maps with municipal precincts superimposed over  
48 county precincts in cases where boundaries differ, and  
49 a certified list of all registered voters within the  
50 precinct or precincts for which such registrars were

51 appointed, upon such form as may be prescribed by the  
52 secretary of state. Registrars appointed for the purpose  
53 of conducting a biennial checkup shall proceed together  
54 to make a house-to-house canvass in their precincts as  
55 allowed by section twenty-one of this article. Each  
56 biennial checkup shall be completed at least sixty days  
57 before the statewide primary election following the  
58 appointment of the registrars. In making the checkup  
59 the registrars shall not reregister any person who is  
60 already registered in such precinct, but shall determine  
61 whether or not such person is duly registered and  
62 qualified to vote therein. Registrars may be appointed  
63 under the provisions of this article to conduct registra-  
64 tion at temporary registration offices established  
65 throughout the county.

66 The registrars shall require valid identification and  
67 proof of age of each registrant, and shall inquire and  
68 attempt to establish whether the registrant resides  
69 within a municipality. The registrars shall have the  
70 registrant complete the voter registration form for  
71 county-state permanent registration and if the person  
72 resides within the limits of a municipality for which a  
73 separate registration file is kept, the registrars shall  
74 also have the registrant complete the form for municipal  
75 registration.

**§3-2-22. Registration in clerk's office; cancellation of  
registrations of deceased persons; temporary  
registration offices.**

1 The clerk or any deputy clerk of the county commis-  
2 sion may register any qualified person as a voter. The  
3 clerk or deputy shall first require valid identification  
4 and proof of age, and inquire and attempt to establish  
5 whether the voter resides within the limits of a  
6 municipality using the map provided by the municipal-  
7 ity in accordance with section five, article one of this  
8 chapter. The clerk or deputy clerk shall have the person  
9 registering fill in and complete the prescribed voter  
10 registration form for county-state permanent registra-  
11 tion. If the person resides within the limits of a  
12 municipality for which a separate registration file is  
13 kept, the clerk or deputy shall also have the person

14 complete the form for municipal registration. The  
15 registrant shall sign the form or forms under oath or  
16 affirmation. The clerk, upon proper proof, may alter,  
17 amend, correct or cancel the registration record of any  
18 voter. Such registration or alteration, amendment,  
19 correction or cancellation of registration records shall be  
20 carried on throughout the year.

21 During the biennial checkup period of every even-  
22 numbered year, the clerk or deputy clerk shall visit  
23 every public or private institution, excluding hospitals,  
24 in which reside aged, infirm, disabled or chronically ill  
25 persons, and every high school to register qualified  
26 voters. The clerk shall establish at least one temporary  
27 registration office per magisterial or tax district,  
28 whichever is more numerous, to register qualified  
29 persons or to alter, amend, correct or cancel such  
30 registration records. Temporary registration offices  
31 shall be open a minimum of four hours each day on at  
32 least three days, including one Saturday and one  
33 evening, not more than sixty days nor less than thirty  
34 days prior to each primary and each general election.  
35 The hours shall be posted and advertised as a Class III-  
36 O legal advertisement with the publication area being  
37 the magisterial district. Additional temporary offices  
38 may be established throughout the county for the public  
39 convenience. The clerk of the county commission shall  
40 also solicit public service advertising of such registra-  
41 tion offices and times on radio, television and newspap-  
42 ers serving that county.

43 Within fifteen days following receipt of a death  
44 certificate from the state or local registrar of vital  
45 statistics or the publication in a newspaper of the county  
46 an obituary clearly identifying a deceased person by  
47 name, residence and age, the clerk of the county  
48 commission shall cancel the voter registration, if any, of  
49 the person shown to be deceased by such certificate or  
50 obituary.

51 Sixty days prior to a general election, the clerk of the  
52 county commission shall review each death certificate  
53 received by him and shall cancel the voter registration,  
54 if any, of each deceased person whose voter registration

55 has not previously been canceled. By the forty-fifth day  
56 prior to a general election each clerk of a county  
57 commission shall certify to the secretary of state that he  
58 has performed the duty required by this paragraph.

59 If found necessary, the county commission may order  
60 and direct the clerk of the county commission to  
61 maintain additional office hours in the evening or at  
62 other proper times and places for accommodation of  
63 voter registration.

**§3-2-30. Time of registration prior to election; changes.**

1 No person may vote in an election when he has  
2 registered or his voter registration has been altered,  
3 amended or corrected within a period of thirty days next  
4 preceding such election: *Provided*, That postcard  
5 registrations containing incomplete information which  
6 are received by the county clerk no later than the close  
7 of registration may be corrected within four days after  
8 the close of registration if such information is available.  
9 This inhibition shall not prevent, during such period of  
10 thirty days, additional registrations and changes in  
11 voter registrations with reference to future elections. If,  
12 during such period of thirty days preceding an election,  
13 a voter is registered or his voter registration is altered,  
14 amended or corrected, he shall not be permitted or  
15 qualified to vote at such election.

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## CHAPTER 71

(Com. Sub. for S. B. 186—By Senator Chafin)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections five, five-c and ten, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to voting by absentees; necessity for physician's and chiropractor's statements deleted in certain cases; more than four consecutive absentee ballots voted by mail as a result of being out of the county to be challenged; exceptions; authorizing county commissions

to adopt a policy extending emergency absentee voting to health care facilities within an adjacent county or within thirty-five miles of the county seat; extending the time in which persons admitted to health care facilities may apply to vote an emergency absent voter's ballot; changing the method by which emergency absent voter's ballots may be applied for and voted; and updating certain terminology.

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

That sections five, five-c and ten, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 3. VOTING BY ABSENTEES.**

§3-3-5. Voting an absent voter's ballot by mail; federal postcard application.

§3-3-5c. Procedures for voting an emergency absent voter's ballot by qualified voters.

§3-3-10. Challenging of absent voters' ballots.

**§3-3-5. Voting an absent voter's ballot by mail; federal postcard application.**

1 A person desiring to vote an absent voter's ballot by  
2 mail may, on or after the first day of January prior to  
3 the date of any primary, general or special election in  
4 the case of any person outside the continental limits of  
5 the United States and not more than eighty-four days  
6 prior to the date of any primary, general or special  
7 election in the case of any other person, make applica-  
8 tion by mail to the clerk of the circuit court of the county  
9 in which he is registered to vote for an official absent  
10 voter's ballot or ballots to be voted at such election. The  
11 clerk of the circuit court shall not honor any such  
12 application for an absent voter's ballot received by him  
13 after the fourth day next preceding the date of the  
14 election. In computing the fourth day, the day of  
15 conducting the election shall be excluded.

16 When a clerk receives a completed application to vote  
17 an absent voter's ballot by mail in more than one  
18 election in an election year from an applicant eligible

19 to vote absentee under subdivision (2), section one of this  
 20 article, the clerk shall, if all legal requirements are met,  
 21 forward to the applicant the appropriate ballot or  
 22 ballots for each election held within that jurisdiction.  
 23 The application to be used by persons who wish to vote  
 24 an absent voter's ballot by mail shall be prescribed by  
 25 the secretary of state and shall be in substantially the  
 26 following form:

27 "APPLICATION FOR VOTING AN ABSENT  
 28 VOTER'S BALLOT BY MAIL

29 KNOWING THAT I CAN BE FINED NOT MORE  
 30 THAN ONE THOUSAND DOLLARS OR IMPRI-  
 31 SONED IN THE COUNTY JAIL FOR A PERIOD OF  
 32 NOT MORE THAN ONE YEAR OR BOTH SUCH  
 33 FINE AND IMPRISONMENT FOR KNOWINGLY  
 34 MAKING A FALSE STATEMENT OR REPRESENTATION  
 35 HEREIN, I, \_\_\_\_\_,  
 36 hereby declare that I am now, or will have been, a  
 37 resident of the state of West Virginia for twelve months,  
 38 and of the county of \_\_\_\_\_, for thirty days,  
 39 next preceding the date of the ensuing election to be  
 40 held on the \_\_\_\_\_ day of \_\_\_\_\_,  
 41 19\_\_\_\_; that I now reside at \_\_\_\_\_

42 (give full address)  
 43 in the magisterial district of \_\_\_\_\_, in said  
 44 county; that I am a duly qualified voter entitled to vote  
 45 in such election; that I am registered in the precinct of  
 46 my residence as provided by law; that I am registered  
 47 as a \_\_\_\_\_; (state political party if ballot is  
 48 for primary election) and that (strike out the numbered  
 49 paragraphs not applicable and complete the numbered  
 50 paragraph which is applicable):

51 (1) I will be unable to vote in person at the polls on  
 52 election day because of \_\_\_\_\_, (state partic-  
 53 ulars of physical disability, illness or injury).

54 (2) I anticipate commitment to a hospital, institution  
 55 or other confinement on or about the \_\_\_\_\_  
 56 day of \_\_\_\_\_, 19\_\_\_\_, for the following  
 57 medical reasons \_\_\_\_\_, as evidenced below  
 58 by the statement of a duly licensed physician or



59 chiropractor, and by reason thereof will not be able to  
60 vote in person at the polls in such election.

61 (3) I expect to be absent from the aforementioned  
62 county in which I am registered to vote during the  
63 entire time the polls are open in such election, and I am  
64 (check one applicable):

65  A member of the armed forces in the active service.

66  A spouse or dependent of a member of the armed  
67 forces in active service.

68  A member of the merchant marine of the United  
69 States.

70  A spouse or dependent of a member of the mer-  
71 chant marine of the United States.

72  A citizen of the United States temporarily residing  
73 outside the territorial limits of the United States and the  
74 District of Columbia.

75  A spouse or dependent residing with or  
76 accompanying a citizen of the United States temporarily  
77 residing outside the territorial limits of the United  
78 States and the District of Columbia.

79 (4) I am required to be absent from the aforementi-  
80 oned county in which I am registered during the entire  
81 time the polls are open in such election for the reason  
82 or reasons hereafter stated; I am not in any of the  
83 categories referred to in paragraph (3) above; I am  
84 required to be absent from said county during regular  
85 business hours of the clerk of the circuit court of said  
86 county throughout the period or throughout the re-  
87 mainder of the period of voting an absent voter's ballot  
88 by personal appearance at said office.

89 \_\_\_\_\_  
90 \_\_\_\_\_

91 (state reason or reasons for required  
92 absence from county on election.)

93 (5) I have been appointed \_\_\_\_\_

94 (state whether an election  
95 commissioner or poll clerk)

96 in precinct No. \_\_\_\_\_ in said election, which  
 97 precinct is not the precinct in which I am registered to  
 98 vote.

99 (6) I will be incarcerated in the county or city jail or  
 100 other detention facility located in this county on election  
 101 day but am not under sentence of treason, bribery or a  
 102 felony, as evidenced below by the statement of the  
 103 county sheriff, chief of police or authorized deputy.

104 In consideration of the foregoing qualifications, I  
 105 hereby make application for an official absent voter's  
 106 ballot (or ballots if more than one are to be used) to be  
 107 voted by me at such election, and request that such  
 108 ballot or ballots be mailed to me at the following  
 109 address: \_\_\_\_\_

110 (give full address for mailing purposes)

111 (Complete the following paragraph only if assistance  
 112 will be needed in voting absent voter's ballot):

113 I further declare that I will need assistance in voting  
 114 an absent voter's ballot for the following reasons: \_\_\_\_\_

115 \_\_\_\_\_  
 116 \_\_\_\_\_

117 (specify illiteracy or exact nature of physical  
 118 disability, illness or injury)

119 I hereby declare under the penalties for false swear-  
 120 ing as provided in section three, article nine, chapter  
 121 three of the code of West Virginia, one thousand nine  
 122 hundred thirty-one, as amended, that the statements and  
 123 declarations contained in this application are true and  
 124 correct to the best of my knowledge and belief.

125 \_\_\_\_\_  
 126 Signature of Applicant

127 \_\_\_\_\_  
 128 (or in case the applicant is illiterate he  
 129 shall make his mark and have it witnessed  
 130 on the following lines):

131 \_\_\_\_\_  
 132 Mark of Applicant

133 \_\_\_\_\_  
 134 Signature of Witness"

135 If the person applying for an absent voter's ballot by  
136 mail be unable to sign his application because of  
137 illiteracy, he shall make his mark on the signature line  
138 above provided for an illiterate applicant which mark  
139 shall be witnessed.

140 The following declaration must be completed and  
141 signed if the reason specified in the above application  
142 for being unable to vote in person at such election is  
143 anticipated confinement in a hospital, institution or  
144 other place for medical reasons.

145 "STATEMENT OF PHYSICIAN (CHIROPRACTOR)

146 I, \_\_\_\_\_, hereby declare that I am a  
147 physician (chiropractor) duly licensed to practice in the  
148 state of \_\_\_\_\_; that I last examined  
149 \_\_\_\_\_, the applicant whose signature ap-  
150 pears on the application above on the \_\_\_\_\_ day  
151 of \_\_\_\_\_, 19\_\_\_\_; and that in my opinion:

152 The applicant will, because of \_\_\_\_\_  
153 \_\_\_\_\_,  
154 (state for what medical reasons)  
155 be confined in \_\_\_\_\_,  
156 (specify hospital, institution  
157 or other place)  
158 on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
159 and will because of such reasons not be able to go to the  
160 polls on the \_\_\_\_\_ day of \_\_\_\_\_,  
161 19\_\_\_\_, the date of the election.

162 \_\_\_\_\_  
163 Signature of Physician (Chiropractor)"

164 The following declaration must be completed and  
165 signed if the reason specified in the above application  
166 for being unable to vote in person at the election is  
167 incarceration in a facility within the county for other  
168 than conviction of treason, bribery or a felony:

169 "STATEMENT OF SHERIFF, CHIEF OF POLICE  
170 OR AUTHORIZED DEPUTY

171 I, \_\_\_\_\_, hereby declare that the applicant  
172 whose signature appears on the application above will

173 be confined in the county or city jail or other detention  
 174 facility on the \_\_\_\_\_ day of \_\_\_\_\_, 19  
 175 \_\_\_\_\_, the date of the election, and is not under  
 176 conviction of treason, bribery or a felony.

177

178

---

 SIGNATURE
 

---

179

180

---

 TITLE
 

---

181

182

---

 COUNTY"
 

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183 In lieu of the application for an absent voter's ballot  
 184 provided above, those persons specified in subdivision  
 185 (2), section one of this article may use the federal  
 186 postcard application for absent voter's ballot form issued  
 187 under authority of the Uniformed and Overseas Citizens  
 188 Absentee Voting Act of 1986, as amended (Public Law  
 189 99-410, 42 U.S.C. 1973, et seq.). Any such federal  
 190 postcard application does not have to be executed  
 191 pursuant to oath or attestation. Upon receipt of a  
 192 properly completed copy of such form, the clerk of the  
 193 circuit court shall process it the same as any other  
 194 application for an absent voter's ballot by mail. Any  
 195 such properly completed copy may be returned only to  
 196 the clerk of the circuit court of the county in which the  
 197 applicant is a registered voter.

198 Immediately upon receipt of a completed application  
 199 for voting an absent voter's ballot by mail, the clerk of  
 200 the circuit court shall determine (1) whether the  
 201 application for voting such ballot has been completed as  
 202 required by law; (2) whether he has evidence that any  
 203 of the statements contained in the application are not  
 204 true; (3) whether the applicant is in fact duly registered  
 205 in the precinct of his residence as provided by law and  
 206 insofar as registration is concerned would be permitted  
 207 to vote at the polls in such election; and (4) whether the  
 208 applicant has voted absentee by mail as a result of being  
 209 out of the county more than four consecutive times:  
 210 *Provided*, That the determination as to whether the  
 211 applicant has voted more than four consecutive times  
 212 shall not apply if the applicant is a citizen residing out

213 of the United States; or a member, spouse or dependent  
214 of a member serving in the uniformed services; or a  
215 college student living outside his or her home county. If  
216 the determination of the clerk of the circuit court as to  
217 (1) or (3) is in the negative or as to (2) or (4) is in the  
218 affirmative, the clerk shall notify the applicant at the  
219 time he mails the absent voter's ballot to him that he  
220 will challenge the applicant's privilege to vote an absent  
221 voter's ballot by mail for reasons which he shall indicate  
222 and, upon receipt of the applicant's absent voter's ballot,  
223 the clerk shall challenge such ballot. If the challenge is  
224 made under subdivision (4) above, such a challenge shall  
225 be removed upon submission of proof of residence before  
226 the board of canvassers.

227 Upon determination by the clerk of the circuit court  
228 that the applicant is entitled to vote an absent voter's  
229 ballot by mail or that the applicant will be permitted  
230 to vote an absent voter's ballot by mail with such ballot  
231 to be challenged by the clerk, the clerk shall between  
232 the forty-second day and the fourth day next prior to the  
233 election in which the absent voter's ballot is to be used,  
234 mail to the applicant the following absentee voting  
235 supplies: *Provided*, That the clerk shall mail such voting  
236 supplies to an applicant whose address is shown to be  
237 outside the continental limits of the United States by  
238 priority airmail on the same day the application is  
239 received in the clerk's office or on the next day  
240 thereafter that he has both an application and a ballot:

241 (a) One official absent voter's ballot (or ballots if more  
242 than one are to be used) which has been prepared in  
243 accordance with law for use in such election; such ballot  
244 in the case of a primary election shall be of the party  
245 of the applicant's affiliation as indicated on his registra-  
246 tion card or, in the case the applicant is not found to  
247 be registered by the clerk but votes a ballot challenged  
248 by the clerk, the clerk shall send to the applicant an  
249 absent voter's ballot of the party designated by the  
250 applicant in his application;

251 (b) One Absent Voter's Ballot Envelope No. 1, un-  
252 sealed, which shall have no writing thereon except the  
253 designation "Absent Voter's Ballot Envelope No. 1";

254 (c) One Absent Voter's Ballot Envelope No. 2,  
255 unsealed;

256 (d) Notice that an absent voter's ballot returned from  
257 outside the continental limits of the United States must  
258 be mailed priority airmail; and

259 (e) Notice that absent voters' ballots must be received  
260 in the office of the clerk not later than the time of  
261 closing of the polls.

262 Upon receipt of an absent voter's ballot by mail, the  
263 voter shall mark the ballot and the voter may have  
264 assistance in voting his absent voter's ballot in accor-  
265 dance with the provisions of section six of this article.

266 After the voter has voted his absent voter's ballot, he  
267 shall (1) enclose the same in Absent Voter's Ballot  
268 Envelope No. 1, and seal that envelope, (2) enclose sealed  
269 Absent Voter's Ballot Envelope No. 1 in Absent Voter's  
270 Ballot Envelope No. 2 and seal that envelope, (3)  
271 complete and sign the forms, if any, on Absent Voter's  
272 Ballot Envelope No. 2 according to the instructions  
273 thereon, and (4) mail, postage prepaid and, if from  
274 outside the continental limits of the United States, by  
275 priority airmail, the sealed Absent Voter's Ballot  
276 Envelope No. 2 to the clerk of the circuit court of the  
277 county in which he is registered to vote.

278 Upon receipt of such sealed envelope, the clerk shall  
279 (1) enter onto the envelope such information as may be  
280 required of him according to the instructions thereon;  
281 (2) enter his challenge, if any, to the absent voter's  
282 ballot; (3) enter the required information into a record  
283 of persons making application for and voting an absent  
284 voter's ballot by personal appearance or by mail or  
285 otherwise (the form of which record and the information  
286 to be entered therein shall be prescribed by the  
287 secretary of state); and (4) place such sealed envelope in  
288 a secure location in his office, there to remain until  
289 delivered to the polling place in accordance with the  
290 provisions of this article or, in case of a challenged  
291 ballot, to the county commission sitting as a body of  
292 canvassers.

**§3-3-5c. Procedures for voting an emergency absent voter's ballot by qualified voters.**

1 (a) Notwithstanding any other provision of this  
2 chapter, a person qualified to vote an absent voter's  
3 ballot, as defined in subdivision (1), section one of this  
4 article, who is admitted, on or after the seventh day next  
5 preceding the election, to a hospital or other duly  
6 licensed health care facility within the county of their  
7 residence for emergency medical treatment, and who  
8 remains confined and is unable to vote at the polls on  
9 election day, may vote an emergency absent voter's  
10 ballot under the procedures established in this section.  
11 The county commission may adopt a policy extending  
12 the emergency absentee voting procedures to hospitals  
13 or other duly licensed health care facilities within an  
14 adjacent county or within thirty-five miles of the county  
15 seat: *Provided*, That the policy shall be adopted by the  
16 county commission at least ninety days prior to the  
17 election that will be affected and a copy of such policy  
18 shall be filed with the secretary of state.

19 (b) On or before the first Monday of the month next  
20 preceding the date on which any election is to be held  
21 the circuit clerk of each county shall notify the county  
22 commission of the number of sets of emergency absent  
23 voter ballot commissioners which he or she deems  
24 necessary to perform the duties and functions hereinaf-  
25 ter set forth.

26 (c) A set of emergency absent voter ballot commis-  
27 sioners at-large shall consist of two persons, appointed  
28 by the county commission in accordance with the  
29 procedure prescribed for the appointment of election  
30 commissioners under the provisions of section twenty-  
31 eight, article one of this chapter but without regard to  
32 magisterial district or precinct. Emergency absent voter  
33 ballot commissioners shall have the same qualifications  
34 and rights and take the same oath required under the  
35 provisions of this chapter for commissioners of elections.  
36 Such commissioners shall be compensated for services  
37 and expenses in the same manner as commissioners of  
38 election obtaining and delivering election supplies under

39 the provisions of section forty-four, article one of this  
40 chapter.

41 (d) Upon request of the voter or a member of the  
42 voter's immediate family, the circuit clerk, upon  
43 receiving a proper request for voting an emergency  
44 absent voter's ballot no earlier than the seventh day next  
45 preceding the election and no later than noon of election  
46 day, shall supply to the emergency absent voter's ballot  
47 commissioners the application for voting an emergency  
48 absent voter's ballot and the balloting materials. The  
49 emergency absent voter ballot application shall be  
50 prescribed by the secretary of state and shall be in  
51 substantially the following form:

52 "APPLICATION FOR VOTING AN EMERGENCY  
53 ABSENT VOTER'S BALLOT

54 KNOWING THAT I CAN BE FINED NOT MORE  
55 THAN ONE THOUSAND DOLLARS AND IMPRI-  
56 SONED IN THE COUNTY JAIL FOR A PERIOD OF  
57 NOT MORE THAN ONE YEAR FOR KNOWINGLY  
58 MAKING A FALSE STATEMENT OR REPRESENT-  
59 TATION HEREIN, I, \_\_\_\_\_, hereby  
60 declare that I am now, or will have been, a resident of  
61 the state of West Virginia for twelve months, and of the  
62 county of \_\_\_\_\_, for thirty days next preced-  
63 ing the date of the ensuing election to be held on the  
64 \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; that I now  
65 reside at \_\_\_\_\_  
66 \_\_\_\_\_

67 (give full address)  
68 in the magisterial district of \_\_\_\_\_, in said  
69 county; that I am a duly qualified voter entitled to vote  
70 in such election; that I am registered in the precinct of  
71 my residence as provided by law; that I am registered  
72 as a \_\_\_\_\_;

73 (1) I will be unable to vote in person at the polls on  
74 election day because I have been confined in \_\_\_\_\_  
75 \_\_\_\_\_  
76 \_\_\_\_\_

77 (State name and location of facility)



78 since \_\_\_\_\_  
 79 (State date of confinement commenced)  
 80 because of \_\_\_\_\_  
 81 (State particulars of illness or injury)

82 (2) My treating physician is \_\_\_\_\_.

83 I hereby declare under the penalties for false swear-  
 84 ing as provided in section three, article nine, chapter  
 85 three of the code of West Virginia, one thousand nine  
 86 hundred thirty-one, as amended, that the statements and  
 87 declarations contained in this application are true and  
 88 correct to the best of my knowledge and belief.

89 \_\_\_\_\_  
 90 Signature of Applicant

91 \_\_\_\_\_  
 92 (or in case the applicant is illiterate he  
 93 shall make his mark and have it witnessed  
 94 on the following lines):

95 \_\_\_\_\_  
 96 Mark of Applicant

97 \_\_\_\_\_  
 98 Signature of Witness"

99 If the person applying for an emergency absent voter's  
 100 ballot be unable to sign his application because of  
 101 illiteracy, he shall make his mark on the signature line  
 102 above provided for an illiterate applicant which mark  
 103 shall be witnessed.

104 The following declaration is to be completed and  
 105 signed by each of the emergency absent voter's ballot  
 106 commissioners:

107 "STATEMENT OF EMERGENCY ABSENT  
 108 VOTER'S BALLOT COMMISSIONERS

109 We, \_\_\_\_\_ and \_\_\_\_\_, hereby declare that we are  
 110 the duly appointed emergency absent voter's ballot  
 111 commissioners and have met the applicant, whose name  
 112 appears on the application above at his or her place of  
 113 confinement on the \_\_\_\_\_ day of \_\_\_\_\_,

114 19\_\_\_\_; and that in our opinion, the applicant will,  
 115 because of an emergency medical confinement which  
 116 commenced at least seven days prior to the election, be  
 117 unable to go to the polls on the \_\_\_\_\_day of  
 118 \_\_\_\_\_, 19\_\_\_\_, the date of the election.

119 We have determined that the applicant has been  
 120 confined in \_\_\_\_\_

121 \_\_\_\_\_

122 (State name and location of facility)

123 since \_\_\_\_\_

124 (State date confinement commenced)

125 because of \_\_\_\_\_

126 (State particulars of illness or injury)

127 \_\_\_\_\_

128 (Date) (Signature of Emergency Absent Voter's  
 129 Ballot Commissioner)

130 \_\_\_\_\_

131 (Date) (Signature of Emergency Absent Voter's  
 132 Ballot Commissioner)"

133 (e) At least one of the emergency absent voter ballot  
 134 commissioners receiving the balloting materials shall  
 135 sign a receipt which shall be attached to the application  
 136 form. Each of the emergency absent voter ballot  
 137 commissioners shall deliver the materials to the absent  
 138 voter, await his or her completion of the application and  
 139 then the ballot, and return the same to the circuit clerk,  
 140 and upon delivering the application and the voted ballot  
 141 to the circuit clerk, sign an oath that no person other  
 142 than the absent voter voted the ballot. The application  
 143 and the voted ballot shall be returned to the circuit clerk  
 144 prior to the close of the polls on election day. Any ballots  
 145 received by the clerk after the time that delivery may  
 146 reasonably be made but before the closing of the polls  
 147 shall be treated as challenged absent voters' ballots in  
 148 accordance with the provisions of section ten of this  
 149 article and in addition to those absent voters' ballots  
 150 subject to challenge as enumerated therein.

151 (f) Upon receiving the application and emergency  
 152 absent voter's ballot, the clerk of the circuit court shall  
 153 ascertain whether the application is complete and the

154 voter is properly registered to vote with the office of the  
155 clerk of the county commission. If the voter is found to  
156 be properly registered in the precinct shown on the  
157 application, the ballot shall be delivered to the precinct  
158 election commissioner pursuant to section seven of this  
159 article. If the voter is found not to be registered, then  
160 the ballot shall be challenged for that reason or any  
161 other provided for in section ten of this article.

162 (g) If either or both of the emergency absent voter  
163 ballot commissioners should refuse to sign any applica-  
164 tion for voting an emergency absent voter's ballot, then  
165 the voter shall be permitted to vote as an emergency  
166 absent voter and any such ballot shall be treated as a  
167 challenged absent voter's ballot in accordance with the  
168 provisions of section ten of this article and in addition  
169 to those absent voters' ballots subject to challenge as  
170 enumerated therein.

171 (h) Any voter who receives assistance in voting an  
172 emergency absent voter's ballot shall comply with the  
173 provisions of section six of this article. Any other  
174 provisions of this chapter relating to absent voter's  
175 ballots not altered by the provisions of this section shall  
176 govern the treatment of emergency absent voter's  
177 ballots.

### §3-3-10. Challenging of absent voters' ballots.

1 The clerk of the circuit court may challenge an absent  
2 voter's ballot on any of the following grounds: (1) That  
3 the application for an absent voter's ballot has not been  
4 completed as required by law; (2) that any statement or  
5 declaration contained in the application for an absent  
6 voter's ballot is not true; (3) that the applicant for an  
7 absent voter's ballot is not registered to vote in the  
8 precinct of his residence as provided by law; (4) that the  
9 person voting an absent voter's ballot by personal  
10 appearance in his office had assistance in voting such  
11 ballot when the person was not qualified for such voting  
12 assistance because (a) the affidavit of the person who  
13 received such assistance does not indicate a legally  
14 sufficient reason for such assistance, or (b) the person  
15 who received such assistance did not make an affidavit

16 as required by this article, or (c) the person who  
17 received such assistance is not so illiterate as to have  
18 been unable to read the names on the ballot or that he  
19 is not so physically disabled as to have been unable to  
20 see or mark the absent voter's ballot; (5) that the person  
21 who voted an absent voter's ballot by mail and received  
22 assistance in voting such ballot was not qualified under  
23 the provisions of this article for such assistance; and (6)  
24 that the person has voted absentee by mail as a result  
25 of being out of the county more than four consecutive  
26 times: *Provided*, That the determination as to whether  
27 the person has voted more than four consecutive times  
28 shall not apply if the person is a citizen residing out of  
29 the United States; or a member, spouse or dependent of  
30 a member serving in the uniformed services; or a college  
31 student living outside of his or her home county.

32 Any one or more of the election commissioners or poll  
33 clerks in a precinct may challenge an absent voter's  
34 ballot on any of the following grounds: (1) That the  
35 application for an absent voter's ballot was not com-  
36 pleted as required by law; (2) that any statement or  
37 declaration contained in the application for an absent  
38 voter's ballot is not true; (3) that the person voting an  
39 absent voter's ballot is not registered to vote in the  
40 precinct of his residence as provided by law; (4) that the  
41 signatures of the person voting an absent voter's ballot  
42 as they appear on his registration record, his application  
43 for an absent voter's ballot, and the absent voter's ballot  
44 envelope are not in the same handwriting; (5) that the  
45 absent voter's ballot does not have thereon the official  
46 seal of the clerk of the circuit court and all signatures  
47 of members of the board of ballot commissioners; (6)  
48 that the person voting an absent voter's ballot by  
49 personal appearance in the office of the clerk of the  
50 circuit court had assistance in voting such ballot when  
51 the person was not qualified for such assistance because  
52 (a) the affidavit of the person who received such  
53 assistance does not indicate a legally sufficient reason  
54 for such assistance, or (b) the person who received such  
55 assistance did not make an affidavit as required by this  
56 article, or (c) the person who received such assistance  
57 is not so illiterate as to have been unable to read the

58 names on the ballot or that he was not so physically  
59 disabled as to have been unable to see or mark the  
60 absent voter's ballot; (7) that the person voted an absent  
61 voter's ballot by mail and received assistance in voting  
62 such ballot when not qualified under the provisions of  
63 this article for such assistance; (8) that the person who  
64 voted the absent voter's ballot voted in person at the  
65 polls on election day; (9) that the person voted an absent  
66 voter's ballot under authority of subdivision (3) of section  
67 one of this article and is or was present in the county  
68 in which he is registered to vote between the opening  
69 and closing of the polls on election day; (10) that the  
70 person who voted an absent voter's ballot had died  
71 before election day; (11) that the person voted an absent  
72 voter's ballot under authority of subdivision (1) of section  
73 one of this article and was able to vote at the polls on  
74 election day; and (12) on any other ground or for any  
75 reason on which or for which the ballot of a voter voting  
76 in person at the polls on election day may be challenged.

77 Any registered voter in the county may challenge an  
78 absent voter's ballot voted under authority of subdivision  
79 (3) of section one of this article on the ground that the  
80 voter of such ballot is or was in the county in which he  
81 is registered to vote between the opening and closing of  
82 the polls on election day and may challenge an absent  
83 voter's ballot voted under authority of subdivision (1) of  
84 section one of this article on the ground that the voter  
85 of such ballot was able to vote at the polls on election  
86 day.

87 Forms for, and the manner of, challenging an absent  
88 voter's ballot under the provisions of this article shall  
89 be prescribed by the secretary of state.

90 Absent voters' ballots challenged by the clerk of the  
91 circuit court under the provisions of this article shall be  
92 transmitted by the clerk directly to the county commis-  
93 sion sitting as a board of canvassers; and the absent  
94 voters' ballots challenged by the election commissioners,  
95 poll clerks and registered voters of the county under the  
96 provisions of this article shall not be counted by the  
97 election officials but shall be transmitted by them to the  
98 county commission sitting as a board of canvassers.

99 Action by the board of canvassers on such challenged  
100 absent voters' ballots shall be governed by the provisions  
101 of section forty-one, article one of this chapter.

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## CHAPTER 72

(H. B. 2235—By Delegates Berry and Tribett)

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[Passed March 20, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the filing of written statements with the secretary of state designating the treasurer of a political committee or the financial agent of a candidate; enlarging the time period for filing such statement from sixty days prior to an election to twenty-eight days prior to an election; designating the specific time of receipt or postmark requirements; and defining the terms "person" and "financial agent".

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

That section four, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

#### §3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.

- 1 (a) No person shall act as the treasurer of any political
- 2 committee, or as financial agent for any candidate for
- 3 nomination or election to any office to be filled by the
- 4 voters of the entire state, or candidates for nomination
- 5 or election for any office, encompassing an election
- 6 district larger than a county, or any person or organ-
- 7 ization advocating or opposing the nomination, election
- 8 or defeat of any candidate, or the passage or defeat of
- 9 any issue, thing or item to be voted upon, encompassing
- 10 an election district larger than a county, unless a

11 written statement designating him as such treasurer or  
12 financial agent shall be filed with the secretary of state,  
13 at least twenty-eight days before the election at which  
14 he is to act, and must be received before midnight,  
15 eastern standard time, of that day, or if mailed, shall  
16 be postmarked before that hour.

17 (b) No person shall act as treasurer of any such  
18 committee or as financial agent for any candidate to be  
19 nominated or elected by the voters of a county or a  
20 district therein, or as the treasurer or financial agent  
21 for a candidate for the nomination or election to any  
22 other office, or for the passage or defeat of any issue,  
23 thing or item to be voted upon not herein mentioned,  
24 unless a written statement designating him as such  
25 treasurer or financial agent shall be filed with the clerk  
26 of the county commission at least twenty-eight days  
27 before the election at which he is to act, and must be  
28 received before midnight, eastern standard time, of that  
29 day, or if mailed, shall be postmarked before that hour.

30 (c) Notwithstanding the provisions of subsections (a)  
31 and (b) of this section, a filing designating a treasurer  
32 or financial agent for a state or county political  
33 executive committee may be made anytime before the  
34 committee either accepts or spends funds on behalf of  
35 the committee. Once a designation is made by a state  
36 or county political executive committee, no additional  
37 designations shall be required under this section until  
38 a successor treasurer or financial agent is designated.  
39 A state or county political executive committee may  
40 terminate a designation made pursuant to this section  
41 by making a written request to terminate the designa-  
42 tion and by stating in the request that the committee  
43 has no funds remaining in the committee's account. This  
44 written request shall be made with either the secretary  
45 of state or the clerk of the county commission as  
46 provided by subsections (a) and (b) of this section.

47 (d) As used in this article:

48 The term "person" shall include an individual,  
49 partnership, committee, association, corporation, and  
50 any other organization or group of persons; and

51 The term "financial agent" shall include any person  
52 acting for and by himself, or any two or more natural  
53 persons acting together or cooperating in a financial  
54 way to aid or take part in the nomination or election of  
55 any candidate for public office, or to aid or promote the  
56 success or defeat of any political party or principle at  
57 any election, or any proposition submitted to a vote at  
58 a public election.

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## CHAPTER 73

(Com. Sub. for H. B. 2028—By Delegates Love and Ashley)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact sections three, five, eight, fourteen and twenty-two, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-three, all relating to definitions; emergency medical services advisory council, duties, composition, appointment, meetings, compensation and expenses, and continuation of the council; standards for emergency medical service personnel, adding class of emergency medical services personnel; services that may be performed by emergency medical services personnel, adding class of emergency medical services personnel; transportation of unconscious or otherwise uncommunicative patients.

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

That sections three, five, eight, fourteen and twenty-two, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-three, all to read as follows:

### ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-3. Definitions.



- §16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses.
- §16-4C-8. Standards for emergency medical service personnel.
- §16-4C-14. Services that may be performed by emergency medical services personnel.
- §16-4C-22. Transportation of unconscious or otherwise uncommunicative patients.
- §16-4C-23. Authority of the director to make regulations.

### §16-4C-3. Definitions.

1 As used in this article, unless the context clearly  
2 requires a different meaning:

3 “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.

7 “Ambulance service” means the transportation, and  
8 treatment at the site of pickup and en route, of a patient  
9 to or from a place where medical, hospital or clinical  
10 service is normally available.

11 “Council” means the emergency medical service  
12 advisory council created pursuant to section five of this  
13 article.

14 “Director” means the director of health.

15 “Emergency medical services” means all services  
16 which are set forth in P.L. 93-154 “The Emergency  
17 Medical Services Act of 1973” and those included in and  
18 made a part of the emergency medical services plan of  
19 the department of health inclusive of, but not limited to,  
20 caring for and giving life-saving or life-preserving  
21 treatment to a patient.

22 “Emergency medical service personnel” means any  
23 person certified by the director to provide emergency  
24 medical services as set out in section eight of this article  
25 and includes, but is not limited to, emergency medical  
26 service attendants, emergency medical technicians,  
27 emergency medical technicians-ambulance, emergency  
28 medical technicians-intermediate, mobile intensive care  
29 paramedics, emergency medical technician-paramedics,  
30 physicians, osteopathic physicians, persons certified to  
31 provide cardiopulmonary resuscitation, registered

32 nurses and licensed practical nurses who have been  
33 trained in first aid, or other licensed or certified health  
34 providers who meet the standards and training require-  
35 ments as determined by the director.

36 “Emergency medical service attendant” means a  
37 person certified by the director to render such emer-  
38 gency medical services as are authorized for such  
39 emergency medical service attendant in section eight of  
40 this article.

41 “Emergency medical technician” means a person  
42 certified by the director to render such emergency  
43 medical services as are authorized for such emergency  
44 medical technician in section eight of this article.

45 “Emergency medical technician-ambulance” means a  
46 person certified by the director to render such emer-  
47 gency medical services as are authorized for such  
48 emergency medical technician-ambulance in section  
49 eight of this article.

50 “Emergency medical technician-intermediate” means  
51 a person certified by the director to render such  
52 emergency medical services as are authorized for such  
53 emergency medical technician-intermediate in section  
54 eight of this article.

55 “Emergency medical technician-critical care” means  
56 a person certified by the director to render such  
57 emergency medical services as are authorized for such  
58 emergency medical technician-critical care in section  
59 eight of this article.

60 “Mobile intensive care paramedic” means a person  
61 certified by the director to render such emergency  
62 medical services as are authorized for such mobile  
63 intensive care paramedic in section eight of this article.

64 “Emergency medical technician-paramedic” means a  
65 person certified by the director to render such emer-  
66 gency medical services as are authorized for such  
67 emergency medical technician-paramedic in section  
68 eight of this article.

69 “Emergency medical service provider” means any

70 authority, person, corporation, partnership or other  
71 entity, public or private, which owns or operates an  
72 ambulance which provides emergency medical service  
73 in this state.

74 “Governing body” has the meanings ascribed to it as  
75 applied to a municipality in subdivision (1), subsection  
76 (b), section two, article one, chapter eight of this code.

77 “Line officer” means the emergency medical service  
78 personnel, present at the scene of an accident, injury or  
79 illness, who has taken the responsibility for patient care.

80 “Medical command” means the issuing of orders by a  
81 physician or osteopathic physician from a medical  
82 facility to emergency medical service personnel for the  
83 purpose of providing appropriate patient care.

84 “Municipality” has the meaning ascribed to it in  
85 subdivision (1), subsection (a), section two, article one,  
86 chapter eight of this code.

87 “Patient” means any sick, injured, wounded or  
88 otherwise incapacitated or helpless person, or an  
89 expectant mother who needs medical, hospital or clinical  
90 service under an existing or imminent emergency  
91 situation.

92 “Service reciprocity” means the provision of emer-  
93 gency medical services to citizens of this state by  
94 emergency medical service personnel certified to render  
95 such services by a neighboring state.

96 “Small emergency medical service provider” means  
97 any emergency medical service provider which is made  
98 up of less than twenty emergency medical service  
99 personnel.

**§16-4C-5. Emergency medical services advisory council;  
duties, composition, appointment, meetings,  
compensation and expenses.**

1 The emergency medical service advisory council,  
2 heretofore created and established by former section  
3 seven of this article, shall be continued for the purpose  
4 of developing, with the director, standards for emer-  
5 gency medical service personnel and for the purpose of

6 providing advice to the office of emergency medical  
7 services and the director thereof, as established by  
8 section four of this article with respect to reviewing and  
9 making recommendations for and providing assistance  
10 to the establishment and maintenance of adequate  
11 emergency medical services for all portions of this state.

12 The council shall have the duty to advise the director  
13 in all matters pertaining to his duties and functions in  
14 relation to carrying out the purposes of this article.

15 The council shall be composed of thirteen members  
16 appointed by the governor by and with the advice and  
17 consent of the Senate. The mountain state emergency  
18 medical services association shall submit to the governor  
19 a list of six names of representatives from their  
20 association and a list of three names shall be submitted  
21 to the governor of representatives of their respective  
22 organizations by the West Virginia association of county  
23 officials, West Virginia state firemen's association, West  
24 Virginia hospital association, West Virginia state  
25 medical association, West Virginia chapter of the  
26 American college of emergency physicians, West  
27 Virginia emergency medical services administrators  
28 association and the state department of education. The  
29 governor shall appoint from the respective lists submit-  
30 ted two persons who represent the mountain state  
31 emergency medical services association, one of whom  
32 shall be a paramedic and one of whom shall be an  
33 emergency medical technician, and one person from the  
34 West Virginia association of county officials, West  
35 Virginia state firemen's association, West Virginia  
36 hospital association, West Virginia state medical  
37 association, West Virginia chapter of the American  
38 college of emergency physicians, West Virginia emer-  
39 gency medical services administrators association and  
40 the state department of education. The governor shall  
41 in addition appoint one person to represent emergency  
42 medical service providers operating within the state, one  
43 person to represent small emergency medical service  
44 providers operating within this state and two persons to  
45 represent the general public. Not more than four of the  
46 members shall be appointed from any one congressional

47 district. No member shall serve more than four consec-  
48 utive terms.

49 The council shall choose its own chairman and meet  
50 at the call of the director at least twice a year.

51 The members of such council may be reimbursed for  
52 any and all reasonable and necessary expenses actually  
53 incurred in the performance of their duties.

54 After having conducted a performance and fiscal  
55 audit through its joint committee on government  
56 operations, pursuant to section nine, article ten, chapter  
57 four of this code, the Legislature hereby finds and  
58 declares that the emergency medical services advisory  
59 council should be continued and reestablished. Accord-  
60 ingly, notwithstanding the provisions of section four,  
61 article ten, chapter four of this code, the emergency  
62 medical services advisory council shall continue to exist  
63 until the first day of July, one thousand nine hundred  
64 ninety-five.

**§16-4C-8. Standards for emergency medical service  
personnel.**

1 (1) After the first day of January, one thousand nine  
2 hundred eighty-five, every ambulance which provides  
3 ambulance service or emergency medical services shall  
4 carry two persons who are certified as emergency  
5 medical service personnel, one of which personnel shall  
6 be in the patient compartment at all times when a  
7 patient is being transported by such ambulance. As a  
8 minimum, of the personnel carried by any ambulance  
9 operated by any emergency medical service provider,  
10 one shall be trained in cardiopulmonary resuscitation  
11 and one shall be certified as an emergency medical  
12 service attendant.

13 (2) After the first day of July, one thousand nine  
14 hundred eighty-six, at least one of the emergency  
15 medical services personnel referred to in the imme-  
16 diately preceding subsection shall be minimally certi-  
17 fied as an emergency medical technician-ambulance on  
18 any emergency call and such person shall be in

19 the patient compartment at all times a patient is being  
20 transported.

21 As a minimum, the training for each class of emer-  
22 gency medical service personnel shall include:

23 (a) Emergency medical service attendant: Shall have  
24 earned and possess valid certificates from the depart-  
25 ment or by authorities recognized and approved by the  
26 director in advanced first aid or equivalent training and  
27 cardiopulmonary resuscitation.

28 (b) Emergency medical technician: Shall have suc-  
29 cessfully completed the course on emergency care of the  
30 sick and injured established by the director or by  
31 authorities recognized and approved by the director.

32 (c) Emergency medical technician-ambulance: Shall  
33 have successfully completed the course for certification  
34 as an emergency medical technician-ambulance as  
35 established by the director or authorities recognized and  
36 approved by the director.

37 (d) Emergency medical technician-intermediate:  
38 Shall have successfully completed the course for  
39 certification as an emergency medical technician-  
40 ambulance and such other course of study and certifi-  
41 cation as may be established by the director.

42 (e) Emergency medical technician-critical care: Shall  
43 have successfully completed the course for certification  
44 as an emergency medical technician-critical care and  
45 such other course of study and certification as may be  
46 established by the director.

47 (f) Mobile intensive care paramedic: Shall have  
48 successfully completed the course for certification as a  
49 mobile intensive care paramedic and such other course  
50 of study and certification as may be established by the  
51 director.

52 (g) Emergency medical technician-paramedic: Shall  
53 have completed the course for certification as an  
54 emergency medical technician-paramedic and such  
55 other course of study and certification as may be  
56 established by the director.

57 The foregoing shall not be considered to limit the  
58 power of the director to prescribe training, certification  
59 and recertification standards.

60 State and county continuing education and recertifi-  
61 cation programs for all levels of emergency medical  
62 service providers shall be available to emergency  
63 medical service providers at a convenient site within the  
64 county in which the emergency medical service provider  
65 operates, or in an adjacent county within thirty minutes  
66 travel time of the provider's primary place of operation.  
67 Such continuing education program shall be provided  
68 free of charge by the department of health to all  
69 nonprofit emergency medical service providers.

70 (3) Any person desiring emergency medical services  
71 personnel certification shall apply to the director using  
72 forms and procedures prescribed by the director. Upon  
73 receipt of such application, the director shall determine  
74 if the applicant meets the requirements for certification  
75 and examine the applicant, as in his discretion, is  
76 necessary to make such a determination. If it is  
77 determined that the applicant meets all of the require-  
78 ments, the director shall issue an appropriate emer-  
79 gency medical service personnel certificate to the  
80 applicant. Emergency medical service personnel certif-  
81 icates issued by the director shall be valid for a period  
82 not to exceed three years from the date of their issuance  
83 unless sooner suspended or revoked by the director.  
84 Certificates may be renewed for additional periods not  
85 to exceed three years after review and determination by  
86 the director that such holder meets the requirements  
87 established for emergency medical service personnel.

88 (4) The director may issue a temporary emergency  
89 medical service personnel certificate to an applicant,  
90 with or without examination of the applicant, when he  
91 finds such issuance to be in the public interest. Unless  
92 sooner suspended or revoked a temporary certificate  
93 shall be valid initially for a period not exceeding one  
94 hundred twenty days and it shall not be renewed  
95 thereafter unless the director finds such renewal to be  
96 in the public interest: *Provided*, That the expiration date  
97 of any such temporary certificate issued shall be

98 extended until the holder of such certificate is afforded  
99 at least one opportunity to take an emergency medical  
100 services personnel training course within the general  
101 area where he serves as an emergency medical service  
102 personnel, but the expiration date shall not be extended  
103 for any longer period of time or for any other reason.

104 The director may, on petition from an emergency  
105 medical service provider, squad, ambulance authority or  
106 county commission, grant an extension for compliance  
107 with paragraphs (1) and (2) of this section where  
108 circumstances prevent such emergency medical service  
109 provider, squad, ambulance authority or county commis-  
110 sion from meeting the time frames indicated. Such  
111 extension shall be for no longer than twelve calendar  
112 months from the date of the request and the request for  
113 extension must include such information as may be  
114 required by the director to determine if all reasonable  
115 efforts have been made to comply with this section. No  
116 petitioner shall be granted more than one extension  
117 under this section.

**§16-4C-14. Services that may be performed by emer-  
gency medical services personnel.**

1 Notwithstanding any other provision of law, emer-  
2 gency medical service personnel, by each class, may  
3 provide the following care:

4 (1) Emergency medical services attendant—Render  
5 basic first-aid and cardiopulmonary resuscitation and  
6 other services as are established by the director.

7 (2) Emergency medical technician—Render care  
8 which may be performed by an emergency medical  
9 services attendant and other services as are established  
10 by the director.

11 (3) Emergency medical technician-ambulance—  
12 Render the care permitted which may be performed by  
13 an emergency medical service attendant and by an  
14 emergency medical technician; and, in addition, other  
15 services as are established by the director.

16 (4) Emergency medical technician-intermediate—  
17 Render the care permitted which may be performed by



18 an emergency medical service attendant, emergency  
19 medical technician and emergency medical technician-  
20 ambulance; and, in addition, upon the order of a medical  
21 command physician or surgeon, perform any other  
22 services as are established by the director.

23 (5) Emergency medical technician-critical—Render  
24 the care permitted which may be performed by an  
25 emergency medical service attendant, an emergency  
26 medical technician, emergency medical technician-  
27 ambulance, emergency medical technician-interme-  
28 diate; and, in addition, upon order of a medical  
29 command physician or surgeon, perform any other  
30 services as are established by the director.

31 (6) Mobile intensive care paramedic—Render care  
32 which may be performed by an emergency medical  
33 service attendant, an emergency medical technician,  
34 emergency medical technician-ambulance, emergency  
35 medical technician-intermediate, emergency medical  
36 technician-critical care; and, in addition, upon order of  
37 a medical command physician or surgeon, perform any  
38 other services as are established by the director.

39 (7) Emergency medical technician-paramedic—  
40 Render care which may be performed by an emergency  
41 medical service attendant, an emergency medical  
42 technician, an emergency medical technician-ambu-  
43 lance, emergency medical technician-intermediate,  
44 emergency medical technician-critical care, mobile  
45 intensive care paramedic; and, in addition, upon order  
46 of a medical command physician or surgeon, perform  
47 any other services as are established by the director.

**§16-4C-22. Transportation of unconscious or otherwise uncommunicative patients.**

1 (a) Emergency medical service personnel shall trans-  
2 port critically ill or injured, unconscious or otherwise  
3 uncommunicative patients to the medical facility  
4 designated by the medical command physician.

5 (b) No person shall have the right to direct emergency  
6 medical service personnel to transport a patient to a  
7 specific medical facility unless such person is the legal

- 8 guardian, parent of a minor or has power of attorney  
9 for the critically injured or ill patient.

**§16-4C-23. Authority of the director to make regulations.**

- 1 The director is hereby authorized and empowered to  
2 make regulations pursuant to the procedures established  
3 in chapter twenty-nine-a of this code for the purpose of  
4 carrying out the purposes of this article.

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## CHAPTER 74

(H. B. 2162—By Delegates Bradley and Buchanan)

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[Passed March 15, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-eight, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article five, chapter forty-four of said code, all relating to the administration of estates; providing for the apportionment of West Virginia estate taxes; including a reference to the apportionment provision governing estates administered under authority of a fiduciary supervisor within the said estate tax provision; prohibiting certain nonresidents from serving as fiduciaries; setting forth exceptions; permitting nonresidents to serve as administrators of resident decedents' assets; requiring nonresident fiduciaries to give bond and setting forth the minimum amounts thereof; exceptions; appointment of clerk of the county commission as attorney-in-fact for purpose of receiving notice or process; proscribing the procedure by which notice or process may be perfected; prohibiting the removal from this state of estate assets until certain conditions are satisfied; making it a misdemeanor offense to remove estate assets from this state without complying with the appropriate laws; setting forth penalties; and providing for the removal of nonresident fiduciaries.

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

That section twenty-eight, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article five, chapter forty-four of said code be amended and reenacted, all to read as follows:

## Chapter

### 11. Taxation.

### 44. Administration of Estates and Trusts.

## CHAPTER 11. TAXATION.

### ARTICLE 11. ESTATE TAXES.

#### §11-11-28. Apportionment of West Virginia estate taxes; deduction of taxes by the fiduciary from shares of beneficiaries.

1 Whenever there is an estate tax levied or assessed  
 2 under the provisions of any estate tax law of this state  
 3 heretofore or hereafter enacted, the amount of the tax  
 4 so paid shall be prorated among the persons interested  
 5 in the estate to whom such property is or may be  
 6 transferred or to whom any benefit accrues in confor-  
 7 mity with the provisions of section sixteen-a, article two,  
 8 and section eighteen, article three-a, chapter forty-four  
 9 of this code.

## CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

### ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

#### §44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

1 (a) Notwithstanding any other provision of law, no  
 2 individual who is a nonresident of this state nor any  
 3 nonresident banking institution nor any corporation  
 4 having its principal office or place of business outside  
 5 this state may be appointed or act as executor, admin-  
 6 istrator, curator, guardian or committee in this state,  
 7 except that:

8 (1) An individual who is a nonresident of this state  
 9 may be appointed ancillary administrator of a nonres-  
 10 ident decedent's assets situate in this state if such

11 nonresident individual is lawfully acting as executor in  
12 said decedent's state of domicile and submits letters of  
13 probate authenticated by the probate authorities of the  
14 decedent's state of domicile to the clerk of the county  
15 commission of any county of this state wherein ancillary  
16 administration is sought;

17 (2) An individual who is a nonresident of this state  
18 may be appointed ancillary administrator of a nonres-  
19 ident decedent's assets situate in this state if such  
20 nonresident individual is acting as administrator in said  
21 decedent's state of domicile and submits letters of  
22 administration authenticated by the probate authorities  
23 of the decedent's state of domicile to the clerk of the  
24 county commission of any county of this state wherein  
25 ancillary administration is sought;

26 (3) An individual who is a nonresident of this state  
27 may be appointed and act as testamentary guardian of  
28 a nonresident infant and thereby exercise dominion and  
29 control over such nonresident infant's assets situate in  
30 this state upon submission of authenticated documenta-  
31 tion that such nonresident testamentary guardian was  
32 so appointed at the place of domicile of the nonresident  
33 infant. Such authenticated documentation shall be  
34 submitted to the clerk of the county commission of any  
35 county of this state wherein assets belonging to such  
36 nonresident infant are situate;

37 (4) An individual who is a nonresident of this state  
38 and who is named executor by a resident decedent may  
39 qualify and act as executor in this state;

40 (5) An individual who is a nonresident of this state  
41 may be appointed and act as administrator of a resident  
42 decedent's assets in this state if appointed in accordance  
43 with the provisions of section four, article one of this  
44 chapter;

45 (6) An individual who is a nonresident of this state  
46 may be appointed as the testamentary guardian of a  
47 resident infant if appointed in accordance with the  
48 provisions of section one, article ten of this chapter;

49 (7) An individual who is a nonresident of this state

50 may be appointed as committee of a resident incompe-  
51 tent: *Provided*, That such appointment is made in  
52 accordance with the provisions of section one, article  
53 eleven, chapter twenty-seven of this code and if such  
54 nonresident individual may otherwise qualify as  
55 committee.

56 (b) Nonresident individuals enumerated in subsection  
57 (a) of this section shall give bond with corporate surety  
58 thereon, qualified to do business in this state, and the  
59 amount of such bond shall not be less than double the  
60 value of the personal assets and double the value of any  
61 real property authorized to be sold or double the value  
62 of any rents and profits from any real property which  
63 the nonresident individual is authorized to receive,  
64 except that:

65 (1) Any nonresident individual enumerated in subsec-  
66 tion (a) of this section who is the spouse, parent, sibling,  
67 lineal descendant or sole beneficiary of a resident or  
68 nonresident decedent shall give bond with corporate  
69 surety thereon qualified to do business in this state, with  
70 such penalty as may be fixed pursuant to the provisions  
71 of section seven, article one of this chapter, as approved  
72 by the clerk of the county commission;

73 (2) Where the terms of a decedent's will direct that  
74 a nonresident individual enumerated in subdivisions (1),  
75 (3), (4) and (6) of subsection (a) of this section named in  
76 a decedent's will shall not give bond or give bond at a  
77 specified amount, it shall not be required or shall be  
78 required only to the extent required under the terms of  
79 the will, unless at the time the will is admitted to record  
80 or at any time subsequently, on the application of any  
81 person interested, or from the knowledge of the commis-  
82 sion or clerk admitting the will to record, it is deemed  
83 proper that greater bond be given.

84 (c) When a nonresident individual is appointed as  
85 executor, administrator, testamentary guardian or  
86 committee pursuant to the provisions of subsection (a)  
87 of this section, said individual thereby constitutes the  
88 clerk of the county commission wherein such appoint-  
89 ment was made as his true and lawful attorney-in-fact

90 upon whom may be served all notices and process in any  
91 action or proceeding against him as executor, adminis-  
92 trator, testamentary guardian or committee or with  
93 respect to such estate, and such qualification shall be a  
94 manifestation of said nonresident individual's agree-  
95 ment that any notice or process, which is served in the  
96 manner hereinafter provided in this subsection, shall be  
97 of the same legal force and validity as though such  
98 nonresident was personally served with notice and  
99 process within this state. Service shall be made by  
100 leaving the original and two copies of any notice or  
101 process, together with a fee of five dollars, with the clerk  
102 of such county commission. The fee of five dollars shall  
103 be deposited with the county treasurer. Such clerk shall  
104 thereupon endorse upon one copy thereof the day and  
105 hour of service and shall file such copy in his office and  
106 such service shall constitute personal service upon such  
107 nonresident: *Provided*, That the other copy of such notice  
108 or process shall be forthwith sent by registered or  
109 certified mail, return receipt requested, deliver to  
110 addressee only, by said clerk to such nonresident at the  
111 address last furnished by him to said clerk and either:  
112 (1) Such nonresident's return receipt signed by him or  
113 (2) the registered or certified mail bearing thereon the  
114 stamp of the post office department showing that  
115 delivery therefor was refused by such nonresident is  
116 appended to the original notice or process filed there-  
117 with in the office of the clerk of the county commission  
118 from which such notice or process was issued. No notice  
119 or process may be served on such clerk of the county  
120 commission or accepted by him less than thirty days  
121 before the return day thereof. The clerk of such county  
122 commission shall keep a record in his office of all such  
123 notices and processes and the day and hour of service  
124 thereof. The provision for service of notice or process  
125 herein provided is cumulative and nothing herein  
126 contained shall be construed as a bar to service by  
127 publication where proper or the service of notice or  
128 process in any other lawful mode or manner.

129 (d) The personal estate of a resident decedent, infant  
130 or incompetent may not be removed from this state until  
131 the inventory or appraisalment of that resident dece-

132 dent's, infant's or incompetent's assets has been filed and  
133 any new or additional bond required to satisfy the  
134 penalties specified in subsection (b) of this section has  
135 been furnished. The liability of a nonresident executor,  
136 administrator, testamentary guardian or committee and  
137 of any such surety shall be joint and several and a civil  
138 action on any such bond may be instituted and main-  
139 tained against the surety, notwithstanding any other  
140 provision of this code to the contrary, even though no  
141 civil action has been instituted against such nonresident.

142 (e) Any such nonresident who removes from this state  
143 assets administered in and situate in this state without  
144 complying with the provisions of this section, the  
145 provisions of article eleven, chapter forty-four of this  
146 code or any other requirement pertaining to fiduciaries  
147 generally, shall be guilty of a misdemeanor, and, upon  
148 conviction thereof, shall be fined not more than one  
149 thousand dollars or confined in the county jail for not  
150 more than one year, or, in the discretion of the court,  
151 by both such fine and imprisonment.

152 (f) If a nonresident appointed pursuant to subsection  
153 (a) of this section fails or refuses to file an accounting  
154 required by this chapter, and the failure continues for  
155 two months after the due date, he may, upon notice and  
156 hearing, be removed or subjected to any other approp-  
157 riate order by the county commission, and if his failure  
158 or refusal to account continues for six months, he shall  
159 be removed by the county commission.

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## CHAPTER 75

(H. B. 2111—By Delegates Murphy and Shores)

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[Passed March 27, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section six, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting the director of the farm management commission the discretion to give surplus foods to

nonprofit charitable organizations.

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

That section six, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 12A. FARM MANAGEMENT COMMISSION.**

**§19-12A-6. Appointment of farm management director; qualifications; powers and duties.**

1 The commission shall appoint a farm management  
2 director who, in addition to qualifications established by  
3 the commission, shall have owned, operated or managed  
4 a farm for at least five years within ten years imme-  
5 diately prior to his appointment. The farm management  
6 director is the chief executive officer of the commission  
7 and is responsible for conducting the operations of the  
8 farms. He shall prepare an annual report of the farming  
9 operations, including a listing of all receipts and  
10 expenditures and shall present it to the commission and  
11 the Legislature at the end of each fiscal year.

12 As authorized or directed by the commission, he shall  
13 also:

14 (1) Prepare the annual budget request for the oper-  
15 ation of the farm management commission and submit  
16 it to the commission for approval and submission to the  
17 commissioner of finance and administration.

18 (2) Receive and approve all requisitions for farm  
19 supplies and equipment.

20 (3) Supervise the operation of all canneries and  
21 determine what foods are to be canned.

22 (4) Recruit and approve assistant farm managers to  
23 supervise each farm.

24 (5) Implement all orders of the commission.

25 (6) Supervise all other employees of the commission.

26 (7) Transfer farm supplies, farm equipment, farm  
27 facilities, food stuffs and produce from one farm to



28 another to promote efficiency and improve farm  
29 management.

30 With the approval of the commission, the farm  
31 management director may rent or lease additional land  
32 for farm use.

33 From the total amount of food, milk and other  
34 commodities produced by the farm management com-  
35 mission, the farm management director shall provide  
36 each of the institutions under the control of the  
37 department of health and the state commissioner of  
38 corrections, at no cost, a proportionate amount of these  
39 products based on the population and dietary needs of  
40 each institution and each of these institutions shall use  
41 the food, milk and commodities provided by the farm  
42 management director for their annual food require-  
43 ments. By the thirtieth day of September each year,  
44 each institution shall present to the farm management  
45 director a requisition request for the food, milk and  
46 other commodities the institution will need during the  
47 next fiscal year.

48 If, during the year, an institution finds that it needs  
49 other or additional food, milk or commodities not  
50 included in the requisition request for the year, the  
51 institutional superintendent shall forward a supplemen-  
52 tal request for the additional or other food, milk or  
53 commodities to the farm management director at least  
54 thirty days before the farm management director is to  
55 deliver such other or additional food, milk or commod-  
56 ities to the institution. An institution may purchase food,  
57 milk or commodities from other sources if the farm  
58 management director certifies in writing that he will be  
59 unable to supply the needed food, milk or commodities  
60 at the time such food, milk or commodities will be  
61 needed by the institution. If the farm management  
62 commission produces more food, milk and other com-  
63 modities than can be consumed by the institutions, the  
64 farm management director first shall sell this surplus  
65 to other state agencies which request it at the wholesale  
66 fair market price for the products. If any surplus  
67 remains after sales to other state agencies, the director  
68 may give such surplus foods to any nonprofit, religious

69 or charitable organizations which are exempt from  
 70 taxation under 26 U.S.C. §501(c)(3) or (4), or the director  
 71 may sell the surplus on the open market. All revenues  
 72 derived from the sale of any farm product shall be  
 73 deposited by the farm management director in the  
 74 general revenue fund of the state.

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## CHAPTER 76

(Com. Sub. for H. B. 2037—By Delegates Farley and Murensky)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections ten and eleven, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article one and section three, article two of said chapter, all relating to the submission of a tentative budget; allowing the second quarterly meeting between the joint committee on government and finance and the council of finance and administration to be held in any month during the second quarter of the fiscal year and changing the time for submission of requests for appropriations from August fifteenth to September first.

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

That sections ten and eleven, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three, article one of said chapter be amended and reenacted and that section three, article two of said chapter be amended and reenacted, all to read as follows:

### CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION

#### Article

1. Department of Finance and Administration.
2. Budget Division.

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

**\*§5A-1-3. Council of finance and administration.**

1 The council of finance and administration is hereby  
2 created and shall be composed of ten members, four of  
3 whom shall serve ex officio and six of whom shall be  
4 appointed as herein provided. The ex officio members  
5 shall be the commissioner of the department of finance  
6 and administration, the attorney general or his designee,  
7 the state treasurer or his designee and the state auditor  
8 or his designee; such designees are authorized to vote.  
9 From the membership of the Legislature, the president  
10 of the Senate shall appoint three senators as members  
11 of the council, not more than two of whom shall be  
12 members of the same political party, and the speaker  
13 of the House shall appoint three delegates as members  
14 of the council, not more than two of whom shall be  
15 members of the same political party. Members of the  
16 council appointed by the president of the Senate and the  
17 speaker of the House shall serve at the will and pleasure  
18 of the officer making their appointment. The commis-  
19 sioner of finance and administration shall serve as  
20 chairman of the council. Meetings of the council shall  
21 be upon call of the chairman or a majority of the  
22 members thereof. It shall be the duty of the chairman  
23 to call at least four meetings in each fiscal year, one in  
24 each quarter, or more often as necessary, and all  
25 meetings shall be open to the public: *Provided*, That the  
26 second quarterly meeting in each fiscal year shall be a  
27 joint meeting with the joint committee on government  
28 and finance of the Legislature called jointly by the  
29 president of the Senate, speaker of the House and  
30 commissioner of finance and administration and shall be  
31 held in November or some other month during the  
32 second quarter as mutually agreed upon.

33 All meetings of the council shall be held at the capitol  
34 building in a suitable committee room which shall be  
35 made available by the Legislature for such purposes.

36 The council shall serve the department of finance and  
37 administration in an advisory capacity for purposes of  
38 reviewing the performance of the administrative and

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\* Clerk's Note: This section was also amended by H. B. 2860, which passed subsequent to this act.

39 fiscal procedures of the state, including the oversight of  
40 all federal funds, and shall have the following duties:

41 (1) To advise with the commissioner in respect to  
42 matters of budgetary intent and efficiency, including  
43 budget bill and budget document detail and format;

44 (2) To advise with the commissioner concerning such  
45 studies of government and administration concerning  
46 fiscal policy as it may consider appropriate;

47 (3) To advise with the commissioner in the preparation  
48 of studies designed to provide long-term capital plan-  
49 ning and finance for state institutions and agencies; and

50 (4) To advise with the commissioner in respect to the  
51 application for, and receipt and expenditure of, antic-  
52 ipated or unanticipated federal funds.

53 The appointed, non-ex officio members of the council  
54 shall be entitled to receive such compensation and  
55 reimbursement for expenses in connection with perfor-  
56 mance of their duties, during interim periods, if not  
57 otherwise receiving the same for such identical periods,  
58 as is authorized by the applicable sections of article two-  
59 a, chapter four of the code in respect to performance of  
60 duties either within the state or, if deemed necessary,  
61 out of state. Such compensation and expenses shall be  
62 incurred and paid only after approval by the joint  
63 committee on government and finance.

## ARTICLE 2. BUDGET DIVISION.

### §5A-2-3. Requests for appropriations; copies to legislative auditor.

1 The spending officer of each spending unit, other than  
2 the Legislature and the judicial branch of state govern-  
3 ment, shall on or before the first day of September of  
4 each year, submit to the commissioner a request for  
5 appropriations for the fiscal year next ensuing. On or  
6 before the same date, the spending officer shall also  
7 transmit two copies of such request to the legislative  
8 auditor for the use of the finance committees of the  
9 Legislature.

10 If the spending officer of any spending unit fails to  
11 transmit to the legislative auditor two copies of the  
12 request for appropriations within the time specified in  
13 this section, the legislative auditor shall notify the  
14 commissioner, auditor and treasurer of such failure, and  
15 thereafter no funds appropriated to such spending unit  
16 shall be encumbered or expended until the spending  
17 officer thereof has transmitted such copies to the  
18 legislative auditor.

19 If a spending officer submits to the commissioner an  
20 amendment to the request for appropriations, two copies  
21 of such amendment shall forthwith be transmitted to the  
22 legislative auditor.

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## CHAPTER 77

(H. B. 2300—By Delegates Love and Martin)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact section nine, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing volunteer fire departments the privilege of purchasing on statewide contracts.

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

That section nine, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 3. PURCHASING DIVISION.

#### **§5A-3-9. Facilities of department available to local governmental bodies.**

1 The director shall make available the facilities and  
2 services of his department to counties; county schools;  
3 municipalities; urban mass transportation authorities  
4 created pursuant to article twenty-seven, chapter eight  
5 of this code; mass transportation divisions of county and  
6 municipal governments; volunteer fire departments; and

- 7 other local governmental bodies within this state. The  
8 actual expenses incurred thereby shall be paid by the  
9 local governmental body.

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## CHAPTER 78

(Com. Sub. for S. B. 273—By Senators Blatnik, et al)

[Passed April 6, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to the designation of a central nonprofit agency to coordinate sales to the state under the provisions of section twelve, article three of said chapter and setting forth its purpose; the creation of a committee for the purchase of commodities and services from the handicapped and setting forth its purpose; the establishment of rule promulgation authority of the committee; and providing exceptions.

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

That chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-a, to read as follows:

**ARTICLE 3A. CENTRAL NONPROFIT COORDINATING AGENCY AND COMMITTEE FOR THE PURCHASE OF COMMODITIES AND SERVICES FROM THE HANDICAPPED.**

- §5A-3A-1. Purpose.  
§5A-3A-2. Central nonprofit agency.  
§5A-3A-3. Committee for the purchase of commodities and services from the handicapped.  
§5A-3A-4. Responsibilities of the committee for the purchase of commodities and services from the handicapped.  
§5A-3A-5. Rules.  
§5A-3A-6. Exceptions.

**§5A-3A-1. Purpose.**

1 The purpose of this article is to further the state's  
2 policy of encouraging disabled persons to achieve  
3 maximum personal independence by engaging in  
4 productive activities and in addition to provide state  
5 agencies, institutions, and political subdivisions with a  
6 method for achieving conformity with purchasing  
7 procedures and requirements of nondiscrimination,  
8 affirmative action, in employment matters related to  
9 disabled persons.

**§5A-3A-2. Central nonprofit agency.**

1 A central nonprofit agency approved by the director  
2 of the division of rehabilitation services is established  
3 for the purpose of coordinating purchases under the  
4 provisions of section twelve, article three of this chapter,  
5 between various "spending units" of the state and  
6 "nonprofit workshops." This agency shall have the  
7 following responsibilities:

8 (a) Represent qualified nonprofit workshops in dealing  
9 with state purchasing agents and the other bodies  
10 charged with purchasing responsibilities;

11 (b) Evaluating the qualifications and capabilities of  
12 workshops and entering, as necessary, into contracts  
13 with government procuring entities for the furnishing  
14 of the commodities or services provided by the  
15 workshops;

16 (c) Overseeing workshops to ensure compliance with  
17 contract performance and quality standards; list the  
18 commodities and services of participating workshops,  
19 research and assist the workshops in developing new  
20 products and upgrading existing ones, and shall survey  
21 applicable private industry to provide input on fair  
22 market prices; and

23 (d) Present an annual report for each fiscal year  
24 concerning the operations of its nonprofit workshops to  
25 the director of the division of rehabilitation services.

**§5A-3A-3. Committee for the purchase of commodities  
and services from the handicapped.**

1 (a) The committee for the purchase of commodities

2 and services from the handicapped is hereby created  
3 and shall be composed of the following six members who  
4 are to be appointed by the governor with the advice and  
5 consent of the Senate: A private citizen who is conver-  
6 sant with the problems incidental to the employment of  
7 handicapped persons; a representative of a producing  
8 nonprofit workshop; a representative of the division of  
9 rehabilitation services; a representative of the depart-  
10 ment of finance and administration; a representative of  
11 private business who is knowledgeable in the activities  
12 involved in the sale of commodities or services to  
13 governmental entities; and a representative of organized  
14 labor who is knowledgeable in matters relating to  
15 employment of the disabled. The governor shall appoint  
16 one member to serve as chairperson.

17 (b) Members of the committee are appointed to serve  
18 two-year terms expiring on the thirty-first day of  
19 January of odd-numbered years. Members may not  
20 receive compensation for their service on the committee  
21 or reimbursement by the state for expenses incurred in  
22 performing their duties as members.

23 (c) The committee shall have as an executive secretary  
24 the person charged with program management in  
25 section twelve, article three of this chapter. The  
26 secretary shall be responsible for the day-to-day  
27 management of the committee and shall coordinate with  
28 the central nonprofit agency to perform the duties  
29 outlined in section twelve, article three of this chapter.

**§5A-3A-4. Responsibilities of the committee for the  
purchase of commodities and services from  
the handicapped.**

1 The committee shall have the following duties and  
2 responsibilities:

3 (a) Determining the fair market price of all commod-  
4 ities, printing and services produced by nonprofit  
5 workshops and offered for sale by the central nonprofit  
6 agency to the various departments and political subdi-  
7 visions of the state. Prices shall be revised periodically  
8 to reflect changing market conditions.



9 (b) Monitoring the activities of the central nonprofit  
10 agency to assure that the interests of the state's  
11 handicapped citizens are advanced by the agency. The  
12 committee shall make rules necessary to monitor the  
13 agency as well as matters related to the state's use of  
14 the products and services produced by the handicapped.  
15 Except as stated in section twelve, article three of this  
16 chapter, rules shall reflect agreement with the policies  
17 and procedures established by the state's purchasing  
18 units.

19 (c) Monitoring the performance of the central non-  
20 profit agency to see that the commodities and services  
21 produced meet state specifications (or in the absence of  
22 specifications meet standards in use by the federal  
23 government or industry) as to quality and delivery. The  
24 committee shall provide procedures for formal and  
25 informal resolution of provider and consumer grievan-  
26 ces or complaints.

27 (d) Maintaining records pertaining to its activities  
28 under the act including records of sales, formal  
29 grievances, number of handicapped workers employed,  
30 a summary of disabilities for workers providing  
31 services, a list of workshop products and services, and  
32 the geographic distribution of provider workshops. On  
33 or before the first day of January of each year the  
34 committee shall file with the governor and the presiding  
35 officer of each house of the Legislature a written report  
36 summarizing the above records and giving a detailed  
37 accounting for all funds received and disbursed by the  
38 committee during the preceding year.

#### §5A-3A-5. Rules.

1 The committee may adopt rules for the implementa-  
2 tion, extension, administration, or improvement of the  
3 program authorized by this article.

#### §5A-3A-6. Exceptions.

1 Exceptions from the operation of the mandatory  
2 provisions of section twelve, article three of this code  
3 may be made in any case where the commodity or  
4 service so produced or provided does not meet the

5 reasonable requirements of the purchasing unit or  
6 cannot be reasonably provided by a nonprofit workshop  
7 in the opinion of the committee or the central nonprofit  
8 agency. No spending unit may evade the intent of this  
9 section when required goods or services are reasonably  
10 available from nonprofit workshops.

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## CHAPTER 79

(Com. Sub. for H. B. 2101—By Delegate Farley)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to repeal section fourteen-a, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article three, chapter twenty-nine of said code by adding thereto a new section, designated section twelve-b; to amend and reenact section twenty-four of said article three; and to further amend said chapter by adding thereto a new article, designated article three-b, all relating to inspection fee collections by the state fire marshal and payment of the same into special fund for the state fire commission; authorizing and setting caps on such inspection fees; providing for legislative appropriation of such fees; prohibiting the sale, possession or use of fireworks without a permit; authorizing the state fire marshal to adopt rules; fees; bond; proof of financial responsibility; providing for the licensure of electricians; providing a declaration of purpose; providing definitions; exemptions; establishing classes of licenses; setting forth minimum standards to qualify for licenses; licenses and renewal thereof; providing for applications; setting fees; providing for examinations; licensure without examination; denial, suspension or revocation of licenses; providing that noncompliance is a misdemeanor offense; providing penalties; providing the state fire marshal with certain powers; providing for the non-applicability of local ordinances in certain cases; and providing for the disposition of fees.

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

That section fourteen-a, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article three, chapter twenty-nine of said code be amended by adding thereto a new section, designated section twelve-b; that section twenty-four of said article three be amended and reenacted; and that said chapter twenty-nine be further amended by adding thereto a new article, designated article three-b, all to read as follows:

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### Article

#### 3. Fire Prevention and Control Act.

##### 3B. Supervision of Electricians.

### ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12b. Fees.

§29-3-24. Unlawful sale, possession or use of fireworks; permit for public display.

#### §29-3-12b. Fees.

1 (a) The state fire marshal may establish fees in  
2 accordance with the following:

3 (1) For blasting.—Any person storing, selling or using  
4 explosives shall first obtain a permit from the state fire  
5 marshal. Such permit shall be valid from the first day  
6 of July through the thirtieth day of June of the  
7 succeeding year beginning on the first day of July, one  
8 thousand nine hundred eighty-nine. The state fire  
9 marshal may charge a fee not to exceed fifty dollars for  
10 such permit.

11 (2) For inspections of schools or day care facilities.—  
12 The state fire marshal may charge a fee of up to twenty-  
13 five dollars per annual inspection for inspection of  
14 schools or day care facilities: *Provided*, That only one  
15 such fee may be charged per year for any building in  
16 which a school and a day care facility are co-located:  
17 *Provided, however*, That any school or day care facility  
18 may not be charged for an inspection more than one  
19 time per twelve-month period.

20 (3) For inspections of hospitals or nursing homes.—  
21 The state fire marshal may charge an inspection fee of

22 up to one hundred dollars per annual inspection of  
23 hospitals or nursing homes: *Provided*, That any hospital  
24 or nursing home may not be charged for an inspection  
25 more than one time per twelve-month period.

26 (4) For inspections of personal care homes or board  
27 and care facilities.—The state fire marshal may charge  
28 an inspection fee of up to fifty dollars per annual  
29 inspection for inspections of personal care homes or  
30 board and care facilities: *Provided*, That any personal  
31 care home or board and care facility may not be charged  
32 for an inspection more than one time per twelve-month  
33 period.

34 (5) For inspections of residential occupancies.—The  
35 state fire marshal may charge an inspection fee of up  
36 to one hundred dollars for each inspection of a residen-  
37 tial occupancy. For purposes of this subdivision,  
38 “residential occupancies” are those buildings in which  
39 sleeping accommodations are provided for normal  
40 residential purposes.

41 (6) For inspections of mercantile occupancies.—The  
42 state fire marshal may charge an inspection fee of up  
43 to one hundred dollars for inspections of mercantile  
44 occupancies: *Provided*, That if such inspection is in  
45 response to a complaint made by a member of the  
46 public, the state fire marshal shall obtain from the  
47 complainant an advance inspection fee of twenty-five  
48 dollars. This fee shall be returned to the complainant if,  
49 after the state fire marshal has made the inspection, he  
50 finds that the complaint was accurate and justified, and  
51 he shall thereafter collect an inspection fee of up to one  
52 hundred dollars from the mercantile occupancy. If, after  
53 the inspection has been performed, it appears to the  
54 state fire marshal that such complaint was not accurate  
55 or justified, the state fire marshal shall keep the twenty-  
56 five dollar advance inspection fee obtained from the  
57 complainant and may not collect any fees from the  
58 mercantile occupant. For purposes of this section,  
59 “mercantile occupancy” includes stores, markets and  
60 other rooms, buildings or structures for the display and  
61 sale of merchandise.

62 (7) For business occupancies.—The state fire marshal  
63 may charge an inspection fee of up to one hundred  
64 dollars for inspections of business occupancies: *Provided,*  
65 That the provisions in subdivision (6) of this section shall  
66 apply regarding complaints by members of the public.  
67 For purposes of this section, “business occupancies” are  
68 those buildings used for the transaction of business,  
69 other than mercantile occupancies, for the keeping of  
70 accounts and records, and similar purposes.

71 (8) For inspections of assembly occupancies.—The  
72 state fire marshal may charge an inspection fee not  
73 more than one time per twelve-month period for the  
74 inspection of assembly occupancies. The inspection fee  
75 shall be assessed as follows: For class C assembly  
76 facilities, an inspection fee not to exceed fifty dollars; for  
77 class B assembly facilities, an inspection fee not to  
78 exceed seventy-five dollars; and for class A facilities, an  
79 inspection fee not to exceed one hundred dollars.

80 For purposes of this subdivision, an “assembly  
81 occupancy” includes, but is not limited to, all buildings  
82 or portions of buildings used for gathering together fifty  
83 or more persons for such purposes as deliberation,  
84 worship, entertainment, eating, drinking, amusement,  
85 or awaiting transportation. For purposes of this section,  
86 a “class C assembly facility” is one that accommodates  
87 fifty to three hundred persons; a “class B facility” is one  
88 which accommodates more than three hundred persons  
89 but less than one thousand persons; and a “class A  
90 facility” is one which accommodates more than one  
91 thousand persons.

92 (b) The state fire marshal shall have the authority to  
93 establish a fee schedule for the fire safety review of  
94 plans and specifications for new and existing construc-  
95 tion as set forth in this article. Such fee shall be paid  
96 by such party or parties receiving the review.

97 The fee schedule shall be based upon existing and  
98 projected workloads as advanced by the state fire  
99 marshal and the schedule shall be clearly set forth by  
100 rules and regulations promulgated by the state fire  
101 commission. In no event may this fee exceed ten dollars.

102 (c) All fees authorized and collected pursuant to this  
103 article and article three-b of this chapter shall be paid  
104 to the state fire marshal and thereafter deposited into  
105 a special account for the operation of the state fire  
106 commission in administering this article and article  
107 three-b of this chapter: *Provided*, That for the fiscal year  
108 one thousand nine hundred ninety, expenditures from  
109 said account shall be made upon authorization by the  
110 governor after submission of an expenditure schedule by  
111 the state fire commission. For fiscal years thereafter,  
112 the Legislature shall appropriate the moneys in said  
113 account by a specific numbered account in the budget  
114 bill. Any amounts not expended from such account at  
115 the end of a fiscal year shall expire and be transferred  
116 to the general fund, unless sooner reappropriated by the  
117 Legislature.

118 (d) If the owner or occupant of any occupancy  
119 arranges a time and place for an inspection with the  
120 state fire marshal and is not ready for the occupancy  
121 to be inspected at the appointed time and place, the  
122 owner or occupant thereof shall be charged the inspec-  
123 tion fee provided in this section unless at least forty-  
124 eight hours prior to the scheduled inspection the owner  
125 or occupant requests the state fire marshal to reschedule  
126 such inspection. In the event a second inspection is  
127 required by the state fire marshal as a result of the  
128 owner or occupant failing to be ready for the inspection  
129 when the state fire marshal arrives, the state fire  
130 marshal shall charge the owner or occupant of such  
131 occupancy the inspection fees set forth above for each  
132 inspection trip required.

**§29-3-24. Unlawful sale, possession or use of fireworks;  
permit for public display.**

1 Except as hereinafter provided, no person, firm, co-  
2 partnership or corporation shall offer for sale, possess,  
3 expose for sale, sell at retail, keep with intent to sell at  
4 retail, or use or explode any fireworks: *Provided*, That  
5 the state fire marshal may adopt reasonable rules and  
6 regulations for the granting of permits for the super-  
7 vised displays of fireworks by municipalities, fair  
8 associations, amusement parks, and other organizations

9 or groups of individuals. The state fire marshal shall  
10 have the authority to charge a fee of ten dollars to each  
11 applicant requesting a license to be a pyrotechnic  
12 operator as set forth in this article. The state fire  
13 marshal shall charge a scaled fee for all applications  
14 requesting permits to establish a pyrotechnics display as  
15 provided in this section. All fees required to be paid by  
16 the provisions of this section shall be paid to the state  
17 fire marshal and thereafter deposited by him into a  
18 special account for the operation of the state fire  
19 commission. Such permits may be granted upon appli-  
20 cation to said state fire marshal and after approval of  
21 the local police and fire authorities of the community  
22 wherein the display is proposed to be held as provided  
23 herein and the filing of a bond by the applicant as  
24 provided hereinafter. Every such display shall be  
25 handled by a competent operator licensed or certified as  
26 to competency by the state fire marshal and shall be of  
27 such composition, character, and so located, discharged  
28 or fired as in the opinion of the chief of the fire  
29 department, after proper inspection, and of the chief of  
30 police as to not be hazardous to property or endanger  
31 any person or persons. After such privilege shall have  
32 been granted, the sale, possession, use and distribution  
33 of fireworks for such display shall be lawful for that  
34 purpose only. No permit granted hereunder shall be  
35 transferable.

36 The governing body or chief executive authority of the  
37 municipality shall require a bond from the licensee in  
38 a sum not less than one thousand dollars conditioned on  
39 compliance with the provisions of this article and the  
40 regulations of the state fire commission: *Provided*, That  
41 no municipality shall be required to file such bond.

42 Before any permit for a pyrotechnic display shall be  
43 issued, the person, firm or corporation making applica-  
44 tion therefor shall furnish proof of financial responsibil-  
45 ity to satisfy claims for damages to property or personal  
46 injuries arising out of any act or omission on the part  
47 of such person, firm or corporation or any agent or  
48 employee thereof, in such amount, character and form

49 as the state fire marshal determines to be necessary for  
50 the protection of the public.

### ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-1. Declaration of purpose.

§29-3B-2. Necessity of license; definitions.

§29-3B-3. Exemptions; nonapplicability of license requirements.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal.

§29-3B-5. Rules; applications and examinations; fees.

§29-3B-6. License without examination; fees.

§29-3B-7. Denial of license; suspension and revocation of license.

§29-3B-8. Effect of noncompliance with article; failure to obtain license.

§29-3B-9. Nonapplicability of local ordinances; exclusive license.

§29-3B-10. Disposition of fees, fines and other receipts.

#### §29-3B-1. Declaration of purpose.

1 This article is enacted to protect the health, safety and  
2 welfare of the public as well as public and private  
3 property by assuring the competence of those who  
4 perform electrical work through licensure by the state  
5 fire marshal of the state fire commission.

#### §29-3B-2. Necessity of license; definitions.

1 After the effective date of this article, no electrical  
2 work may be performed, offered or engaged in for  
3 compensation or hire within the state of West Virginia  
4 by any person, firm or corporation unless such person,  
5 firm or corporation possesses a license and a certificate  
6 therefor issued by the state fire marshal in accordance  
7 with this article, and a copy of such license is posted on  
8 any job in which electrical work is being performed for  
9 hire.

10 As used in this article:

11 (a) "Apprentice electrician" means a person with  
12 interest in and an aptitude for performing electrical  
13 work but who alone is not capable of installing wires,  
14 conduits, apparatus, equipment, fixtures and other  
15 appliances.

16 (b) "Electrical contractor" means a person, firm or  
17 corporation who engages in the business of electrical  
18 work or employs master electricians, electricians,



19 apprentice electricians or helpers for the construction,  
20 alteration or repair of any electrical wiring, equipment  
21 or systems for the purposes of furnishing heat, light or  
22 power.

23 (c) "Electrical work" means the installation of wires,  
24 conduits, apparatus, fixtures, other appliances, equip-  
25 ment or systems for transmitting, carrying or using  
26 electricity for light, heat or power purposes.

27 (d) "Journeyman electrician" means a person qualified  
28 by at least two years of electrical work experience to do  
29 any work installing wires, conduits, apparatus, equip-  
30 ment, fixtures and other appliances subject to supervi-  
31 sion by a master electrician.

32 (e) "License" means a valid and current certificate of  
33 competency issued by the state fire marshal.

34 (f) "Master electrician" means a person with at least  
35 five years of electrical work experience, including  
36 experience in all phases of electrical wiring and  
37 installation, who is competent to instruct and supervise  
38 the electrical work of journeyman electricians and  
39 apprentice electricians.

### §29-3B-3. Exemptions; nonapplicability of license requirements.

1 This article does not apply to and no license may be  
2 required for (a) a person who performs electrical work  
3 with respect to any property owned or leased by such  
4 person; (b) a person who performs electrical work at any  
5 manufacturing plant or other industrial establishment  
6 as an employee of the person, firm or corporation  
7 operating such plant or establishment; (c) a person who  
8 performs electrical work while employed by an em-  
9 ployer who engages in the business of selling appliances  
10 at retail, so long as such electrical work is performed  
11 incident to the installation or repair of appliances sold  
12 by the employer; (d) a person who, while employed by  
13 a public utility or its affiliate, performs electrical work  
14 in connection with the furnishing of public utility  
15 service; or (e) any government employee.

**§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal.**

1 (a) The following three classes of license may be issued  
2 by the state fire marshal: "Master electrician license,"  
3 "journeyman electrician's license" and "apprentice  
4 electrician license."

5 (b) The state fire marshal shall issue the appropriate  
6 class of license to a person, firm or corporation upon a  
7 finding that such person, firm or corporation possesses  
8 the qualifications for the class of license to be issued.

9 (c) The qualifications for each class of license to be  
10 issued are as follows:

11 (1) For a "master electrician license" a person must  
12 have five years of experience in electrical work of such  
13 breadth, independence and quality that such work  
14 indicates that the applicant is competent to perform all  
15 types of electrical work and can direct and instruct  
16 journeyman electricians and apprentice electricians in  
17 the performance of electrical work. Such applicant, or  
18 a member of a firm or an officer of a corporation if the  
19 applicant be a firm or corporation, must also pass the  
20 master electrician examination given by the state fire  
21 marshal with a grade of eighty percent correct or better;

22 (2) For a "journeyman electrician's license," a person  
23 must have at least two years of experience in perform-  
24 ing electrical work under the direction or instruction of  
25 a master electrician or must have completed a formal  
26 apprentice program providing actual electrical work  
27 experience and training conducted by one or more  
28 master electricians. Such applicant must also pass the  
29 journeyman electrician's examination given by the state  
30 fire marshal with a grade of eighty percent correct or  
31 better;

32 (3) For an "apprentice electrician license," a person  
33 must pass the apprentice electrician's examination given

34 by the state fire marshal with a grade of eighty percent  
35 correct or better.

36 (d) (1) Certificates of license for a master electrician's  
37 license issued by the state fire marshal shall specify the  
38 name of the person, firm or corporation so qualifying  
39 and the name of the person, who in the case of a firm  
40 shall be one of its members and in the case of a  
41 corporation shall be one of its officers, passing the  
42 master electrician examination.

43 (2) Licenses issued to journeyman electricians and  
44 apprentice electricians shall specify the name of the  
45 person who is thereby authorized to perform electrical  
46 work or, in the case of apprentice electricians, to work  
47 with other classes of electricians to perform electrical  
48 work.

49 (e) No license issued under this article is assignable  
50 or transferable.

51 (f) All licenses issued by the state fire marshal shall  
52 expire on the thirtieth day of June following the year  
53 of issue or renewal.

54 (g) (1) Each expiring license may be renewed without  
55 need for examination and without limit as to the number  
56 of times renewed, for the same class of license previously  
57 issued and for the same person, firm or corporation to  
58 whom it was originally issued upon payment to the state  
59 fire marshal of a renewal fee of fifty dollars if such  
60 application for renewal and payment of such fee is made  
61 before the date of expiration of the license.

62 (2) In the case of a failure to renew a license on or  
63 before the thirtieth day of June the person named in the  
64 license may, upon payment of the renewal fee and an  
65 additional fee of fifteen dollars, receive from the state  
66 fire marshal a deferred renewal of such license which  
67 shall expire on the thirtieth day of June in the ensuing  
68 year. No person, firm or corporation may perform  
69 electrical work upon expiration of such person's, firm's  
70 or corporation's license until a deferred renewal for such  
71 license is issued by the state fire marshal even if such  
72 person, firm or corporation has applied for the deferred  
73 renewal of such license.

**§29-3B-5. Rules; applications and examinations; fees.**

1 (a) The state fire marshal shall promulgate necessary  
2 rules pursuant to the provisions of chapter twenty-nine-  
3 a of this code to implement the provisions of this article.  
4 Rules adopted by the state fire marshal and presently  
5 in effect shall remain in effect until and unless the state  
6 fire marshal adopts new rules, and the state fire  
7 marshal may adopt any or all of the rules presently in  
8 effect.

9 (b) The state fire marshal shall prepare and arrange  
10 for the receipt of applications from those who intend to  
11 perform electrical work in the state of West Virginia.  
12 Such application shall be sufficiently detailed to enable  
13 the state fire marshal to determine the presence or  
14 absence of an applicant's qualifications for a license of  
15 a particular class. The state fire marshal may, if he  
16 considers it necessary, require applicants to supply  
17 affidavits or other documents attesting to the applicant's  
18 qualifications from past employers, other electricians,  
19 engineers and others with knowledge of the applicant's  
20 qualifications. The state fire marshal may make such  
21 other inquiries as he considers necessary to determine  
22 the qualifications of the applicant. An applicant  
23 expressly consents to such inquiries by the state fire  
24 marshal by his application.

25 (c) The state fire marshal shall prepare and arrange  
26 for the giving of examinations to all applicants for  
27 licensure as master electricians, journeyman electri-  
28 cians and apprentice electricians. There shall be a  
29 separate and different examination for each class of  
30 license, appropriate in subject matter, difficulty and  
31 depth of understanding for each class. All examinations  
32 shall be based on and derived from the national electric  
33 code as promulgated from time to time by the national  
34 fire protection association. A minimum grade of eighty  
35 percent correct for all examinations is necessary for  
36 licensure by the state fire marshal. The examinations  
37 shall be given at least four times each year. The places,  
38 dates and times of such examinations shall be made  
39 known by public notice issued by the state fire marshal.  
40 The state fire marshal may contract with the bureau of

41 vocational, technical and adult education, state depart-  
42 ment of education, to perform such examinations.

43 (d) Each person desiring to take an examination shall  
44 make written application therefor at the time desig-  
45 nated by and on forms prescribed by the state fire  
46 marshal. The applicant shall specify the class of license  
47 for which he seeks licensure. The application shall be  
48 accompanied by an examination fee of twenty-five  
49 dollars for licenses for master electrician or journeyman  
50 electrician, or by an examination fee of ten dollars for  
51 an apprentice electrician license applicant. The fee is  
52 not returnable.

53 (e) An applicant who fails to make the required  
54 passing score on any examination or who lacks qualifi-  
55 cations for the class of license desired may retake the  
56 examination or change his application to request a  
57 license of a lesser class upon the payment to the state  
58 fire marshal of a fee of ten dollars together with a new  
59 application. Any reexamination may be taken or new  
60 application may be submitted as many times as the  
61 applicant desires, but each such examination or appli-  
62 cation requires the payment of the additional fee of ten  
63 dollars and the making of a new application to the state  
64 fire marshal. When the examination is successfully  
65 passed and the requisite qualifications are established  
66 by the applicant, the state fire marshal shall issue the  
67 appropriate license as provided above.

#### §29-3B-6. License without examination; fees.

1 (a) Notwithstanding the foregoing provisions of this  
2 article, any applicant for a certificate of license who  
3 within ninety days following the effective date of this  
4 article furnishes the state fire marshal with satisfactory  
5 evidence showing that such applicant is working as a  
6 journeyman electrician or master electrician in this  
7 state as of the effective date of this article and that he  
8 has been working for a period of one year immediately  
9 prior to the effective date of this article, or any applicant  
10 who gives conclusive evidence of possession of a  
11 certificate of competency issued by the state fire  
12 marshal prior to the effective date of this article is not

13 required to take the examination described in section  
14 five of this article. Such applicant shall be issued a  
15 license for the class of license the applicant's qualifica-  
16 tions establish.

17 (b) Such applicant who is exempt from testing is  
18 nevertheless required to submit a complete application  
19 on forms prescribed by the state fire marshal accompan-  
20 ied by a license fee of twenty-five dollars.

21 (c) Such license issued by the state fire marshal upon  
22 application without examination expires and is eligible  
23 for renewal as provided in section four of this article.

**§29-3B-7. Denial of license; suspension and revocation of  
license.**

1 (a) The state fire marshal shall deny a license to any  
2 applicant who fails to make a passing grade on the  
3 examination or who fails to establish or who lacks the  
4 necessary qualifications for a license for the class of  
5 license desired.

6 (b) The state fire marshal may upon complaint or his  
7 own inquiry, after notice and hearing as provided by  
8 article five, chapter twenty-nine-a of this code, suspend  
9 or revoke the license of any person who holds a license  
10 if:

11 (1) The license was granted upon an application or  
12 documents supporting such application which mate-  
13 rially misstated the terms of the applicant's qualifica-  
14 tions or experience;

15 (2) Such person subscribed or vouched for such  
16 misstatement by an applicant;

17 (3) Such person incompetently or unsafely performs  
18 electrical work;

19 (4) Such person violated any statute of the state of  
20 West Virginia, any rule lawfully promulgated by an  
21 agency of the state of West Virginia or any ordinance  
22 of any municipality or county of the state of West  
23 Virginia which protects the consumer or public against  
24 unfair, unsafe, unlawful or improper business practices;  
25 or

26 (5) Such person fails to comply with any rule of the  
27 state fire marshal promulgated to fulfill his responsibil-  
28 ities under this article.

29 (c) Any person aggrieved by an order or decision of  
30 the state fire marshal under this article is entitled to  
31 judicial review as provided by section eighteen, article  
32 three of this chapter and by chapter twenty-nine-a of  
33 this code.

**§29-3B-8. Effect of noncompliance with article; failure to  
obtain license.**

1 Any person, firm, corporation or employee thereof, or  
2 any representative, member or officer of such firm or  
3 corporation, individually, entering upon or engaging in  
4 the business of performing any electrical work as  
5 defined in this article, without obtaining the required  
6 license or otherwise complying with this article, is for  
7 the first offense guilty of a misdemeanor, and, upon  
8 conviction thereof, shall be fined not more than one  
9 hundred dollars. For a second and each subsequent  
10 offense, the penalty and punishment is a fine of not less  
11 than one hundred dollars nor more than five hundred  
12 dollars.

13 Each day during which such electrical work is  
14 performed without the required license or while in  
15 noncompliance with any of the provisions of this article,  
16 after official notice that such work is unlawful, is a  
17 separate offense.

18 Any electrical work performed by a person, firm or  
19 corporation which is determined by the state fire  
20 marshal to constitute a safety or health hazard to  
21 members of the public or any electrical work of an  
22 extensive nature being performed by any person without  
23 the required license or otherwise in noncompliance with  
24 the requirements of this article or contrary to an order  
25 or rule promulgated lawfully by the state fire marshal,  
26 is subject to a civil action in the name of the state in  
27 the circuit court of the county where such work is being  
28 performed for an injunction against such person, firm  
29 or corporation, enjoining such work or violation. A  
30 circuit court by mandatory or prohibitory injunction

31 may compel compliance with the provisions of this  
32 article, with the lawful orders of the state fire marshal  
33 and with any final decision of the state fire marshal or  
34 state fire commission. The state fire marshal shall be  
35 represented in all such proceedings by the attorney  
36 general or his assistants.

**§29-3B-9. Nonapplicability of local ordinances; exclusive license.**

1 After the effective date of this article no municipality,  
2 local government or county may require any license or  
3 other evidence of competence as an electrician from any  
4 person, firm or corporation who or which holds a valid  
5 and current license issued pursuant to this article, as a  
6 condition precedent to permission for the performance  
7 of electrical work in such municipality, local govern-  
8 ment jurisdiction or county.

**§29-3B-10. Disposition of fees, fines and other receipts.**

1 All fees or other moneys received as a result of actions  
2 under this article shall be paid to the state fire marshal.  
3 Such receipts shall be deposited by him in a special  
4 account with the state treasurer for the use of the state  
5 fire marshal in administering this article as provided in  
6 subsection (c), section twelve-b, article three of this  
7 chapter.

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## CHAPTER 80

(Com. Sub. for H. B. 2333—By Delegates Otte and Givens)

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[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

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**AN ACT** to amend and reenact section sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fire prevention and control act; smoke detectors in one and two-family dwellings; requiring operational smoke detectors in all new one and two-family dwellings completed after the first day of July, one thousand nine hundred ninety; deleting certain provisions with respect



to mobile homes and exempting "manufactured homes" from the provisions thereof; and continuing and increasing the penalties for violations of this section.

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

That section sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

**§29-3-16a. Smoke detectors in one and two-family dwellings; penalty.**

1 (a) Within all one and two-family dwellings which are  
2 not occupied by the owner thereof, and within all one  
3 and two-family dwellings completed after the first day  
4 of July, one thousand nine hundred ninety, an opera-  
5 tional smoke detector shall be installed outside of each  
6 separate sleeping area in the immediate vicinity of the  
7 sleeping area: *Provided*, That the provisions of this  
8 section shall not apply to any "manufactured home" as  
9 that term is defined in subsection (j), section two, article  
10 nine, chapter twenty-one of this code. Such smoke  
11 detector shall be capable of sensing visible or invisible  
12 particles of combustion and shall meet the specifications  
13 and be installed as provided for in the National Fire  
14 Protection Association Standard 74, "Standard for the  
15 Installation, Maintenance and Use of Household Fire  
16 Warning Equipment," 1984 edition, and in the manufac-  
17 turer's specifications. When activated, the smoke  
18 detector shall provide an alarm suitable to warn the  
19 occupants of the danger of fire.

20 (b) The owner of each dwelling described in subsec-  
21 tion (a) of this section shall provide, install and replace  
22 the operational smoke detectors required by this section.  
23 So as to assure that the smoke detector continues to be  
24 operational, in each dwelling described in subsection (a)  
25 which is not occupied by the owner thereof, the tenant  
26 in any such dwelling shall perform routine maintenance  
27 on the smoke detectors within such dwelling.

28 (c) Where a dwelling is not occupied by the owner and  
29 is occupied by an individual who is deaf or hearing

30 impaired, the owner shall, upon written request by or  
31 on behalf of such individual, provide and install a smoke  
32 detector with a light signal sufficient to warn the deaf  
33 or hearing-impaired individual of the danger of fire.

34 (d) An automatic fire sprinkler system installed in  
35 accordance with the National Fire Protection Associa-  
36 tion Standard 13D, "Standard for the Installation of  
37 Sprinkler Systems in Residential Occupancies," 1983  
38 edition, may be provided in lieu of smoke detectors.

39 (e) After investigating a fire in any dwelling des-  
40 cribed in subsection (a) of this section, the local  
41 investigating authority shall issue to the owner a smoke  
42 detector installation order in the absence of the required  
43 smoke detectors.

44 (f) Any person who violates any provision of this  
45 section is guilty of a misdemeanor, and, upon conviction  
46 thereof, shall be fined not less than fifty dollars nor  
47 more than one hundred dollars.

48 (g) A violation of this section shall not be deemed by  
49 virtue of such violation to constitute evidence of  
50 negligence or contributory negligence or comparative  
51 negligence in any civil action or proceeding for  
52 damages.

53 (h) A violation of this section shall not constitute a  
54 defense in any civil action or proceeding involving any  
55 insurance policy.

56 (i) Nothing in this section shall be construed to limit  
57 the rights of any political subdivision in this state to  
58 enact laws imposing upon owners of any dwelling  
59 described in subsection (a) of this section a greater duty  
60 with regard to the installation, repair and replacement  
61 of the smoke detectors than is required by this section.

62 (j) Owners of dwellings described in subsection (a)  
63 shall comply with the provisions of this section no later  
64 than the first day of July, one thousand nine hundred  
65 eighty-five, except as may be otherwise specified in said  
66 subsection (a).

## CHAPTER 81

(Com. Sub. for S. B. 3—By Senator Hylton)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-b, relating to enabling the conveyance of Grandview State Park to the National Park Service of the government of the United States of America.

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

That article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-b, to read as follows:

### ARTICLE 1. DEPARTMENT OF COMMERCE.

#### §5B-1-12b. Conveyance of Grandview State Park to the National Park Service; governor, director of the department of natural resources and director of the department of commerce.

1 The governor and the director of the department of  
2 natural resources may convey, within one year of the  
3 effective date of this section, the lands and property of  
4 Grandview State Park to the National Park Service of  
5 the government of the United States of America:  
6 *Provided*, That the National Park Service agrees to  
7 accept the conveyance: *Provided, however*, That the  
8 department of natural resources shall hold public  
9 hearings prior to making said conveyance. At least one  
10 public hearing shall be held in the county where the  
11 park is located.

12 The commissioner of the department of commerce  
13 shall cooperate with and aid the department of natural  
14 resources in the conveyance. The conveyance is subject  
15 to the provisions of article one, chapter twenty of the  
16 code of West Virginia, one thousand nine hundred  
17 thirty-one, as amended.

## CHAPTER 82

(Com. Sub. for H. B. 2612—By Delegates M. Burke and White)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to conversion of hospital acute beds to skilled nursing beds.

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

That article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a, to read as follows:

### ARTICLE 2D. CERTIFICATE OF NEED.

#### §16-2D-4a. Conversion of hospital acute beds to skilled nursing beds.

1 (a) Legislative findings and purpose.—The Legisla-  
2 ture hereby finds and declares that a need exists for  
3 skilled nursing health care beds in this state due to a  
4 shortage of existing facilities with adequate bed  
5 capacity and lack of willingness to provide such services;  
6 that patients in need of skilled nursing services have  
7 sometimes been retained in an inappropriate level of  
8 care facility; that such practices have resulted in  
9 malutilization of health care facilities and resources;  
10 that there currently exists a surplus of acute care beds  
11 in hospitals, particularly those in rural areas within this  
12 state; that the surplus of acute care beds is, for the  
13 foreseeable future, permanent in nature; that the same  
14 excess capacity of acute care beds promotes economic  
15 inefficiencies in operation while failing to meet com-  
16 munity needs; that nursing homes are unable under  
17 subsection (h), section five of this article, to add  
18 intermediate or dually certified beds to skilled nursing  
19 beds at the present time in numbers in excess of ten  
20 percent or not more than ten beds, whichever is less; and  
21 that remedial action by the Legislature is necessary to

22 effectuate relief of these problems to promote the health  
23 and welfare of the citizens of the state by allowing, in  
24 certain instances, for the conversion of acute care beds  
25 to skilled nursing beds by hospitals, but with no increase  
26 in overall hospital bed capacity.

27 (b) Notwithstanding the provisions of subsection (h),  
28 section five of this article, and, further, notwithstanding  
29 the provisions of subsection (d), section three of this  
30 article, the state agency shall adopt rules pursuant to  
31 section eight of this article, to exempt from review the  
32 conversion of acute care beds to skilled nursing care  
33 beds by a licensed hospital by the state department of  
34 health if the hospital meets the following conditions:

35 (1) It is located in a nonmetropolitan statistical area  
36 as defined by the bureau of census of the federal  
37 government;

38 (2) It has experienced an average occupancy rate of  
39 less than fifty percent for the twelve months preceding  
40 the date of request for this exemption; and

41 (3) The nursing home service area within which the  
42 hospital is located is under the bed ceiling as calculated  
43 by the thirty beds per thousand population formula as  
44 set forth in the long-term care chapter of the state  
45 health plan, except for the purposes of this article  
46 existing nursing home beds shall be used in the  
47 calculation.

48 (c) The state agency shall include in its rules require-  
49 ments that:

50 (1) In converting beds, the hospital must change one  
51 acute care bed into one skilled nursing care bed;

52 (2) All acute care beds converted shall be perman-  
53 ently deleted from the hospital's acute care bed comple-  
54 ment and the hospital may not thereafter add, by  
55 conversion or otherwise, acute care beds to its bed  
56 complement without satisfying the requirements of  
57 subsection (d), section three of this article, for which  
58 purposes such an addition, whether by conversion or  
59 otherwise, such be considered a substantial change to  
60 the bed capacity of the hospital notwithstanding the

61 definition of that term found in subsection (ee), section  
62 two of this article;

63 (3) The hospital shall meet all applicable federal and  
64 state licensing requirements for the provisions of skilled  
65 nursing services including a requirement that all skilled  
66 care beds created under this exemption shall be located  
67 in distinct-part, long-term care units;

68 (4) No hospital is permitted to convert more than  
69 twenty-five percent of its licensed bed capacity in any  
70 twenty-four month period pursuant to this exemption;  
71 however, in the event that subsection (h), section five of  
72 this article, is repealed and to the extent that other  
73 methods of converting acute care beds are available  
74 under this article, the hospital may request certificate  
75 of need approval of such conversions;

76 (5) The hospital shall undergo substantial compliance  
77 review of a conversion under this exemption under such  
78 terms and at such a time as set by the state agency in  
79 its rules.

80 (d) Nothing in this section negatively affects the  
81 rights of inspection and certification which are else-  
82 where required by federal law or regulations or by this  
83 code or duly adopted regulation of an authorized state  
84 entity.

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## CHAPTER 83

(Com. Sub. for H. B. 2510—By Delegates Riggs and Minard)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-g, relating to federal "WIC" program; requiring banks in the state to accept WIC vouchers or coupons from vendors; requiring state health director to deposit WIC funds in state bank and providing for method of selection of bank; and providing an effective date.

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

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-g, to read as follows:

**ARTICLE 2G. SPECIAL SUPPLEMENTARY FOOD PROGRAM  
FOR WOMEN, INFANTS AND CHILDREN (WIC).**

**§16-2G-1. Voucher or coupon redemption and payment.**

1 With respect to the vouchers or coupons authorized by  
2 the department of health in the administration of the  
3 special supplementary food program for women, infants  
4 and children, commonly known as the WIC program,  
5 under the auspices and guidelines of the United States  
6 department of agriculture, such vouchers or coupons,  
7 when received by a vendor from a holder thereof in  
8 exchange for food, food stuffs, or authorized goods or  
9 services, may be deposited by the said vendor in any  
10 federally insured bank in this state for collection and  
11 payment thereof, and such bank shall accept the same  
12 as equivalent to a negotiable instrument from a holder  
13 in due course pursuant to chapter forty-six of this code,  
14 and shall collect the funds for such vouchers or coupons  
15 so received.

16 All moneys received from the United States depart-  
17 ment of agriculture under said program, except for  
18 moneys to be used for administration, shall be deposited  
19 by the state health director in a special account in a  
20 federally insured bank in this state. The director shall  
21 select the bank by competitive bidding in the same  
22 manner as the state treasurer selects depository banks  
23 for state funds, subject to applicable federal laws or  
24 regulations governing such selection.

25 The provisions of this section shall take effect on the  
26 first day of April, one thousand nine hundred ninety,  
27 except that the director shall commence procedures for  
28 the selection of the bank and for implementation of the  
29 other provisions of this section upon the passage hereof.

30 Nothing in this section shall make such vouchers or

31 coupons negotiable instruments for any purpose other  
32 than expressly set forth herein or as permitted by  
33 applicable federal laws or regulations.

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## CHAPTER 84

(H. B. 2760—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, ten and eleven, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three, five and twenty, article twenty-nine-a of said chapter, relating to nursing home, personal care home and residential board and care home licensure; application; fees; duration; renewal; certified beds; reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; license limitation; suspension; revocation; continuation of disciplinary proceedings; closure; transfer of patients; appointment of temporary management; assessment of interest, collection thereof; promulgation of regulations to conform to federal requirements; hearings; powers of the West Virginia Hospital Finance Authority; definitions of hospitals; and certificates of need.

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

That sections six, ten and eleven, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, three, five and twenty, article twenty-nine-a of said chapter be amended and reenacted, all to read as follows:

### CHAPTER 16. PUBLIC HEALTH.

#### Article

5C. Nursing and Personal Care Homes and Residential Board and Care Homes.

29A. West Virginia Hospital Finance Authority Act.



**ARTICLE 5C. NURSING AND PERSONAL CARE HOMES AND RESIDENTIAL BOARD AND CARE HOMES.**

- §16-5C-6. License required; application; fees; duration; renewal.
- §16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.
- §16-5C-11. License limitation, suspension, revocation; continuation of disciplinary proceedings; closure, transfer of patients, appointment of temporary management; assessment of interest; collection of assessments; promulgation of regulations to conform with federal requirements; hearings.

**§16-5C-6. License required; application; fees; duration; renewal.**

1 Subject to the provisions of section seventeen of this  
2 article, no person may establish, operate, maintain, offer  
3 or advertise a nursing home, personal care home, or  
4 residential board and care home within this state unless  
5 and until he obtains a valid license therefor as hereinaf-  
6 ter provided, which license remains unsuspended,  
7 unrevoked and unexpired. No public official or em-  
8 ployee may place any person in, or recommend that any  
9 person be placed in, or directly or indirectly cause any  
10 person to be placed in, any facility, as defined in section  
11 two of this article, which is being operated without a  
12 valid license from the director. The procedure for  
13 obtaining a license shall be as follows:

14 (a) The applicant shall submit an application to the  
15 director on a form to be prescribed by the director,  
16 containing such information as may be necessary to  
17 show that the applicant is in compliance with the  
18 standards for nursing homes, personal care homes, or  
19 residential board and care homes as established by this  
20 article and the rules and regulations lawfully promul-  
21 gated by the board of health hereunder. The application  
22 and any exhibits thereto shall provide the following  
23 information:

24 (1) The name and address of the applicant;

25 (2) The name, address and principal occupation (i) of  
26 each person who, as a stockholder or otherwise, has a  
27 proprietary interest of ten percent or more in the  
28 applicant, (ii) of each officer and director of a corporate  
29 applicant, (iii) of each trustee and beneficiary of an

30 applicant which is a trust, and (iv) where a corporation  
31 has a proprietary interest of fifty percent or more in an  
32 applicant, the name, address and principal occupation  
33 of each officer and director of such corporation;

34 (3) The name and address of the owner of the  
35 premises of the facility or proposed facility, if he is a  
36 different person from the applicant, and in such case,  
37 the name and address (i) of each person who, as a  
38 stockholder or otherwise, has a proprietary interest of  
39 ten percent or more in such owner, (ii) of each officer  
40 and director of a corporate applicant, (iii) of each trustee  
41 and beneficiary of such owner if he is a trust, and (iv)  
42 where a corporation has a proprietary interest of fifty  
43 percent or more in such owner, the name and address  
44 of each officer and director of such corporation;

45 (4) Where the applicant is the lessee or the assignee  
46 of the facility or the premises of the proposed facility,  
47 a signed copy of the lease and any assignment thereof;

48 (5) The name and address of the facility or the  
49 premises of the proposed facility;

50 (6) The type of institution to be operated;

51 (7) The proposed bed quota of the facility and the  
52 proposed bed quota of each unit thereof;

53 (8) (i) An organizational plan for the facility indicat-  
54 ing the number of persons employed or to be employed,  
55 the positions and duties of all employees, (ii) the name  
56 and address of the individual who is to serve as  
57 administrator, and (iii) such evidence of compliance  
58 with applicable laws and regulations governing zoning,  
59 buildings, safety, fire prevention and sanitation as the  
60 director may require;

61 (9) Such additional information as the director may  
62 require; and

63 (10) Assurances that the nursing home was reviewed  
64 and found to be needed under the provisions of article  
65 two-d of this chapter.

66 (b) Upon receipt and review of an application for  
67 license made pursuant to subdivision (a) of this section,

68 and inspection of the applicant facility pursuant to  
69 section ten of this article, the director shall issue a  
70 license if he finds:

71 (1) That an individual applicant, and every partner,  
72 trustee, officer, director and controlling person of an  
73 applicant which is not an individual, be a person  
74 responsible and suitable to operate or to direct or  
75 participate in the operation of a facility by virtue of  
76 financial capacity, appropriate business or professional  
77 experience, a record of compliance with lawful orders  
78 of the department (if any) and lack of revocation of a  
79 license during the previous five years;

80 (2) That the facility be under the supervision of an  
81 administrator who is qualified by training and expe-  
82 rience: *Provided*, That every facility classified as a  
83 nursing home shall have an administrator licensed  
84 pursuant to the provisions of article twenty-five, chapter  
85 thirty of this code; and

86 (3) That the facility is in substantial compliance with  
87 standards established pursuant to section five of this  
88 article, and such other requirements for a license as the  
89 board of health may establish by regulation under this  
90 article.

91 Any license granted by the director shall state the  
92 maximum bed capacity for which it is granted, the date  
93 the license was issued, the expiration date, and the  
94 rating assigned to the facility pursuant to section five  
95 of this article. Such licenses shall be issued for a period  
96 not to exceed fifteen months for nursing homes and for  
97 a period of not to exceed one year for personal care  
98 homes and residential board and care homes: *Provided*,  
99 That any such license in effect for which timely  
100 application for renewal, together with payment of the  
101 proper fee has been made to the state department of  
102 health in conformance with the provisions of this article  
103 and the rules and regulations issued thereunder, and  
104 prior to the expiration date of such license, shall  
105 continue in effect until (a) one year following the  
106 expiration date of such license, or (b) the date of the  
107 revocation or suspension of such license pursuant to the

108 provisions of this article, or (c) the date of issuance of  
109 a new license, whichever date first occurs. Each license  
110 shall be issued only for the premises and persons named  
111 in the application and shall not be transferable or  
112 assignable: *Provided, however,* That in the case of the  
113 transfer of ownership of a facility with an unexpired  
114 license, the application of the new owner for a license  
115 shall have the effect of a license for a period of three  
116 months when filed with the director. Every license shall  
117 be posted in a conspicuous place in the facility for which  
118 it is issued so as to be accessible to and in plain view  
119 of all patients and visitors of the facility.

120 (c) An original license shall be renewable, conditioned  
121 upon the licensee filing timely application for the  
122 extension of the term of the license accompanied by the  
123 fee, and contingent upon evidence of compliance with  
124 the provisions of this article and regulations promul-  
125 gated by the board of health hereunder: *Provided,* That  
126 notwithstanding the requirements of other sections of  
127 this article, the director may deem as evidence of  
128 compliance with such provisions and regulations the  
129 certification of nursing home beds under the medicare  
130 or medicaid requirements of titles eighteen or nineteen  
131 of the Social Security Act, Title 42, United States Code,  
132 sections 1395 and 1396, et seq. Any such application for  
133 renewal of a license shall include a report by the licensee  
134 in such form and containing such information as shall  
135 be prescribed by the director, including the following:

136 (1) A balance sheet of the facility as of the end of its  
137 fiscal year, setting forth assets and liabilities at such  
138 date, including all capital, surplus, reserve, depreciation  
139 and similar accounts;

140 (2) A statement of operations of the facility as of the  
141 end of its fiscal year, setting forth all revenues,  
142 expenses, taxes, extraordinary items and other credits  
143 or charges; and

144 (3) A statement of any changes in the name, address,  
145 management or ownership information on file with the  
146 director. All holders of facility licenses as of the effective  
147 date of this article shall include, in the first application  
148 for renewal filed thereafter, such information as is

149 required for initial applicants under the provisions of  
150 subsection (a) of this section.

151 (d) In the case of an application for a renewal license,  
152 if all requirements of section five of this article are not  
153 met, the director may in his discretion issue a provi-  
154 sional license, provided that care given in the facility is  
155 adequate for patient needs and the facility has demon-  
156 strated improvement and evidences potential for  
157 substantial compliance within the term of said license:  
158 *Provided*, That a provisional renewal may not be issued  
159 for a period greater than one year, shall not be renewed,  
160 and that no such license shall be issued to any facility  
161 with uncorrected violations of any Class I standard, as  
162 defined in subsection (c), section five of this article.

163 (e) A nonrefundable application fee in the amount of  
164 one hundred dollars for an original nursing home license  
165 or fifty dollars for an original personal care facility or  
166 residential board and care home license shall be paid at  
167 the time application is made for such license. Direct  
168 costs of initial licensure inspections or inspections for  
169 changes in licensed bed capacity shall be borne by the  
170 applicant and shall be received by the director prior to  
171 the issuance of an initial or amended license. The license  
172 fee for renewal of a license shall be at the rate of eight  
173 dollars per bed per year for nursing homes, and four  
174 dollars per bed per year for personal care homes, and  
175 two dollars per bed per year for residential board and  
176 care homes, except the annual rate per bed may be  
177 assessed for licenses issued for less than one year. The  
178 director may annually adjust the licensure fees for  
179 inflation based upon the consumer price index. The bed  
180 capacity for the holder of each license shall be deter-  
181 mined by the director. All such license fees shall be due  
182 and payable to the director, annually, and in such  
183 manner set forth in the rules and regulations promul-  
184 gated by the board of health. Such fee and application  
185 shall be submitted to the director who shall retain both  
186 the application and fee pending final action on the  
187 application. All fees received by the director under the  
188 provisions of this article shall be deposited in accordance  
189 with section thirteen, article one of this chapter.

**§16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.**

1 (a) Reports of all inspections made pursuant to section  
2 nine of this article shall be in writing and filed with the  
3 director, and shall list all deficiencies in the facility's  
4 compliance with the provisions of this article and the  
5 regulations adopted by the board of health hereunder.  
6 The director shall send a copy of such report to the  
7 facility and shall specify a time within which the facility  
8 shall submit a plan for correction of such deficiencies,  
9 which plan shall be approved, rejected or modified by  
10 the director. The surveyors shall allow audio taping of  
11 the exit conference for both licensure and certification  
12 inspections with all costs directly associated with such  
13 taping to be paid by the facility.

14 (b) With regard to a facility with deficiencies which  
15 is not certified under titles eighteen or nineteen of the  
16 Social Security Act and upon such facility's failure to  
17 submit a plan of correction which is approved by the  
18 director, or to correct any deficiency within the time  
19 specified in an approved plan of correction, the director  
20 may assess civil penalties as hereinafter provided or  
21 may initiate any other legal or disciplinary action as  
22 provided by this article.

23 (c) Nothing in this section shall be construed to  
24 prohibit the director from enforcing a regulation,  
25 administratively or in court, without first affording  
26 formal opportunity to make correction under this  
27 section, where, in the opinion of the director, the  
28 violation of such regulation jeopardizes the health or  
29 safety of patients or where the violation of such  
30 regulation is the second or subsequent such violation  
31 occurring during a period of twelve full months.

32 (d) Civil penalties assessed against facilities not  
33 certified under titles eighteen or nineteen of the Social  
34 Security Act shall be classified according to the nature  
35 of the violation as defined in subsection (c), section five  
36 of this article and regulations promulgated thereunder  
37 by the board of health, as follows: For each violation of  
38 a Class I standard, a civil penalty of not less than one

39 hundred nor more than one thousand dollars shall be  
40 imposed; for each violation of a Class II standard, a civil  
41 penalty of not less than fifty nor more than one hundred  
42 dollars shall be imposed; for each violation of a Class III  
43 standard, a civil penalty of not less than twenty-five nor  
44 more than fifty dollars shall be imposed. Each day a  
45 violation continues, after the date by which correction  
46 was required under an approved plan of correction or,  
47 if an approved plan of correction is not submitted, the  
48 date on which such plan was due, shall constitute a  
49 separate violation.

50 (e) Within thirty days after the completion of an  
51 inspection for a facility certified under titles eighteen or  
52 nineteen of the Social Security Act, the director may  
53 assess civil money penalties against such facility when  
54 the facility is not in compliance with federal regulatory  
55 level A or B certification requirements as contained in  
56 Title 42, Code of Federal Regulations, part 483. In  
57 determining whether to assess a penalty, and the  
58 amount of penalty to be assessed, the director shall  
59 consider how serious the noncompliance with such level  
60 A or B requirement is in relation to direct patient care  
61 and safety, the number of patients such a noncompliance  
62 is likely to affect, whether such a noncompliance was a  
63 noncompliance during the previous inspection, the  
64 opportunity that the facility has had to correct the  
65 noncompliance, and any additional factors that may be  
66 relevant. For each day in which a facility is, or was, out  
67 of compliance with such level A or B requirements,  
68 penalties shall not exceed one hundred dollars for each  
69 such level B requirement and shall not exceed five  
70 hundred dollars for each such level A requirement. If  
71 a facility is out of compliance on two successive  
72 inspections with such a level A or B requirement, the  
73 director may, and in the case of immediate jeopardy to  
74 the health, safety, welfare or rights of patients the  
75 director shall, for each day of noncompliance, assess a  
76 civil penalty: Not to exceed two hundred dollars for each  
77 such level B requirement which is, or was, out of  
78 compliance; and, not to exceed one thousand dollars for  
79 each such level A requirement which is, or was, out of  
80 compliance. If a facility is out of compliance on three

81 or more successive inspections with such a level A or B  
82 requirement, the director shall for each day of noncom-  
83 pliance assess a civil penalty: Not to exceed six hundred  
84 dollars for each such level B requirement which is, or  
85 was, out of compliance; and, not to exceed three  
86 thousand dollars for each such level A requirement  
87 which is, or was, out of compliance.

88 If the director and the United States secretary of  
89 health and human services determines that a facility's  
90 failure to meet federal medicaid certification require-  
91 ments under title nineteen of the Social Security Act  
92 does not jeopardize the health or safety of its patients  
93 and if such secretary establishes one or more remedies  
94 which are additional or alternative to the remedy of  
95 terminating the facility's participation under the state  
96 medicaid plan, any civil money penalty assessed under  
97 this subsection shall be withdrawn.

98 (f) The director shall impose a civil penalty of not  
99 more than one thousand dollars against an individual  
100 who willfully and knowingly certifies under section  
101 1919(b)(3)(B)(i) of title nineteen of the Social Security  
102 Act, or under section 1819(b)(3)(B)(i) of title eighteen of  
103 such Act, a material and false statement in a patient  
104 assessment. Such penalty shall be imposed with respect  
105 to each such patient assessment. The director shall  
106 impose a civil penalty of not more than five thousand  
107 dollars against an individual who willfully and know-  
108 ingly causes another individual to certify under either  
109 such section of the Social Security Act a material and  
110 false statement in a patient assessment. Such penalty  
111 shall be imposed with respect to each such patient  
112 assessment.

113 (g) The director shall assess a civil penalty not to  
114 exceed two thousand dollars against any individual who  
115 notifies, or causes to be notified, a facility of the time  
116 or date on which an inspection is scheduled to be  
117 conducted under this article or under titles eighteen or  
118 nineteen of the Social Security Act.

119 (h) If the director assesses a penalty under this  
120 section, the director shall cause delivery of notice of such  
121 penalty by personal service or by certified mail. Said



122 notice shall state the amount of the penalty, the action  
123 or circumstance for which the penalty is assessed, the  
124 requirement that the action or circumstance violates,  
125 and the basis upon which the director assessed the  
126 penalty and selected the amount of the penalty.

127 (i) The director shall, in a civil judicial proceeding,  
128 recover any unpaid assessment which has not been  
129 contested under section twelve of this article within  
130 thirty days of receipt of notice of such assessment, or  
131 which has been affirmed under the provisions of that  
132 section and not appealed within thirty days of receipt  
133 of the director's final order, or which has been affirmed  
134 on judicial review, as provided in section thirteen of this  
135 article. All money collected by assessments of civil  
136 penalties or interest shall be paid into a special patient  
137 benefit account and shall be applied by the director only  
138 for the protection of the health or property of patients  
139 of facilities operated within the state that the director  
140 or the United States secretary of health and human  
141 services find to be deficient, including payment for the  
142 costs of relocation of patients to other facilities,  
143 operation of a facility pending correction of deficiencies  
144 or closure, and reimbursement of patients for personal  
145 funds lost.

146 (j) The opportunity for a hearing on an action taken  
147 under this section shall be as provided in section twelve  
148 of this article. In addition to any other rights of appeal  
149 conferred upon a facility pursuant to this section, a  
150 facility shall have the right to request a hearing and  
151 seek judicial review pursuant to sections twelve and  
152 thirteen of this article to contest the citing by the  
153 director of a deficiency on an inspection report,  
154 irrespective of whether the deficiency results in the  
155 imposition of a civil penalty.

**§16-5C-11. License limitation, suspension, revocation;  
continuation of disciplinary proceedings;  
closure, transfer of patients, appointment  
of temporary management; assessment of  
interest; collection of assessments; promul-  
gation of regulations to conform with  
federal requirements; hearings.**

1 (a) The director shall by order reclassify a facility, or  
2 reduce the bed quota of the facility, or both, where he  
3 finds upon inspection of the facility that the licensee is  
4 not providing adequate care under the facility's existing  
5 classification or quota, and that reclassification, reduc-  
6 tion in quota or both would place the licensee in a  
7 position to render adequate care. Any notice to a licensee  
8 of reclassification, reduction in quota or both shall  
9 include the terms of such order, the reasons therefor,  
10 and the date set for compliance.

11 (b) The director may suspend or revoke a license  
12 issued under this article if he finds upon inspection that  
13 there has been a substantial failure to comply with the  
14 provisions of this article or the standards or regulations  
15 promulgated pursuant hereto.

16 (c) Whenever a license is limited, suspended or  
17 revoked pursuant to this section, the director shall file  
18 a complaint stating facts constituting a ground or  
19 grounds for such limitation, suspension or revocation.  
20 Upon the filing of the complaint, the director shall  
21 notify the licensee in writing of the filing of the  
22 complaint, enclosing a copy of the complaint, and shall  
23 advise the licensee of the availability of a hearing  
24 pursuant to section twelve of this article. Such notice  
25 and copy of the complaint shall be served on such  
26 licensee by certified mail, return receipt requested.

27 (d) The suspension, expiration, forfeiture or cancella-  
28 tion by operation of law or order of the director of a  
29 license issued by the director, or the withdrawal of an  
30 application for a license after it has been filed with the  
31 director, may not deprive the director of the director's  
32 authority to institute or continue a disciplinary proceed-  
33 ing, or a proceeding for the denial of a license applica-  
34 tion, against the licensee or applicant upon any ground  
35 provided by law or to enter an order denying the license  
36 application or suspending or revoking the license or  
37 otherwise taking disciplinary action on any such ground.

38 (e) In addition to other remedies provided in this  
39 article, upon petition from the director, a circuit court  
40 may determine that a facility's deficiencies under this

41 article, or under titles eighteen or nineteen of the Social  
42 Security Act, if applicable, constitute an emergency  
43 immediately jeopardizing the health, safety, welfare, or  
44 rights of its patients, and issue an order to:

45 (1) Close the facility;

46 (2) Transfer patients in the facility to other facilities;  
47 or

48 (3) Appoint temporary management to oversee the  
49 operation of the facility and to assure the health, safety,  
50 welfare and rights of the facility's patients, where there  
51 is a need for temporary management while:

52 (A) There is an orderly closure of the facility, or

53 (B) Improvements are made in order to bring the  
54 facility into compliance with all the applicable require-  
55 ments of this article and, if applicable, titles eighteen  
56 and nineteen of the Social Security Act.

57 If the director petitions a circuit court for the closure  
58 of a facility, the transfer of patients, or the appointment  
59 of a temporary management, the circuit court shall hold  
60 a hearing no later than seven days thereafter, at which  
61 time the director and the licensee or operator of the  
62 facility may participate and present evidence.

63 A circuit court may divest the licensee or operator of  
64 possession and control of a facility in favor of a  
65 temporary management. The temporary management  
66 shall be responsible to the court and shall have such  
67 powers and duties as the court may grant to direct all  
68 acts necessary or appropriate to conserve the property  
69 and promote the health, safety, welfare and rights of the  
70 patients of the facility, including, but not limited to, the  
71 replacement of management and staff, the hiring of  
72 consultants, the making of any necessary expenditures  
73 to close the facility or to repair or improve the facility  
74 so as to return it to compliance with applicable  
75 requirements, and the power to receive, conserve and  
76 expend funds, including medicare, medicaid and other  
77 payments on behalf of the licensee or operator of the  
78 facility. Priority shall be given to expenditures for  
79 current direct patient care or the transfer of patients.

80 The person charged with temporary management  
81 shall be an officer of the court, shall not be liable for  
82 conditions at the facility which existed or originated  
83 prior to his appointment and shall not be personally  
84 liable, except for his own gross negligence and inten-  
85 tional acts which result in injuries to persons or damage  
86 to property at the facility during his temporary  
87 management.

88 To administer a nursing home, the temporary man-  
89 agement shall employ a person licensed as a nursing  
90 home administrator in West Virginia.

91 No person shall impede the operation of a temporary  
92 management. There shall be an automatic stay for a  
93 ninety-day period subsequent to the establishment of a  
94 temporary management of any action that would  
95 interfere with the functioning of the facility, including,  
96 but not limited to, cancellation of insurance policies,  
97 termination of utility services, attachments to working  
98 capital accounts, foreclosures, evictions and reposses-  
99 sions of equipment used in the facility.

100 A temporary management established for the purpose  
101 of making improvements in order to bring a facility into  
102 compliance with applicable requirements shall not be  
103 terminated until the court has determined that the  
104 facility has the management capability to ensure  
105 continued compliance with all applicable requirements,  
106 except if the court has not made such determination  
107 within six months of the establishment of the temporary  
108 management, the temporary management terminates by  
109 operation of law at that time, and the facility shall be  
110 closed. After the termination of the temporary manage-  
111 ment, the person who was responsible for the temporary  
112 management shall make an accounting to the court, and  
113 after deducting from receipts the costs of the temporary  
114 management, expenditures and civil penalties and  
115 interest no longer subject to appeal, in that order, any  
116 excess shall be paid to the licensee or operator of the  
117 facility.

118 (f) The assessments for penalties and for costs of  
119 actions taken under this article shall have interest

120 assessed at two percent on the last day of each month  
121 after the month in which occurs the thirtieth day after  
122 receipt of notice of such assessment or after the month  
123 in which occurs the thirtieth day after receipt of the  
124 director's final order following a hearing, whichever is  
125 later. All such assessments against a facility that are  
126 unpaid shall be added to the facility's licensure fee and  
127 may be filed as a lien against the property of the licensee  
128 or operator of the facility. Funds received from such  
129 assessments shall be deposited as funds received in  
130 section ten of this article.

131 (g) The board of health shall have the power to  
132 promulgate emergency regulations that expand the  
133 power of the director in excess of that provided in this  
134 article to the extent required to comply with federal  
135 requirements, but any such regulations shall expand the  
136 power of the director to the minimum extent required  
137 by federal requirements. Such regulations are subject to  
138 the provisions of article three, chapter twenty-nine-a of  
139 this code.

140 (h) The opportunity for a hearing on an action by the  
141 director taken under this section shall be as provided in  
142 section twelve of this article.

#### ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.

§16-29A-2. Declaration of policy and responsibility; purpose and intent of article; findings.

§16-29A-3. Definitions.

§16-29A-5. Powers of authority.

§16-29A-20. Certificate of need.

#### §16-29A-2. Declaration of policy and responsibility; purpose and intent of article; findings.

1 It is hereby declared to be the public policy of the  
2 state of West Virginia and a responsibility of the state  
3 of West Virginia, for the benefit of the people of the  
4 state and the improvement of their health, welfare and  
5 living conditions, to provide hospitals with appropriate  
6 means at reasonable cost to maintain, expand, enlarge  
7 and establish health care, hospital and other related  
8 facilities and to provide hospitals with the ability to

9 refinance indebtedness. This article shall provide a  
10 method to enable hospitals to provide or maintain at  
11 reasonable cost pursuant to reasonable terms the  
12 facilities, structures and services needed to accomplish  
13 the purposes of this article, all to the public benefit and  
14 good, to the extent and in the manner provided in this  
15 article.

16 The Legislature finds and hereby declares that the  
17 responsibility of the state as outlined above cannot be  
18 effectively met without the hospital loan program as  
19 provided for in this article.

### §16-29A-3. Definitions.

1 As used in this article, unless the context clearly  
2 requires a different meaning:

3 (1) "Authority" means the West Virginia hospital  
4 finance authority created by section four of this article,  
5 the duties, powers, responsibilities and functions of  
6 which are specified in this article;

7 (2) "Board" means the West Virginia hospital finance  
8 board created by section four of this article, which shall  
9 manage and control the authority;

10 (3) "Bond" means a revenue bond issued by the  
11 authority to effect the purposes of this article;

12 (4) "Construction" means and includes reconstruction,  
13 enlargement, improvement and providing furnishings  
14 or equipment;

15 (5) "Direct provider of health care" means a person or  
16 organization whose primary current activity is the  
17 provision of health care to individuals and includes a  
18 licensed or certified physician, osteopath, dentist, nurse,  
19 podiatrist or physician's assistant or an organization  
20 comprised of these health professionals or employing  
21 these health professionals;

22 (6) "Hospital" means a corporation, association,  
23 institution or establishment for the care of those who  
24 require medical treatment, which may be a public or  
25 private corporation or association, or state owned or  
26 operated establishment and specifically includes nurs-

27 ing homes which are licensed under chapter sixteen of  
28 this code or those facilities certified under the Social  
29 Security Act as intermediate care facilities for the  
30 mentally retarded;

31 (7) "Hospital facilities" means any real or personal  
32 property suitable and intended for, or incidental or  
33 ancillary to, use by a hospital and includes: Outpatient  
34 clinics; laboratories; laundries; nurses, doctors or interns  
35 residences; administration buildings; facilities for  
36 research directly involved with hospital care; mainte-  
37 nance, storage or utility facilities; parking lots and  
38 garages; and all necessary, useful or related equipment,  
39 furnishings and appurtenances and all lands necessary  
40 or convenient as a site for the foregoing and specifically  
41 includes any capital improvements to any of the  
42 foregoing. "Hospital facilities" specifically includes  
43 office facilities not less than eighty percent of which are  
44 intended for lease to direct providers of health care and  
45 which are geographically or functionally related to one  
46 or more other hospital facilities, if the authority  
47 determines that the financing of the office facilities is  
48 necessary to accomplish the purposes of this article;

49 (8) "Hospital loan" means a loan made by the author-  
50 ity to a hospital and specifically includes financings by  
51 the authority for hospital facilities pursuant to lease-  
52 purchase agreements, installment sale or other similar  
53 agreements;

54 (9) "Note" means a short-term promise to pay a  
55 specified amount of money, payable and secured as  
56 provided pursuant to this article and issued by the  
57 authority to effect the purposes of this article;

58 (10) "Project costs" means the total of the reasonable  
59 or necessary costs incurred for carrying out the works  
60 and undertakings for the acquisition or construction of  
61 hospital facilities under this article. "Project costs"  
62 includes, but is not limited to, all of the following costs:  
63 The costs of acquisition or construction of the hospital  
64 facilities; studies and surveys; plans, specifications,  
65 architectural and engineering services; legal, organiza-  
66 tion, marketing or other special services; financing,  
67 acquisition, demolition, construction, equipping and site

68 development of new and rehabilitated buildings; reha-  
69 bilitation, reconstruction, repair or remodeling of  
70 existing buildings; interest and carrying charges during  
71 construction and before full earnings are achieved and  
72 operating expenses before full earnings are achieved or  
73 a period of one year following the completion of  
74 construction, whichever occurs first, and a reasonable  
75 reserve for payment of principal of and interest on  
76 bonds or notes of the authority. "Project costs" shall also  
77 include reimbursement of a hospital for the foregoing  
78 costs expended by a hospital from its own funds or from  
79 money borrowed by the hospital for such purposes  
80 before issuance and delivery of bonds or notes by the  
81 authority for the purpose of providing funds to pay the  
82 project costs. "Project costs" also specifically includes  
83 the refinancing of any existing debt of a hospital  
84 necessary in order to permit the hospital to borrow from  
85 the authority and give adequate security for the hospital  
86 loan. The determination of the authority with respect to  
87 the necessity of refinancing and adequate security for  
88 a hospital loan is conclusive;

89 (11) "Revenue" means any money or thing of value  
90 collected by, or paid to, the authority as principal of or  
91 interest, charges or other fees on hospital loans, or any  
92 other collections on hospital loans made by the authority  
93 to hospitals to finance in whole or in part the acquisition  
94 or construction of any hospital facilities, or other money  
95 or property which is received and may be expended for  
96 or pledged as revenues pursuant to this article.

#### §16-29A-5. Powers of authority.

1 The authority is hereby granted, has and may exercise  
2 all the powers necessary or appropriate to carry out and  
3 effectuate the purposes of this article, including the  
4 following:

5 (a) To sue and be sued in its own name and plead and  
6 be impleaded in its own name; to have a seal and alter  
7 the same at its pleasure; to make, execute and deliver  
8 contracts, indentures, agreements, conveyances and  
9 other instruments necessary or convenient to the  
10 exercise of its powers; to adopt and, from time to time,



11 amend and repeal bylaws necessary and proper for the  
12 legislation of its business and rules and regulations to  
13 implement and make effective its powers and duties,  
14 such rules and regulations to be promulgated in  
15 accordance with the provisions of chapter twenty-nine-  
16 a of this code; and to maintain a principal office. Any  
17 actions against the authority shall be brought in the  
18 circuit court of Kanawha County, in which the principal  
19 office of the authority shall be located. When the cost  
20 under any contract or agreement to be entered by the  
21 authority, other than compensation for personal servi-  
22 ces, involves an expenditure of more than three thou-  
23 sand dollars, the authority shall make a written contract  
24 with the lowest responsible bidder after public notice  
25 published as a Class II legal advertisement in com-  
26 pliance with the provisions of article three, chapter fifty-  
27 nine of this code, the publication area for such publica-  
28 tion to be the county wherein the work is to be  
29 performed or which is affected by the contract, which  
30 notice shall state the general character of the work and  
31 the general character of the materials to be furnished,  
32 the place where plans and specifications therefor may  
33 be examined and the time and place of receiving bids:  
34 *Provided*, That a contract, indenture or agreement for  
35 a hospital loan is not subject to the foregoing require-  
36 ments, and the authority may enter into such contract,  
37 indenture or agreement pursuant to negotiation and  
38 upon such terms and conditions and for such period as  
39 it finds to be reasonable and proper under the circum-  
40 stances and as necessary to best effectuate the purposes  
41 of this article: *Provided, however*, That a contract or  
42 agreement entered into by a hospital to which any  
43 hospital loan is made is not subject to the foregoing  
44 requirements. The authority may reject any and all bids.  
45 A bond with good and sufficient surety, approved by the  
46 authority, shall be required of all contractors in an  
47 amount equal to at least fifty percent of the contract  
48 price, conditioned upon the faithful performance of the  
49 contract.

50 (b) To solicit and accept gifts, grants, loans and other  
51 aids from any person, corporation or governmental  
52 agency.

53 (c) To make hospital loans, to participate in the  
54 making of hospital loans, to undertake commitments, to  
55 execute and be the beneficiary under deeds of trust, to  
56 enter into security agreements, to sell hospital loans and  
57 the security therefor at public or private sale, to modify  
58 or alter hospital loans and security therefor, to dis-  
59 charge hospital loans and security therefor, to order a  
60 trustee's sale under a deed of trust or commence an  
61 action to protect or enforce a right conferred upon it by  
62 a law, deed of trust, hospital loan, contract, indenture  
63 or other agreement and to bid for and purchase property  
64 which was the subject of a deed of trust at a trustee's  
65 sale or at any other sale and to acquire or take  
66 possession of that property and in that event complete,  
67 administer, pay the principal of and interest on any  
68 obligations incurred in connection with such property,  
69 dispose of and otherwise deal with the property in a  
70 manner necessary or desirable to protect the interest of  
71 the authority in the property. The hospital loans made  
72 by the authority may be secured by deeds of trust or  
73 security agreements, as applicable, or not, as the  
74 authority determines.

75 (d) To lend money to hospitals for the purpose of  
76 refinancing any outstanding indebtedness of a hospital  
77 if the authority determines the refinancing is necessary  
78 to realize the purposes of this article. A hospital loan  
79 made pursuant to this subsection shall not exceed the  
80 amount of the principal of and interest and redemption  
81 premium, if any, on the indebtedness to be refinanced  
82 which has not been repaid, plus the marketing, financ-  
83 ing, legal and other costs incurred in connection with  
84 the refinancing and the issuance of bonds or notes of the  
85 authority issued in whole or in part to provide funds to  
86 make the hospital loan described in this subdivision,  
87 including the costs of funding a bond reserve and paying  
88 capitalized interest on the bonds or notes for a period  
89 not to exceed one year after the issuance of such bonds  
90 or notes. The determination of the authority under this  
91 subsection shall be conclusive.

92 (e) To charge, impose and collect fees and charges in  
93 connection with its hospital loans, commitments and

94 servicing, including reimbursement of the costs of  
95 financing by the authority, service charges, insurance  
96 premiums and an allocable share of the operating  
97 expenses of the authority and to make provision for  
98 increasing the same, if necessary, as the authority  
99 determines is reasonable and approved by the board.

100 (f) To acquire, hold and dispose of real or personal  
101 property necessary or appropriate for the accomplish-  
102 ment of the purposes of this article.

103 (g) To procure insurance against a loss in connection  
104 with its property, assets or activities.

105 (h) To borrow money for its purpose, including its  
106 initial operating expense and issue its bonds or notes for  
107 the money and provide for the rights of the holders of  
108 the bonds or notes and to secure the bonds or notes by  
109 a deed of trust on or an assignment or pledge of any or  
110 all of its properties, including any part of the security  
111 for its hospital loans. The state shall not be liable on any  
112 bonds or notes of the authority; the bonds or notes shall  
113 not be a debt of the state; and each bond or note shall  
114 contain on its face a statement to that effect.

115 (i) To invest any funds not required for immediate use  
116 or disbursement, at its discretion, in any of the  
117 following:

118 (1) Direct obligations of, or obligations the timely  
119 payment of the principal of and interest on which is  
120 guaranteed by, the United States of America;

121 (2) Bonds, debentures, notes or other evidences of  
122 indebtedness issued by any of the following agencies:  
123 Banks for cooperatives; federal intermediate credit  
124 banks; federal home loan bank system; Export-Import  
125 Bank of the United States; federal farm credit banks;  
126 federal land banks; federal financing banks; the Federal  
127 National Mortgage Association or the Government  
128 National Mortgage Association;

129 (3) Public housing bonds issued by public agencies or  
130 municipalities and fully secured as to the payment of  
131 both principal and interest by a pledge of annual  
132 contributions under an annual contributions contract or

133 contracts with the United States of America; or  
134 temporary notes issued by public agencies or municipal-  
135 ities or preliminary loan notes issued by public agencies  
136 or municipalities, in each case fully secured as to the  
137 payment of both principal and interest by a requisition  
138 or payment agreement with the United States of  
139 America;

140 (4) Certificates of deposit secured by obligations of the  
141 type specified in subparagraph (1);

142 (5) Direct obligations of, or obligations the timely  
143 payment of the principal of and interest on which is  
144 guaranteed by, the state of West Virginia;

145 (6) Direct and general obligations of any other state  
146 within the territorial United States, to the payment of  
147 the principal of and interest on which the full faith and  
148 credit of such state is pledged: *Provided*, That at the  
149 time of their purchase, such obligations are rated in  
150 either of the two highest rating categories by a  
151 nationally recognized bond-rating agency;

152 (7) Any fixed interest bond, note or debenture of any  
153 corporation organized and operating within the United  
154 States: *Provided*, That such corporation has a minimum  
155 net worth of fifteen million dollars and its securities or  
156 its parent corporation's securities are listed on one or  
157 more of the national stock exchanges: *Provided, however*,  
158 That (i) such corporation has earned a profit in eight of  
159 the preceding ten fiscal years as reflected in its  
160 statements, (ii) such corporation has not defaulted in the  
161 payment of principal of or interest on any of its  
162 outstanding funded indebtedness during its preceding  
163 ten fiscal years, and (iii) the bonds, notes or debentures  
164 of such corporation to be purchased are rated "AA" or  
165 the equivalent thereof or better than "AA" or the  
166 equivalent thereof by at least two or more nationally  
167 recognized rating services such as Standard and Poor's,  
168 Dun & Bradstreet or Moody's;

169 (8) Fully collateralized or insured bankers acceptan-  
170 ces or time deposits drawn on and accepted by commer-  
171 cial banks; and

172 (9) Repurchase agreements of commercial banks or  
173 trust companies fully secured by obligations of the type  
174 specified in subparagraph (1) and having on the date of  
175 such agreement a fair market value equal to at least one  
176 hundred percent of the principal amount of such  
177 repurchase agreement.

178 (j) To engage necessary personnel and to engage the  
179 services of private consultants for rendering profes-  
180 sional and technical assistance and advice.

181 (k) To establish or increase reserves from moneys  
182 received or to be received by the authority to secure or  
183 to pay the principal of and interest on bonds issued by  
184 the authority pursuant to this article.

185 (l) To lease, or lease with an option to purchase, to  
186 others its real or personal property, including hospitals  
187 and hospital facilities, for such rentals and upon such  
188 terms and conditions as the authority may deem  
189 advisable.

190 (m) To do all acts necessary and proper to carry out  
191 the powers expressly granted to the authority in this  
192 article.

#### §16-29A-20. Certificate of need.

1 Before the authority makes a hospital loan to any  
2 hospital, and as a condition precedent to the authority's  
3 making any such hospital loan, a certificate of need shall  
4 be obtained pursuant to article two-d of this chapter, or  
5 a determination shall be secured from the agency  
6 issuing the certificate of need that a certificate is not  
7 necessary for the hospital facilities with respect to which  
8 the hospital loan is proposed to be made: *Provided*, That  
9 if a certificate of need is not necessary for a specific  
10 project or projects, then the health care cost review  
11 authority created by section five, article twenty-nine-b  
12 of this chapter must be consulted by the authority  
13 concerning the availability of financial resources to both  
14 repay the loan and to fund the ongoing operations of the  
15 project or projects. The opinion of the health care cost  
16 review authority, while not determinative on the  
17 question of the issuance of the hospital loan, shall be

18 entitled to substantial weight before the authority and  
19 shall be overcome only by clear and convincing evidence  
20 to the contrary. This section shall not apply to refinanc-  
21 ing of present indebtedness or to refunding or advance  
22 refunding of bonds, notes, or for reimbursement of  
23 projects costs.

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## CHAPTER 85

(Com. Sub. for H. B. 2253—By Delegates Pitrolo and Mezzatesta)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-j, relating to public health; regulation and licensing of clinical laboratories and laboratory technicians and technologists; providing legislative findings; defining phrase "clinical laboratory"; requiring state health director to promulgate rules; providing for certain exemptions; enumerating powers and duties of such director with respect to licensure and inspection; creating an advisory board and providing for appointment, membership and terms of office; providing for hearings and appeals from director's decisions; creating misdemeanor offense relating to certain solicitation, receipt, delivery or transmission of human material for or to unlicensed laboratories; exceptions thereto; providing a severability clause; providing for licensure and certification of laboratory technicians and technologists and rules and regulations pertaining thereto; exempting technicians and technologists so employed on effective date of act from such requirements; and providing that certain technicians and technologists shall be deemed certified.

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

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-j, to read as follows:

**ARTICLE 5J. CLINICAL LABORATORIES QUALITY ASSURANCE ACT.**

- §16-5J-1. Legislative findings.
- §16-5J-2. Definition.
- §16-5J-3. Rules; recognized external standards.
- §16-5J-4. Powers and duties.
- §16-5J-5. Advisory board.
- §16-5J-6. Hearing and judicial review.
- §16-5J-7. Exemptions.
- §16-5J-8. Unlawful conduct; penalties.
- §16-5J-9. Interpretation of article; severability.
- §16-5J-10. Licensure of technicians; fee; rules and regulations.

**§16-5J-1. Legislative findings.**

1 The Legislature finds that the diagnosis and treat-  
2 ment of human affliction is or may be largely deter-  
3 mined by the results of laboratory testing and that  
4 inaccurate laboratory test results endanger the health  
5 and lives of the citizens of West Virginia. A due respect  
6 for the citizenry of the state requires that all such  
7 testing be done under the supervision of qualified and  
8 competent persons having sufficient expertise and  
9 experience to assure the quality and accuracy of clinical  
10 laboratory testing. Further, it is imperative that  
11 laboratories be regulated and licensed to ensure that the  
12 intent of this article be met.

**§16-5J-2. Definition.**

1 The term "clinical laboratory" means any facility or  
2 place, however named, for the biological, microbiolog-  
3 ical, serological, chemical, immuno-hematological,  
4 hematological, biophysical, crytological, pathological, or  
5 other examination of materials derived from the human  
6 body for the purpose of providing information for the  
7 diagnosis, prevention or treatment of any disease or  
8 impairment of, or the assessment of the health of human  
9 beings.

**§16-5J-3. Rules; recognized external standards.**

1 The director of the department of health shall  
2 promulgate, pursuant to chapter twenty-nine-a of this  
3 code, rules required to implement this article, and such  
4 rules shall specifically address, among other things,  
5 training, education and experience requirements. The

6 standards to be adopted by the department of health  
7 shall be equal to or higher than such standards  
8 currently applicable and as established by the college of  
9 American pathologists, the center for disease control,  
10 American Osteopathic Board of Pathology, American  
11 Osteopathic Hospital Association, the medicare program  
12 or the joint commission for the accreditation of hospitals:  
13 *Provided*, That any laboratory in this state accredited  
14 by or certified by one of these organizations or the  
15 medicare program shall be exempt from the require-  
16 ments of licensure with no further inquiry by the  
17 department of health, and any such accredited or  
18 certified laboratory shall be exempt from the provisions  
19 of this article as long as such laboratories remain so  
20 accredited or certified: *Provided, however*, That all  
21 laboratories shall have five years from the effective date  
22 of this article to come into compliance.

**§16-5J-4. Powers and duties.**

1 In addition to promulgating rules specified in section  
2 three of this article, the director of the department of  
3 health, with the advice of the advisory board created in  
4 section five of this article, has the power to:

5 (a) Adopt rules for clinical laboratory licensure;

6 (b) Establish rules for continued evaluation of labor-  
7 atory testing, such rules and evaluations being at least  
8 equivalent to the appropriate section of the "Clinical  
9 Laboratory Improvement Act of 1967";

10 (c) Institute and administer a program of inspection  
11 to ensure compliance with standards established in this  
12 article and rules established pursuant to this article;

13 (d) Issue a license to those clinical laboratories which  
14 meet requirements for licensure under this article;

15 (e) Set a reasonable fee for application and licensure;

16 (f) Withhold, revoke or suspend or restrict the license  
17 of any clinical laboratory which fails to meet require-  
18 ments for licensure or relicensure.

19 The cost of the initial inspection of any new laboratory



20 constructed after July one, one thousand nine hundred  
21 ninety, shall be the responsibility of the prospective  
22 licensee.

23 Within the limit of available funds, the department of  
24 health shall inspect clinical laboratories on a periodic  
25 basis to ensure compliance with standards and regula-  
26 tions.

#### §16-5J-5. Advisory board.

1 There is hereby created an advisory board which shall  
2 be composed of the following persons:

3 (a) Two board certified pathologists licensed and  
4 currently practicing in this state;

5 (b) A board certified physician or doctor of osteo-  
6 pathy, licensed and currently practicing in this state in  
7 a specialty other than pathology;

8 (c) Two clinical laboratory practitioners who hold  
9 professional certification from an agency acceptable to  
10 the department of health. These two must have had a  
11 minimum of three years experience in a clinical  
12 laboratory setting during the five years preceding  
13 appointment. One of the two must hold a minimum of  
14 a baccalaureate degree;

15 (d) One lay person to represent the interests of the  
16 people of this state.

17 The advisory board shall be appointed by the gover-  
18 nor, with the advice and consent of the Senate.  
19 Appointments of professional members shall be made  
20 from lists of candidates submitted from among their  
21 peers. These lists may be solicited from the West  
22 Virginia association of pathology, the West Virginia  
23 state society for medical technology, the West Virginia  
24 state medical association, the West Virginia society of  
25 state American medical technologists and other similar  
26 professional organizations. The lists submitted shall  
27 contain at least one name in excess of the number of  
28 appointments to be made. Appointments shall be for a  
29 term of three years beginning the first day of July of  
30 the year of appointment, except for the first board  
31 appointed, whose terms shall be as follows:

32 (a) The pathologists and one baccalaureate clinical  
33 practitioner shall serve a one-year term;

34 (b) The nonpathologist physician or doctor of osteo-  
35 pathy, and the other clinical practitioner shall serve for  
36 a two-year term;

37 (c) The lay person shall serve for a three-year term.

38 Successors to those first board members will serve  
39 three-year terms. Board members may succeed them-  
40 selves once, but may not serve for a total period in excess  
41 of six years. In the event of a vacancy on the advisory  
42 board the governor shall appoint a successor in the same  
43 manner as the original appointment was made. The  
44 successor will serve for the unexpired term and may be  
45 eligible for reappointment: *Provided*, That any member  
46 shall serve until such time as his or her successor is  
47 appointed.

#### §16-5J-6. Hearing and judicial review.

1 If a license is withheld, suspended or revoked, the  
2 laboratory is entitled to a hearing before representatives  
3 of the department of health within sixty days of the  
4 withholding, suspension or revocation decision. Such  
5 laboratory may be represented at the hearing by counsel  
6 and may present evidence in its defense. The final order  
7 of the director will be based on a record of the hearing  
8 and shall contain findings of fact and conclusions of law.  
9 The laboratory may appeal an adverse order to the  
10 circuit court of Kanawha County or the circuit court of  
11 the county in which the laboratory is located to  
12 determine whether the director abused his discretion or  
13 exceeded his jurisdiction. The department of health has  
14 the power to obtain an injunction during the time  
15 preceding the hearing against any laboratory which  
16 fails to meet licensure requirements and whose con-  
17 tinued operation poses a significant threat to the public  
18 health.

#### §16-5J-7. Exemptions.

1 This article does not include or apply to any labora-  
2 tory or laboratories maintained and operated by the  
3 federal government or to any laboratory or laboratories

4 maintained and operated purely for research or teach-  
5 ing purposes nor to any laboratory operated by a  
6 primary health care center having tax exempt status  
7 and receiving contributions which are deductible to the  
8 contributor under provisions of federal law. All county  
9 health departments shall be exempt from this article.

**§16-5J-8. Unlawful conduct; penalties.**

1 It is a misdemeanor for any person to solicit, receive,  
2 accept, deliver or transmit, by mail or otherwise,  
3 material originating from the human body on behalf of  
4 any person operating a laboratory not in possession of  
5 a license under this article regardless of whether such  
6 laboratory is located in this state and, upon conviction  
7 thereof, such person shall be fined not less than five  
8 hundred dollars. The provisions of this section do not  
9 apply to transactions with any person operating a  
10 laboratory located in another state, which laboratory has  
11 been issued a license or permit in conformity with the  
12 "Clinical Laboratories Improvement Act of 1967," and  
13 related statutes. Neither does this section apply to  
14 transactions with laboratories operated in this state  
15 which are exempt from the license requirements of this  
16 article.

**§16-5J-9. Interpretation of article; severability.**

1 The provisions of this article are severable and if any  
2 of its provisions shall be held unconstitutional, the  
3 decision of the court shall not affect or impair any of  
4 the remaining provisions of this article. It is hereby  
5 declared to be the legislative intent that this article  
6 would have been adopted had such unconstitutional  
7 provisions not been included herein.

**§16-5J-10. Licensure of technicians; fee; rules and regulations.**

1 (a) The director of the department of health shall  
2 promulgate rules and regulations for the licensure and  
3 certification of lab technicians and lab technologists. All  
4 such persons being so employed on the effective date of  
5 this article shall be automatically certified and exempt  
6 from this requirement: *Provided*, That any technologist

7 and technician who is certified by the American medical  
 8 technologists or the American society of clinical  
 9 pathologists or the national certification agency for  
 10 medical laboratory personnel or any federal certification  
 11 program shall be considered certified.

12 (b) All laboratory technicians or technologists shall  
 13 pay an annual license fee of twenty-five dollars to the  
 14 director of the department of health to cover the costs  
 15 of licensure.

16 (c) All rules and regulations required under this  
 17 section or other provisions of this article may not be filed  
 18 as emergency rules until after the set of rules is  
 19 approved by the Legislature.

20 (d) All fees and interest earned or collected by the  
 21 department under this article shall be used to pay for  
 22 the implementation of this article.

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## CHAPTER 86

(S. B. 388—By Senators Tucker, Mr. President, and Harman,  
 By Request of the Executive)

Clerk's Note: It has been determined that S. B. 388, originally styled as Chapter 86, was incorrectly enrolled and signed by the Governor in an incorrect form.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, S. B. 388 did not become law.

The text formerly occupied pages 733 and 734, which have been omitted.

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## CHAPTER 87

(Com. Sub. for S. B. 576—By Senators Tucker, Mr. President, and Harman,  
 By Request of the Executive)

[Passed April 8, 1989: in effect from passage. Approved by the Governor.]

AN ACT to repeal section four, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty of said article; to further amend chapter

sixteen of said code by adding thereto a new article, designated article twenty-nine-d; to amend and reenact section three, article four, chapter twenty-three of said code; and to amend article twelve, chapter twenty-nine of said code by adding thereto a new section, designated section five-c, all relating to the health care cost review authority; repealing a freeze on rates; repealing certain expedited rate review processes; authorizing the creation of other expedited rate review processes; relating to rate determinations; approval of rate increases for hospitals; providing for regulations regarding reporting requirements; providing legislative findings and legislative purposes; providing definitions for certain articles; providing that pharmacies and pharmacists not be considered health care providers under certain circumstances; providing for cooperation among agencies; providing for the development of plans concerning health care by specified departments or divisions of state government; providing for reports to the Legislature; prohibitions on balance billing and exceptions and termination thereof; providing exceptions for certain health care providers; providing criteria for an acceptable preferred provider contract; providing for rates of reimbursement and exceptions thereto; exemption from and application of antitrust laws; providing civil penalties for violations of the article and provisions for removal as a provider; providing a severability clause for certain articles; authorizing promulgation of rules by certain departments; providing schedules for maximum disbursements for medical, surgical and hospital treatment for workers' compensation; providing for submission of the rate schedule to the Legislature; requiring verification for workers' compensation payments; prohibiting charges in excess of scheduled amounts; providing for employer participation in preferred provider organizations, programs or cost containment relationships; and penalties for violations of article.

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

That section four, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-

one, as amended, be repealed; that section twenty of said article be amended and reenacted; that said chapter sixteen be further amended by adding thereto a new article, designated article twenty-nine-d; that section three, article four, chapter twenty-three of said code be amended and reenacted; and that article twelve, chapter twenty-nine of said code be amended by adding thereto a new section, designated section five-c, all to read as follows:

### **Chapter**

**16. Public health.**

**23. Workers' Compensation.**

**29. Miscellaneous Boards and Officers.**

### **CHAPTER 16. PUBLIC HEALTH.**

#### **Article**

**29B. West Virginia Health Care Cost Review Authority.**

**29D. State Health Care.**

#### **ARTICLE 29B. WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY.**

##### **§16-29B-20. Rate determination.**

1 (a) Upon commencement of review activities, no rates  
 2 may be approved by the board nor payment be made  
 3 for services provided by hospitals under the jurisdiction  
 4 of the board by any purchaser or third-party payor to  
 5 or on behalf of any purchaser or class of purchasers  
 6 unless:

7 (1) The costs of the hospital's services are reasonably  
 8 related to the services provided and the rates are  
 9 reasonably related to the costs;

10 (2) The rates are equitably established among all  
 11 purchasers or classes of purchasers within a hospital  
 12 without discrimination unless federal or state statutes or  
 13 regulations conflict with this requirement. Equity  
 14 among classes of purchasers may be achieved by  
 15 considering demonstrated differences in the financial  
 16 requirements of hospitals resulting from service,  
 17 coverage and payment characteristics of a class of  
 18 purchasers. The provision for differentials in rates  
 19 among classes of purchasers should be carried out in the  
 20 context of each hospital's total financial requirements

21 for the efficient provision of necessary services. The  
22 board shall institute a study of objective methods of  
23 computing the percentage differential to be utilized for  
24 all hospitals in determining appropriate projected gross  
25 revenues under subsection (b) of this section. Such study  
26 shall include a review and determination of the relevant  
27 and justifiable economic factors which can be considered  
28 in setting such differential. The differential shall be  
29 allowed for only those activities and programs which  
30 result in quantifiable savings to the hospital with  
31 respect to patient care costs, bad debts, free care or  
32 working capital, or reductions in the payments of other  
33 payors. Each component utilized in determining the  
34 differential shall be individually quantified so that the  
35 differential shall equal the value assigned to each  
36 component. The board shall consider such matters as  
37 coverage to individual subscribers, the elderly and small  
38 groups, payment practices, savings in hospital adminis-  
39 trative costs, cost containment programs and working  
40 capital. The study shall also provide for a method of  
41 annual recomputation of the differential and triennial  
42 recomputation of all other components. The board may  
43 contract with any person or entity to assist the board  
44 in the discharge of its duties as herein stated. Whoever  
45 obstructs any person or entity conducting a study  
46 authorized under the provisions of this section shall be  
47 deemed to be in violation of this article and shall be  
48 subject to any appropriate actions, including injunctive  
49 relief, as may be necessary for the enforcement of this  
50 section;

51 (3) The rates of payment for medicaid are reasonable  
52 and adequate to meet the costs which must be incurred  
53 by efficiently and economically operated hospitals  
54 subject to the provisions of this article. The rates shall  
55 take into account the situation of hospitals which serve  
56 disproportionate numbers of low income patients and  
57 assure that individuals eligible for medicaid have  
58 reasonable access, taking into account geographic  
59 location and reasonable travel time, to inpatient hospital  
60 services of adequate quality;

61 (4) The rates are equitable in comparison to prevail-

62 ing rates for similar services in similar hospitals as  
63 determined by the board;

64 (5) In no event shall a hospital's receipt of emergency  
65 disaster funds from the federal government be included  
66 in such hospital's gross revenues for either rate-setting  
67 or assessment purposes.

68 (b) In the interest of promoting efficient and approp-  
69 riate utilization of hospital services the board shall  
70 review and make findings on the appropriateness of  
71 projected gross revenues for a hospital as such revenues  
72 relate to charges for services and anticipated incidence  
73 of service. The board shall further render a decision as  
74 to the amount of net revenue over expenditures that is  
75 appropriate for the effective operation of the hospital.

76 (c) When applying the criteria set forth above, the  
77 board shall consider all relevant factors, including, but  
78 not limited to, the following: The economic factors in the  
79 hospital's area; the hospital's efforts to share services;  
80 the hospital's efforts to employ less costly alternatives  
81 for delivering substantially similar services or produc-  
82 ing substantially similar or better results in terms of the  
83 health status of those served; the efficiency of the  
84 hospital as to cost and delivery of health care; the  
85 quality of care; occupancy level; a fair return on  
86 invested capital, not otherwise compensated for;  
87 whether the hospital is operated for profit or not for  
88 profit; costs of education; and, income from any  
89 investments and assets not associated with patient care,  
90 including, but not limited to, parking garages, residen-  
91 ces, office buildings, and income from foundations and  
92 restricted funds whether or not so associated.

93 (d) Wages, salaries and benefits paid to or on behalf  
94 of nonsupervisory employees of hospitals subject to this  
95 article shall not be subject to review unless the board  
96 first determines that such wages, salaries and benefits  
97 may be unreasonably or uncustomarily high or low. Said  
98 exemption does not apply to accounting and reporting  
99 requirements contained in this article, nor to any that  
100 may be established by the board. "Nonsupervisory  
101 personnel," for the purposes of this section, means, but



102 is not limited to, employees of hospitals subject to the  
103 provisions of this article who are paid on an hourly  
104 basis.

105 (e) Reimbursement of capital and operating costs for  
106 new services and capital projects subject to article two-  
107 d of this chapter shall not be allowed by the board if  
108 such costs were incurred subsequent to the eighth day  
109 of July, one thousand nine hundred seventy-seven, unless  
110 they were exempt from review or approved by the state  
111 health planning and development agency prior to the  
112 first day of July, one thousand nine hundred eighty-four,  
113 pursuant to the provisions of article two-d of this  
114 chapter.

115 (f) The board shall consult with relevant licensing  
116 agencies and may require them to provide written  
117 findings with regard to their statutory functions and  
118 information obtained by them in the pursuit of those  
119 functions. Any licensing agency empowered to suggest  
120 or mandate changes in buildings or operations of  
121 hospitals shall give notice to the board together with any  
122 findings.

123 (g) Rates shall be set by the board in advance of the  
124 year during which they apply except for the procedure  
125 set forth in subsection (c), section twenty-one of this  
126 article and shall not be adjusted for costs actually  
127 incurred.

128 (h) All determinations, orders and decisions of the  
129 board with respect to rates and revenues shall be  
130 prospective in nature.

131 (i) No hospital may charge for services at rates in  
132 excess of those established in accordance with the  
133 requirements of and procedures set forth in this article.

134 (j) Notwithstanding any other provision of this article,  
135 the board shall approve all requests for rate increases  
136 by hospitals which are licensed for one hundred beds or  
137 less and which are not located in a Standard Metropol-  
138 itan Statistical Area where the rate of increase in the  
139 hospital's gross inpatient revenues per discharge for  
140 nonmedicare and nonmedicaid payors is equal to or less  
141 than the rate of inflation for the hospital industry

142 nationally as measured by the most recent hospital  
 143 market basket component of the consumer price index  
 144 as reported by the United States Bureau of Labor  
 145 Statistics applicable to the hospital's fiscal year. The  
 146 board may, by regulation, impose reporting require-  
 147 ments to ensure that a hospital does not exceed the rate  
 148 of increases permitted herein.

149 (k) Notwithstanding any other provision of this  
 150 article, the board shall develop an expedited review  
 151 process applicable to all hospitals licensed for more than  
 152 one hundred beds or that are located in a Standard  
 153 Metropolitan Statistical Area for rate increase requests  
 154 which may be based upon a recognized inflation index  
 155 for the national or regional hospital industry. The board  
 156 shall adopt emergency regulations implementing this  
 157 subsection within ninety days after the effective date of  
 158 this subsection and shall thereafter submit a proposed  
 159 legislative rule to the Legislature for consideration at its  
 160 regular session in the year one thousand nine hundred  
 161 ninety.

#### ARTICLE 29D. STATE HEALTH CARE.

§16-29D-1. Legislative findings; legislative purpose.

§16-29D-2. Definitions.

§16-29D-3. Agencies to cooperate and to provide plan; contents of plan;  
 reports to Legislature; late payments by state agencies and  
 interest thereon.

§16-29D-4. Prohibition on balance billing; exceptions and termination of  
 exceptions.

§16-29D-5. Coordination of benefits.

§16-29D-6. Exemption from and application of antitrust laws.

§16-29D-7. Rules.

§16-29D-8. Civil penalties; removal as provider.

§16-29D-9. Severability; supersedes other provisions.

#### §16-29D-1. Legislative findings; legislative purpose.

1 (a) The Legislature hereby finds as follows:

2 (1) That a significant and ever-increasing amount of  
 3 the state's financial resources are required to assure that  
 4 the citizens of the state who are reliant on the state for  
 5 the provision of health care services and payment  
 6 thereof receive such, whether through the public  
 7 employees insurance agency, the state medicaid pro-

8 gram, the workers' compensation fund, the division of  
9 rehabilitation services or otherwise;

10 (2) That the state has been unable to timely pay for  
11 such health care services;

12 (3) That the public employees insurance agency and  
13 the state medicaid program face serious financial  
14 difficulties in terms of decreasing amounts of available  
15 federal or state dollars by which to fund their respective  
16 programs and in paying debts presently owed;

17 (4) That, in order to alleviate such situation and to  
18 assure such health care services, in addition to adequate  
19 funding of such programs, the state must effect cost  
20 savings in the provision of such health care;

21 (5) That it is in the best interest of the state and the  
22 citizens thereof that the various state departments and  
23 divisions involved in such provision of health care and  
24 the payment thereof cooperate in the effecting of cost  
25 savings; and

26 (6) That the health and well-being of all state citizens,  
27 and particularly those whose health care is provided or  
28 paid for by the public employees insurance agency, the  
29 state medicaid program, the workers' compensation  
30 fund and the division of rehabilitation services, are of  
31 primary concern to the state.

32 (b) This article is enacted to provide a framework  
33 within which the departments and divisions of state  
34 government can cooperate to effect cost savings for the  
35 provision of health care services and the payment  
36 thereof. It is the purpose of the Legislature to encourage  
37 the long-term, well-planned development of fair,  
38 equitable and cost-effective systems for all health care  
39 providers paid or reimbursed by the public employees  
40 insurance agency, the state medicaid program, the  
41 workers' compensation fund or the division of rehabil-  
42 itation services.

#### §16-29D-2. Definitions.

1 (a) "Coordination of benefits" means a provision  
2 establishing an order in which two or more insurance

3 contracts, plans or programs covering the same benefi-  
4 ciary pay their claims, with the effect that there is no  
5 duplication of benefits.

6 (b) The term "health care" or "health care services"  
7 means clinically related preventive, diagnostic, treat-  
8 ment, or rehabilitative services whether provided in the  
9 home, office, hospital, clinic or any other suitable place  
10 either inside or outside the state of West Virginia  
11 provided or prescribed by any health care provider or  
12 providers. Such services include, among others, medical  
13 supplies, appliances, laboratory, preventive, diagnostic,  
14 therapeutic and rehabilitative services, hospital care,  
15 nursing home and convalescent care, medical physi-  
16 cians, osteopathic physicians, chiropractic physicians,  
17 and such other surgical including inpatient oral  
18 surgery, nursing, and podiatric services and supplies as  
19 may be prescribed by such health care providers but not  
20 other dental services.

21 (c) "Health care provider" means a person, partner-  
22 ship, corporation, facility or institution licensed,  
23 certified or authorized by law to provide professional  
24 health care services in or outside this state to an  
25 individual during this individual's medical care,  
26 treatment or confinement. For the sole purpose of this  
27 article, pharmacists and pharmacies shall not be  
28 considered health care providers.

**§16-29D-3. Agencies to cooperate and to provide plan;  
contents of plan; reports to Legislature;  
late payments by state agencies and inter-  
est thereon.**

1 (a) All departments and divisions of the state, includ-  
2 ing, but not limited to, the division of employment  
3 security, the division of health, the division of human  
4 services, and the division of workers' compensation  
5 within the department of health and human resources;  
6 the public employees insurance agency within the  
7 department of administration; the division of rehabili-  
8 tation services or such other department or division as  
9 shall supervise or provide rehabilitation; and the West  
10 Virginia board of regents or such other department or  
11 division as shall govern the state medical schools, are

12 authorized and directed to cooperate in order, among  
13 other things, to ensure the quality of the health care  
14 services delivered to the beneficiaries of such depart-  
15 ments and divisions and to ensure the containment of  
16 costs in the payment for such services.

17 (b) It is expressly recognized that no other entity may  
18 interfere with the discretion and judgment given to the  
19 single state agency which administers the state's  
20 medicaid program. Thus, it is the intention of the  
21 Legislature that nothing contained in this article shall  
22 be interpreted, construed, or applied to interfere with  
23 the powers and actions of the single state agency which,  
24 in keeping with applicable federal law, shall administer  
25 the state's medicaid program as it perceives to be in the  
26 best interest of that program and its beneficiaries.

27 (c) Such departments and divisions shall develop a  
28 plan or plans to ensure that a reasonable and appropri-  
29 ate level of health care is provided to the beneficiaries  
30 of the various programs including the public employees  
31 insurance agency and the workers' compensation fund,  
32 the division of rehabilitation services and, to the extent  
33 permissible, the state medicaid program. The plan or  
34 plans may include, among other things, and the  
35 departments and divisions are hereby authorized to  
36 enter into:

37 (1) Utilization review and quality assurance  
38 programs;

39 (2) The establishment of a schedule or schedules of the  
40 maximum reasonable amounts to be paid to health care  
41 providers for the delivery of health care services covered  
42 by the plan or plans. Such a schedule or schedules may  
43 be either prospective in nature or cost reimbursement  
44 in nature, or a mixture of both: *Provided*, That any  
45 payment methods or schedules for institutions which  
46 provide inpatient care shall be institution-specific and  
47 shall, at a minimum, take into account a disproportionate  
48 share of medicaid, charity care and medical education:  
49 *Provided, however*, That in no event may any rate set in  
50 this article for an institutional health care provider be  
51 greater than such institution's current rate established

52 and approved by the health care cost review authority  
53 pursuant to article twenty-nine-b of this chapter;

54 (3) Provisions for making payments in advance of the  
55 receipt of health care services by a beneficiary, or in  
56 advance of the receipt of specific charges for such  
57 services, or both;

58 (4) Provisions for the receipt or payment of charges  
59 by electronic transfers;

60 (5) Arrangements, including contracts, with pre-  
61 ferred provider organizations; and

62 (6) Arrangements, including contracts, with particu-  
63 lar health care providers to deliver health care services  
64 to the beneficiaries of the programs of the departments  
65 and divisions at agreed upon rates in exchange for  
66 controlled access to the beneficiary populations.

67 (d) The director of the public employees insurance  
68 agency shall contract with an independent actuarial  
69 company for a review every four years of the claims  
70 experience of all governmental entities whose employees  
71 participate in the public employees insurance agency  
72 program, including, but not limited to, all branches of  
73 state government, all state departments or agencies  
74 (including those receiving funds from the federal  
75 government or a federal agency), all county and  
76 municipal governments, or any other similar entities for  
77 the purpose of determining the cost of providing  
78 coverage under the program, including administrative  
79 cost, to each such governmental entity.

80 (e) Except as provided in subsection (h) of this section,  
81 any health care provider who agrees to deliver health  
82 care services to any beneficiary of a health care  
83 program of a department or division of the state,  
84 including the public employees insurance agency, the  
85 state medicaid program, the workers' compensation  
86 fund and the division of rehabilitation services, the  
87 charges for which shall be paid by or reimbursed by any  
88 department or division which participates in a plan or  
89 plans as described in this section, shall be deemed to  
90 have agreed to provide health care services to the

91 beneficiaries of health care programs of all of the other  
92 departments and divisions participating in a plan or  
93 plans: *Provided*, That a health care provider shall be in  
94 compliance with this subsection if the health care  
95 provider actually delivers health care services to all  
96 such patients who request such services or if the health  
97 care provider actually delivers health care services to at  
98 least a sufficient number of patients who are beneficiar-  
99 ies under the state's medicaid program to equate to at  
100 least fifteen percent of the health care provider's total  
101 patient population: *Provided, however*, That the delivery  
102 of health care services immediately needed to resolve an  
103 imminent life-threatening medical or surgical emer-  
104 gency shall not be deemed to be an agreement under this  
105 subsection: *Provided further*, That nothing contained in  
106 this article may be deemed to, or purport to imply, any  
107 consent by any physician on the staff of any hospital or  
108 other health care institution to accepting or agreeing to  
109 deliver health care services to any beneficiary of a  
110 health care program of a division or department of this  
111 state in any such physician's private office or practice  
112 by virtue of the fact that such physician saw such  
113 patient in connection with such physician's duties as an  
114 on-call staff physician.

115 (f) The administrators of the division of health,  
116 human services, workers' compensation, and the public  
117 employees insurance agency shall report to the Legisla-  
118 ture no later than the first day of the regular session  
119 of the Legislature of the year one thousand nine hundred  
120 ninety concerning the plan or plans developed: *Provided*,  
121 That the plan or plans may be implemented prior to the  
122 delivery of such report.

123 (g) Nothing in this section shall be construed to give  
124 or reserve to the Legislature any further or greater  
125 power or jurisdiction over the operations or programs  
126 of the various departments and divisions affected by this  
127 article than that already possessed by the Legislature in  
128 the absence of this article.

129 (h) A health care provider who provides health care  
130 services to any beneficiary of a health care program of  
131 a department or division of the state pursuant to the

132 plan or plans developed in accordance with this article  
133 may withdraw from participation in said plan or plans:  
134 *Provided*, That the health care provider shall provide  
135 written notice of withdrawal from participation in said  
136 plan or plans to the administrator of the public  
137 employees insurance agency: *Provided, however*, That a  
138 provider who has withdrawn from further participation  
139 is not required to render services to any beneficiaries  
140 under the plan or plans who are not his or her patients  
141 at the time the notice of withdrawal is provided and the  
142 provider may continue to provide services to his or her  
143 preexisting patients for not more than forty-five days  
144 after tendering the notice of withdrawal without  
145 obligating his or herself to treat such other  
146 beneficiaries.

147 (i) For the purchase of health care or health care  
148 services by a health care provider participating in a  
149 plan under this section or in a contract under subsection  
150 (d) or (e) of section four of this article on or after the  
151 first day of September, one thousand nine hundred  
152 eighty-nine, by the public employees insurance agency,  
153 the division of rehabilitation services and the division of  
154 workers' compensation, a state check shall be issued in  
155 payment thereof within sixty-five days after a legitimate  
156 uncontested invoice is actually received by such division  
157 or agency. Any state check issued after sixty-five days  
158 shall include interest at the current rate, as determined  
159 by the state tax commissioner under the provisions of  
160 section seventeen-a, article ten, chapter eleven of this  
161 code, which interest shall be calculated from the sixty-  
162 sixth day after such invoice was actually received by the  
163 division or agency until the date on which the state  
164 check is mailed to the vendor.

**§16-29D-4. Prohibition on balance billing; exceptions and  
termination of exceptions.**

1 (a) Except in instances involving the delivery of  
2 health care services immediately needed to resolve an  
3 imminent life-threatening medical or surgical emer-  
4 gency, the agreement by a health care provider to  
5 deliver services to a beneficiary of any department or  
6 division of the state which participates in a plan or plans



7 developed under section three of this article shall be  
8 deemed to also include an agreement by that health care  
9 provider:

10 (1) To accept the assignment by the beneficiary of any  
11 rights the beneficiary may have to bill such division or  
12 department for, and to receive payment under such plan  
13 or plans on account of, such services; and

14 (2) To accept as payment in full for the delivery of  
15 such services the amount specified in plan or plans or  
16 as determined by the plan or plans. In such instances,  
17 the health care provider shall bill the division or  
18 department, or such other person specified in the plan  
19 or plans, directly for the services. The health care  
20 provider shall not bill the beneficiary or any other  
21 person on behalf of the beneficiary and, except for  
22 deductibles or other payments specified in the applica-  
23 ble plan or plans, the beneficiary shall not be personally  
24 liable for any of the charges, including any balance  
25 claimed by the provider to be owed as being the  
26 difference between that provider's charge or charges  
27 and the amount payable by the applicable department  
28 or divisions. The plan or plans may specify what sums  
29 are deductibles, copayments or are otherwise payable by  
30 the beneficiary and the sums for which the health care  
31 provider may bill the beneficiary: In addition, any  
32 health care service which is not subject to payment by  
33 the plan or plans shall be the responsibility of the  
34 beneficiary and for those health care services which are  
35 not covered by the plans, there shall be no prohibition  
36 against billing the beneficiary directly.

37 (b) The prohibitions and limitations stated in subsec-  
38 tion (a) of this section do not apply to the delivery of  
39 health care services immediately needed to resolve an  
40 imminent life-threatening medical or surgical emer-  
41 gency. However, once the patient is stabilized, then the  
42 delivery of any further health care services shall be  
43 subject to subsection (a) of this section for those latter  
44 services only.

45 (c) The exceptions provided in this section for the  
46 delivery of health care services immediately needed to

47 resolve an imminent life-threatening medical or surgical  
48 emergency shall not apply to health care providers  
49 under contract with a department or division plan or  
50 plans.

51 (d) Subsections (a), (b) and (c) of this section shall not  
52 be applicable to those health care providers who are  
53 allopathic physicians, osteopathic physicians, or podia-  
54 trists and who enter into acceptable preferred provider  
55 contracts with the public employees insurance agency  
56 insofar as this section would apply to beneficiaries of  
57 that agency. The limitations in this subsection do not  
58 apply to the beneficiaries of any other program of any  
59 other department or division of the state or to any other  
60 type of health care provider. An acceptable preferred  
61 provider contract for the purpose of this subsection shall  
62 be one which meets each and every one of the following  
63 factors in addition to the other elements required by a  
64 preferred provider arrangement:

65 (1) The contract shall set the rates of reimbursement  
66 for health care services at the eightieth percentile of the  
67 public employees insurance agency's 1988 calendar year  
68 experience in paying claims unless, after the thirty first  
69 day of December, one thousand nine hundred eighty-  
70 nine, the director of the public employees insurance  
71 agency determines that continuing to make payments at  
72 the eightieth percentile shall not be consistent with the  
73 budgetary restrictions imposed by the Legislature upon  
74 the public employees insurance agency. In this later  
75 event, the director, after consultation with the advisory  
76 committee created under section seven of this article,  
77 may cause the rate of reimbursement to be set below the  
78 aforesaid eightieth percentile but in no event may those  
79 rates be set below the seventy-fifth percentile. In  
80 determining whether continued rates of payment of the  
81 eightieth percentile shall be consistent or inconsistent  
82 with the aforesaid budgetary restrictions, the director  
83 shall take into consideration only the current claims  
84 experience of the health care providers covered by this  
85 subsection and shall not consider the effects of the other  
86 demands upon the public employees insurance agency's  
87 resources. If a reduction in rates is necessary during a

88 fiscal year, at the start of the following fiscal year and  
89 for the first six months thereafter, the rates of reimbur-  
90 sement shall revert to the aforesaid eightieth percentile;

91 (2) The contract applies to at least seventy percent, by  
92 the first day of July, one thousand nine hundred eighty-  
93 nine, and eighty percent by the first day of September,  
94 one thousand nine hundred eighty-nine, of the members  
95 of recognized specialties of these health care providers  
96 in the applicable region as defined by the eleven  
97 planning and development council regions authorized by  
98 section five-a, article two-d, chapter sixteen of this code  
99 as those regions exist on the effective date of this article:  
100 *Provided*, That in determining the percentages stated  
101 above in this subsection, the total number of health care  
102 providers in a given region and specialty shall not  
103 include those providers who are hospital based and who  
104 do not themselves bill or receive a fee for services  
105 delivered by them nor shall the total number include  
106 those providers who decline to deliver health care  
107 services to all beneficiaries of a health care program of  
108 all departments or divisions of the state: *Provided*,  
109 *however*, That the director of the public employees  
110 insurance agency may waive this factor for any individ-  
111 ual or group of health care providers if the director  
112 ascertains that a sufficient number of providers or  
113 recognized specialists in a given region are willing to  
114 enter into or to continue with a contract to assure access  
115 to that type of health care service to the local public  
116 employees insurance agency beneficiaries;

117 (3) The contract provides for a utilization review and  
118 quality assurance program which is satisfactory to the  
119 public employees insurance agency;

120 (4) The contract provides that the beneficiaries of the  
121 public employees insurance agency shall be individually  
122 responsible for payments only as provided for by the  
123 agency's benefit plan or plans and shall bear no personal  
124 liability for payment for health care services except as  
125 provided for by the plan or plans;

126 (5) The contract is entered into by the first day of  
127 July, one thousand nine hundred eighty-nine;

128 (6) The contract shall include incentives to public  
129 employees insurance agency beneficiaries to utilize  
130 subscriber health care providers and shall also include  
131 incentives to health care providers to subscribe to a  
132 contract; and

133 (7) The contract shall provide that, if after the  
134 contract is entered into, later developments reveal that  
135 one or more of subdivisions (2), (3), (4) or (6) of this  
136 subsection are no longer satisfied, then the director of  
137 the public employees insurance agency, after approval  
138 by the governor, may renegotiate or terminate the  
139 contract upon giving notice of no less than thirty days  
140 nor more than forty-five days: *Provided*, That any  
141 nonparticipating providers during the continuance of  
142 this section shall be permitted to set his or her rates for  
143 reimbursement at no greater than one hundred and ten  
144 percent of the rates of reimbursement set by the director  
145 at the aforesaid eightieth percentile and may make  
146 claim against the beneficiary for the balance between  
147 the amount paid by the public employees insurance  
148 agency and the rate set by the provider as described  
149 above: *Provided, however*, That any nonparticipating  
150 provider shall be subject to the provisions of subsections  
151 (a), (b) and (c) of this section if the director of the public  
152 employees insurance agency determines in any case that  
153 a beneficiary of the public employees insurance agency  
154 does not have access to a provider who is participating  
155 in a preferred provider contract.

156 (e) This section shall not be applicable to hospitals  
157 which enter into prospective contracts with the public  
158 employees insurance agency for each state fiscal year  
159 insofar as this section would apply to beneficiaries of  
160 that agency. The limitations in this subsection do not  
161 apply to the beneficiaries of any other program of any  
162 other department or division of the state or to any other  
163 type of health care provider. Such contracts shall  
164 include, in addition to the other elements required by  
165 such a contract, the following factors:

166 (1) The contract provides for a utilization review and  
167 quality assurance program which is satisfactory to the  
168 public employees insurance agency;

169 (2) For the first year of the contract, the rates for  
170 health care services are determined prospectively based  
171 upon the public employees insurance agency's one  
172 thousand nine hundred eighty-nine fiscal year expe-  
173 rience in paying the charges of each individual hospital,  
174 but taking into consideration also any adjustments to  
175 that experience that may be necessary to provide for the  
176 special concerns and needs of the state's small and rural  
177 hospitals; for each succeeding year of the contract, the  
178 rates shall be set at no less than that of the first year  
179 but may be negotiated for a greater level;

180 (3) The contract provides that the beneficiaries of the  
181 public employees insurance agency shall be individually  
182 responsible for payments only as provided for by the  
183 agency's benefit plan or plans and shall bear no personal  
184 liability for payment for health care services except as  
185 provided for by the plan or plans;

186 (4) The contract is entered into by the first day of  
187 July, one thousand nine hundred eighty-nine, unless the  
188 director of the public employees insurance agency  
189 extends this time limit for good cause;

190 (5) The contract shall provide by its terms that, if  
191 after the contract is entered into, later developments  
192 reveal that any one or more of the first four factors set  
193 forth in this subsection are no longer satisfied, then the  
194 director of the public employees insurance agency, after  
195 approval of the governor, may renegotiate or terminate  
196 that contract upon reasonable notice which shall not be  
197 less than thirty days nor more than forty-five days:  
198 *Provided*, That any hospital which elects not to enter  
199 into a contract shall be subject to the provisions of  
200 subsections (a), (b) and (c) of this section.

201 (f) This section shall terminate without any further  
202 action by the Legislature on the thirtieth day of June,  
203 one thousand nine hundred ninety-one. On or before the  
204 first day of January, one thousand nine hundred ninety-  
205 one, the advisory committee created under section seven  
206 of this article and the director of the public employees  
207 insurance agency shall report to the governor and the  
208 Legislature upon the impact of the effects of the

209 prohibition upon balance billing in this section upon the  
210 health care provider community, upon the public  
211 employees, and upon the public employees insurance  
212 agency.

**§16-29D-5. Coordination of benefits.**

1 Coordination of benefits is permitted between two or  
2 more insurance contracts or employee benefit plans and  
3 shall be included for benefits from the public employees  
4 insurance agency and, as appropriate, from the state  
5 medicaid program, the workers' compensation fund and  
6 the division of rehabilitation services. Notwithstanding  
7 the foregoing, the workers' compensation fund shall be  
8 considered the primary payor for health care services  
9 related to work-related injuries and diseases ruled  
10 compensable as provided in article four, chapter twenty-  
11 three of this code. In no event shall the state medicaid  
12 program be considered a primary insurance contract.

**§16-29D-6. Exemption from and application of antitrust laws.**

1 (a) Actions of the departments and divisions of the  
2 state, or by officers, administrators, employees, or other  
3 agents thereof, shall be exempt from antitrust action as  
4 provided in section five, article eighteen, chapter forty-  
5 seven of this code. Any actions of health care providers  
6 when made in compliance with orders, directives, rules,  
7 or regulations issued or promulgated by a department  
8 or division which participates in a plan or plans  
9 developed under section three of this article shall  
10 likewise be exempt.

11 (b) It is the express intention of the Legislature that  
12 the actions specified in subsection (a) of this section by  
13 either state-related persons or entities or by health care  
14 providers should also be deemed to be state actions for  
15 purposes of obtaining exemptions from federal antitrust  
16 laws.

17 (c) Notwithstanding subsections (a) and (b) of this  
18 section, any agreement by two or more persons, partner-  
19 ships, corporations, facilities or institutions licensed,  
20 certified or authorized by law to provide professional

21 health care services in this state to an individual during  
22 this individual's medical care, treatment or confine-  
23 ment, unless any of the foregoing are practicing as a  
24 partnership or are otherwise associated as a joint  
25 venture, to refrain from delivering health care services  
26 to any person or persons, which delivery would be  
27 subject to the provisions of this article, for the purpose  
28 or with the effect of fixing, controlling, or maintaining  
29 their charges for the delivery of health care services or  
30 for the purpose or with the effect of defeating the  
31 purposes of this article shall be deemed to be unlawful  
32 under the provision of subsection (a), section three,  
33 article eighteen, chapter forty-seven of this code and  
34 shall be subject to the remedies and relief provided for  
35 in that article and chapter: *Provided*, That nothing  
36 contained in this subsection may prevent any physician  
37 on staff of any hospital or other health care institution  
38 from discussing with such hospital or health care  
39 institution the fact that such physician only consents to  
40 see the patient in connection with his or her duties as  
41 a staff on-call physician.

#### §16-29D-7. Rules.

1 The secretary of the department of health and human  
2 resources shall promulgate rules to carry out the  
3 provisions of this article. The governor shall establish an  
4 advisory committee consisting of at least five individuals  
5 representing: An administrator of a small rural hospi-  
6 tal; an administrator of a hospital having a dispropor-  
7 tionate share of medicaid or charity care; a registered  
8 professional nurse; a physician licensed in this state; and  
9 beneficiaries of the plan or plans. The majority of this  
10 advisory committee shall consist of health care provid-  
11 ers. The purpose of the advisory committee is to advise  
12 and assist in the establishment of reasonable payment  
13 methods, schedule or schedules and rates. The advisory  
14 committee shall serve without compensation; however,  
15 the members thereof are entitled to reimbursement of  
16 their expenses. The policies and procedures of the rate  
17 schedule process setting forth the methodology for  
18 determination of rates, payments and schedules are  
19 subject to the legislative rule-making procedures of

20 chapter twenty-nine-a of this code: *Provided*, That  
21 emergency rules may be utilized: *Provided, however*,  
22 That the actual rates, payments and schedules them-  
23 selves shall not be subject to chapter twenty-nine-a of  
24 this code.

**§16-29D-8. Civil penalties; removal as provider.**

1 The secretary of the department of health and human  
2 resources may assess a civil penalty for violation of this  
3 article. In addition to the assessments the secretary may  
4 remove the health care provider from any list of  
5 providers for whose services a department or division  
6 may pay. Upon the secretary determining there is  
7 probable cause to believe that a health care provider is  
8 knowingly violating any portion of this article, or any  
9 plan, order, directive, rule or regulation issued pursuant  
10 to this article, the secretary shall provide such health  
11 care provider with written notice which shall state the  
12 nature of the alleged violation and the time and place  
13 at which such health care provider shall appear to show  
14 cause why a civil penalty or removal from any list of  
15 providers should not be imposed, at which time and  
16 place such health care provider shall be afforded an  
17 opportunity to cross-examine the secretary's witnesses  
18 and afforded the opportunity to present testimony and  
19 enter evidence in support of its position. The hearing  
20 shall be conducted in accordance with the administra-  
21 tive hearings provisions of section four, article five,  
22 chapter twenty-nine-a of this code. The hearing may be  
23 conducted by the secretary or a hearing officer ap-  
24 pointed by the secretary. The secretary or hearing  
25 officer shall have the power to subpoena witnesses,  
26 papers, records, documents, and other data in connec-  
27 tion with the alleged violations and to administer oaths  
28 or affirmations in any such hearing. If, after reviewing  
29 the record of such hearing, the secretary determines  
30 that such health care provider is in violation of this  
31 article or any plan, order, directive, rule, or regulation  
32 issued pursuant to this article, the secretary may assess  
33 a civil penalty of not less than one thousand dollars nor  
34 more than twenty-five thousand dollars, and may  
35 remove the health care provider. Any health care



36 provider assessed or removed shall be notified of the  
37 assessment or removal in writing and the notice shall  
38 specify the reasons for the assessment and its amount  
39 or the reasons for removal. In any appeal by the health  
40 care provider in the circuit court, the scope of the court's  
41 review, which shall include a review of the amount of  
42 the assessment and any removal as a provider, shall be  
43 as provided in section four, article five, chapter twenty-  
44 nine-a of this code for the judicial review of contested  
45 administrative cases. The provider may be removed  
46 from any list of providers, based upon the final orders  
47 of the secretary, pending final disposition of any appeal.  
48 Such removal order or penalty assessment may be  
49 stayed by the circuit court after hearing, but may not  
50 be stayed in any ex parte proceeding. If the health care  
51 provider assessed or removed has not appealed such  
52 assessments or removal and fails to pay the amount of  
53 the assessment to the secretary within thirty days, the  
54 attorney general may institute a civil action in the  
55 circuit court of Kanawha County to recover the amount  
56 of the assessment. Civil action under this section shall  
57 be handled in an expedited manner by the circuit court  
58 and shall be assigned for hearing at the earliest possible  
59 date. The remedies set forth in this section are intended  
60 only for violations of this article and shall not affect any  
61 other contractual relationship between any department  
62 or division and a health care provider.

**§16-29D-9. Severability; supersedes other provisions.**

1 If, for any reason, any part of this article or the  
2 application thereof to any person or circumstances is  
3 held unconstitutional or invalid, such unconstitutionality  
4 or invalidity shall not affect the remaining parts or their  
5 application to any other person or circumstance, and to  
6 this end, each and every part of this article is hereby  
7 declared to be severable. In the event of any inconsis-  
8 tency between the provisions of this article and any  
9 other provisions of this code, the provisions of this article  
10 shall prevail.

**CHAPTER 23. WORKERS' COMPENSATION.**

**ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

**§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties for violation.**

1       The commissioner shall establish and alter from time  
2 to time as he may determine to be appropriate a  
3 schedule of the maximum reasonable amounts to be paid  
4 to chiropractic physicians, medical physicians, osteopa-  
5 thic physicians, podiatrists, optometrists, vocational  
6 rehabilitation specialists, pharmacists, ophthalmolo-  
7 gists, and others practicing medicine and surgery,  
8 surgeons, hospitals or other persons, firms or corpora-  
9 tions for the rendering of treatment to injured em-  
10 ployees under this chapter. The commissioner also, on  
11 the first day of each regular session, and also from time  
12 to time, as the commissioner may consider appropriate,  
13 shall submit the schedule, with any changes thereto, to  
14 the Legislature. The promulgation of the schedule is not  
15 subject to the legislative rule-making review procedures  
16 established in sections eleven through fifteen, article  
17 three, chapter twenty-nine-a of this code.

18       The commissioner shall disburse and pay from the  
19 fund for such personal injuries to such employees as may  
20 be entitled thereto hereunder as follows:

21       (a) Such sums for medicines, medical, surgical, dental  
22 and hospital treatment, crutches, artificial limbs and  
23 such other and additional approved mechanical applian-  
24 ces and devices as may be reasonably required.

25       (b) Payment for such medicine, medical, surgical,  
26 dental and hospital treatment, crutches, artificial limbs  
27 and such other and additional approved mechanical  
28 appliances and devices authorized under subdivision  
29 (a) hereof may be made to the injured employee, or to  
30 the person, firm or corporation who or which has  
31 rendered such treatment or furnished any of the items  
32 specified above, or who has advanced payment for same,  
33 as the commissioner may deem proper, but no such  
34 payments or disbursements shall be made or awarded

35 by him unless duly verified statements on forms  
36 prescribed by the commissioner shall be filed with the  
37 commissioner within two years after the cessation of  
38 such treatment or the delivery of such appliances:  
39 *Provided*, That no payment hereunder shall be made  
40 unless such verified statement shows no charge for or  
41 with respect to such treatment or for or with respect to  
42 any of the items specified above has been or will be  
43 made against the injured employee or any other person,  
44 firm or corporation, and when an employee covered  
45 under the provisions of this chapter is injured in the  
46 course of and as a result of his employment and is  
47 accepted for medical, surgical, dental or hospital  
48 treatment, the person, firm or corporation rendering  
49 such treatment is hereby prohibited from making any  
50 charge or charges therefor or with respect thereto  
51 against the injured employee or any other person, firm  
52 or corporation which would result in a total charge for  
53 the treatment rendered in excess of the maximum  
54 amount set forth therefor in the commissioner's schedule  
55 established as aforesaid.

56 (c) No employer shall enter into any contracts with  
57 any hospital, its physicians, officers, agents or employees  
58 to render medical, dental or hospital service or to give  
59 medical or surgical attention therein to any employee  
60 for injury compensable within the purview of this  
61 chapter, and no employer shall permit or require any  
62 employee to contribute, directly or indirectly, to any  
63 fund for the payment of such medical, surgical, dental  
64 or hospital service within such hospital for such  
65 compensable injury. Any employer violating this section  
66 shall be liable in damages to his employees as provided  
67 in section eight, article two of this chapter, and any  
68 employer or hospital or agent or employee thereof  
69 violating the provisions of this section shall be guilty of  
70 a misdemeanor, and, upon conviction thereof, shall be  
71 punished by a fine not less than one hundred dollars nor  
72 more than one thousand dollars or by imprisonment not  
73 exceeding one year, or both: *Provided*, That the forego-  
74 ing provisions of this subdivision (c) shall not be deemed  
75 to prohibit an employer from participating in a pre-  
76 ferred provider organization or program or a health

77 maintenance organization or other medical cost contain-  
78 ment relationship with the providers of medical,  
79 hospital or other health care: *Provided, however,* That  
80 nothing in this section shall be deemed to restrict the  
81 right of a claimant to select a health care provider for  
82 treatment of a compensable injury or disease.

83 (d) When an injury has been reported to the commis-  
84 sioner by the employer without protest, the commis-  
85 sioner may pay, or order an employer who or which  
86 made the election and who or which received the  
87 permission mentioned in section nine, article two of this  
88 chapter to pay, within the maximum amount provided  
89 by schedule established by the commissioner as afore-  
90 said, bills for medical or hospital services without  
91 requiring the injured employee to file an application for  
92 benefits.

93 (e) The commissioner shall provide for the replace-  
94 ment of artificial limbs, crutches, hearing aids, eye-  
95 glasses and all other mechanical appliances provided in  
96 accordance with this section which later wear out, or  
97 which later need to be refitted because of the progres-  
98 sion of the injury which caused the same to be originally  
99 furnished, or which are broken in the course of and as  
100 a result of the employee's employment. The fund or self-  
101 insured employer shall pay for these devices, when  
102 needed, notwithstanding any time limits provided by  
103 law.

104 Notwithstanding the foregoing, the commissioner may  
105 establish fee schedules, make payments and take other  
106 actions required or allowed pursuant to article twenty-  
107 nine-d, chapter sixteen of this code.

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### ARTICLE 12. STATE INSURANCE.

#### §29-12-5c. Insurance for damages allegedly resulting from obstetric treatment of medicaid patients.

1 In accordance with the provisions of this article, the  
2 state board of risk and insurance management shall provide

3 appropriate professional or other liability insurance for  
4 all medical practitioners who provide obstetric treat-  
5 ment to patients which is reimbursed or reimbursable  
6 by state medicaid funds. Said insurance shall cover any  
7 claim, demand, action, suit or judgment by reason of  
8 alleged negligence or other act in the course of provid-  
9 ing such obstetric treatment which results in illness,  
10 injury or other compensable damages, if, at the time of  
11 the alleged negligence or other act, the practitioner  
12 knew or believed that the services which he or she was  
13 providing were reimbursable or would be reimbursed  
14 by state medicaid funds. Such insurance coverage shall  
15 be in an amount to be determined by the state board  
16 of risk and insurance management, but in no event less  
17 than one million dollars for each occurrence.

18 The insurance policy shall include a provision for the  
19 payment of the cost of attorney's fees in connection with  
20 any claim, demand, action, suit or judgment arising  
21 from such alleged negligence or other act resulting in  
22 illness, injury or other compensable damages under the  
23 conditions specified in this section.

24 The insurance coverage specified in this section shall  
25 not apply to any hospital which is the site of the obstetric  
26 treatment or to any employee of said hospital, except  
27 that a practitioner providing the obstetric treatment  
28 who is also an employee of the hospital which is the site  
29 of the treatment shall be included in the insurance  
30 coverage required by this section.

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## CHAPTER 88

(Com. Sub. for H. B. 2636—By Mr. Speaker, Mr. Chambers, and Delegate White)

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[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

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

sections ten and eleven, all relating to creating the West Virginia health care insurance plan; legislative findings; purpose; planning; development and implementation; West Virginia health care insurance fund; administrative support; rules and regulations; contents; legislative report; availability of data of department of employment security; termination of health care insurance plan; exemption from state antitrust laws and insurance laws; misrepresentation by employee or provider; penalty; and exception.

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

That sections one, two, three, four, five, six, seven, eight and nine, article sixteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections ten and eleven, 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.**

**ARTICLE 16A. THE WEST VIRGINIA HEALTH CARE INSURANCE ACT.**

- §5-16A-1. Short title.
- §5-16A-2. Legislative findings.
- §5-16A-3. Insurance plan; purpose; planning; development and implementation.
- §5-16A-4. West Virginia health care insurance fund; administrative support.
- §5-16A-5. Rules; contents.
- §5-16A-6. Legislative report.
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- §5-16A-8. Exemption from state antitrust laws and insurance laws.
- §5-16A-9. Termination of health care insurance plan.
- §5-16A-10. Misrepresentation by employee or provider; penalty.
- §5-16A-11. Exceptions.

**§5-16A-1. Short title.**

- 1 This article may be cited as "The West Virginia
- 2 Health Care Insurance Plan Act."

**§5-16A-2. Legislative findings.**

1 The Legislature hereby finds and declares as follows:

2 (a) That in excess of three hundred thousand, or  
3 nearly sixteen percent, of West Virginians are without  
4 health insurance and are not covered by federal or state  
5 health care assistance and eighty percent of these  
6 persons have incomes below two hundred percent of the  
7 federal poverty level and are thus medically indigent;

8 (b) That this problem is exacerbating as the number  
9 of persons so uninsured has increased by thirty thou-  
10 sand, or eleven percent, since the year one thousand nine  
11 hundred eighty;

12 (c) Approximately seventy-six thousand of these  
13 uninsured are employed by small businesses. Taking  
14 into account dependents, this group accounts for  
15 approximately one half of West Virginia's uninsured  
16 population;

17 (d) No relief appears available for the uninsured  
18 working citizens of this state in the form of adequate  
19 health insurance or access to funds to pay therefor and  
20 the health and welfare of these uninsured working  
21 citizens and their dependents is increasingly threatened;

22 (e) Studies show that the numbers of such uninsured  
23 persons are rising as a result of changing patterns of  
24 employment in which jobs are available in ever enlarg-  
25 ing numbers in industries involving service and trade  
26 and that these are among the least likely industries to  
27 provide health insurance for employees;

28 (f) The system of cost shifting by providers of  
29 uncompensated health care to paying health care  
30 consumers creates increasing numbers of persons  
31 unable to afford health insurance and has resulted in a  
32 climate where the financial stability of health care  
33 providers is increasingly threatened; West Virginia  
34 taxpayers and private insurance companies provided  
35 one hundred thirty million dollars of uncompensated  
36 health care in the year one thousand nine hundred  
37 eighty-seven, which represents eight and three tenths  
38 percent of gross patient revenue, a rate that is twenty-  
39 five percent greater than the national average;

40 (g) Thousands of uninsured working citizens are  
41 employed in small businesses many of which do not have  
42 available to them affordable group health insurance  
43 plans for their employees;

44 (h) Many small businesses, with only one employee  
45 who is considered to be a high risk for medical reasons,  
46 are unable to obtain group health insurance for any of  
47 their employees;

48 (i) That the Family Support Act of 1988 provides the  
49 state of West Virginia with an opportunity to provide  
50 basic health care coverage to families earning below one  
51 hundred and eighty-five percent of the federal poverty  
52 level; thereby taking full advantage of available federal  
53 funds;

54 (j) That families and individuals without health  
55 insurance delay seeking health care which often results  
56 in more expensive intensive care at a later date;

57 (k) That the state of West Virginia presently does not  
58 have a "high risk pool" which would provide health  
59 insurance to persons not able to purchase health  
60 insurance due to medical reasons;

61 (l) The severity of these problems demands a solution,  
62 and projects have been developed in other states which  
63 do provide affordable, necessary health insurance  
64 coverage through the combining of small employee  
65 groups into a larger insurance pool;

66 (m) To address these problems, the public employees  
67 insurance agency created by article sixteen of this  
68 chapter is the appropriate logical entity to implement  
69 a health care insurance plan to target West Virginians  
70 and their dependents without health insurance, and to  
71 assist those unable to purchase health insurance with  
72 the cooperation and assistance of the legislative task  
73 force on uncompensated health care and medicaid  
74 expenditures created by article twenty-nine-c, chapter  
75 sixteen of this code.

**§5-16A-3. Insurance plan; purpose; planning; develop-  
ment and implementation.**



1 On the first day of July, one thousand nine hundred  
2 eighty-nine, a health care insurance plan in the state  
3 shall be commenced and administered by the public  
4 employees insurance agency and the resources available  
5 to it solely through the West Virginia health care  
6 insurance fund, with the advice and assistance of the  
7 legislative task force on uncompensated health care and  
8 medicaid expenditures. The purpose of the plan shall be  
9 to make available affordable health insurance by  
10 pooling in a group for health insurance purposes groups  
11 of small businesses to provide for acute and primary  
12 health care services to working citizens of the state and  
13 their dependents who are without health insurance  
14 benefits offered in connection with their employment as  
15 well as to any citizen who is unable to obtain health  
16 insurance coverage. The public employees insurance  
17 agency shall be responsible for the development and  
18 implementation of the plan. In so doing, the agency may  
19 seek the advice and assistance of the legislative task  
20 force on uncompensated health care and medicaid  
21 expenditures.

**§5-16A-4. West Virginia health care insurance fund;  
administrative support.**

1 (a) There is hereby created in the state treasury the  
2 West Virginia health care insurance fund. The fund  
3 shall operate as a revolving fund whereby all appropri-  
4 ations, other payments and interest earned thereon shall  
5 be applied and reapplied for the purposes of this article.  
6 Any premiums, grants, gifts, legislative appropriations  
7 or other income from any source shall be deposited into  
8 this fund.

9 (b) The fund shall be used to provide the subsidization  
10 provided in subsections (e) and (g), section five of this  
11 article as well as to pay the administrative costs and all  
12 other proper costs incurred in implementing the  
13 provisions of this article.

14 (c) The public employees insurance agency is autho-  
15 rized to utilize its administrative staff and resources in  
16 administering this article. In no event, however, may  
17 any benefit or program entitlement offered to those

18 eligible under the provisions of article sixteen be  
19 affected by the plan established in this article.

**§5-16A-5. Rules; contents.**

1 (a) The public employees insurance agency shall  
2 develop and implement the plan through rules promul-  
3 gated in accordance with the provisions of chapter  
4 twenty-nine-a of this code. The legislative task force on  
5 uncompensated health care and medicaid expenditures  
6 shall share with the public employees insurance agency  
7 any and all pertinent data, studies, reports, analyses,  
8 research, summaries, information collected, filed or  
9 developed now or in the future in order to effect the  
10 development and implementation of the plan contem-  
11 plated herein. Upon request, in the planning, develop-  
12 ment and implementation of the plan the insurance  
13 commissioner and the commissioner of human services  
14 shall cooperate with advice and assistance.

15 (b) The rules shall provide for the establishment of an  
16 insurance pool for the provision of basic acute and  
17 primary health care insurance coverage with measur-  
18 able cost containment provisions to employers and  
19 employees of small businesses and individuals in this  
20 state and their respective dependents; shall develop a  
21 definition for "small business" which definition shall  
22 include nonprofit organizations and nonprofit corpora-  
23 tions having nineteen or fewer employees; shall permit  
24 bids from qualified and licensed insurance companies or  
25 carriers, who may wish to offer plans or reinsurance for  
26 the insurance coverage desired; shall address incentives  
27 for small business participation in the plan, and a  
28 variety of effective cost controls; shall provide for an  
29 appropriate application form for participation and  
30 procedures for application; shall ensure accurate and  
31 appropriate marketing of the health insurance coverage  
32 to small businesses throughout the state; and shall  
33 establish criteria for monitoring the effectiveness of the  
34 insurance pool.

35 (c) The rules shall provide that the plan will be  
36 available to small business employers with nineteen  
37 employees or less and to individuals who can demon-

38 strate that they have been without health insurance  
39 coverage for a period of at least six months prior to  
40 enrollment, except that persons who are not eligible for  
41 the COBRA provisions for the unemployed and who can  
42 demonstrate that their lack of health insurance is due  
43 to a reduction in workforce will be eligible. Beginning  
44 on the first day of April, one thousand nine hundred  
45 ninety, families that no longer qualify for AFDC but do  
46 qualify for Medicaid under the Family Support Act of  
47 1988 will be eligible to participate in the program, and  
48 the plan may include a premium for those families.

49 (d) The rules shall provide that health care provided  
50 pursuant to the plan be through an exclusive provider  
51 organization consisting of acute care hospitals, primary  
52 care centers, clinics, physician groups and physicians.  
53 Inpatient care shall be provided by hospitals at a  
54 discounted rate which will be at or below cost. Primary  
55 care and outpatient services shall be provided on a per  
56 capita basis to be negotiated with providers or provider  
57 groups and such payment may be made in advance of  
58 services rendered. A formulary prescription drug  
59 program shall also be included on a near cost basis.  
60 Health care provided outside the exclusive provider  
61 organization will generally not be covered by the plan.  
62 Outpatient services shall include a quality assurance  
63 component to ensure that the level of care is adequate  
64 and appropriate. Appropriate provisions may be in-  
65 cluded to ensure that health care providers participat-  
66 ing in the plan do not realize a financial windfall from  
67 such participation and that subsequent charges reflect  
68 the income received therefrom.

69 (e) The rules shall provide that benefit design and  
70 premium structures be developed with recommenda-  
71 tions from the legislative task force on uncompensated  
72 health care and medicaid expenditures. The plan shall  
73 provide for differing premium and benefit structures  
74 based upon the enrollee's level of income. To the extent  
75 feasible, the plan will limit enrollment to those individ-  
76 uals who have incomes at or below two hundred percent  
77 of the federal poverty level. Premium structures may  
78 include cost sharing methods including employer and

79 employee sharing of cost and a sliding scale based on  
80 ability to pay. Provisions shall be included for a  
81 minimum two hundred fifty dollar annual deductible for  
82 inpatient acute care and a lifetime cap of two hundred  
83 fifty thousand dollars, per individual, for all benefits  
84 provided under the plan. The plan may provide for the  
85 subsidization of premiums for employees and individu-  
86 als whose income is below the federal poverty rate but  
87 above medicaid payment standards. The plan may  
88 include such provisions as are necessary to allow full  
89 advantage to be taken of the provisions of the Family  
90 Support Act of 1988.

91 (f) The plan shall begin with a three-year pilot  
92 program which shall include, at a minimum, two  
93 thousand subscribers. The program will be established  
94 in two pilot areas in the state. One pilot area will be  
95 located in an urban area defined as a metropolitan  
96 statistical area and one in a rural area, defined as a  
97 nonmetropolitan statistical area. The plan authorized  
98 pursuant to this section is a pilot plan only, and may be  
99 discontinued or terminated at the end thereof without  
100 further liability on behalf of the State of West Virginia  
101 or any small businesses that are participating.

102 (g) The rules may provide that medical underwriting  
103 will take place after, rather than prior, to enrollment  
104 in the plan, although all participants will be required  
105 to complete a medical screen. Those who do not pass the  
106 medical screen may be able to participate. Premiums  
107 for such individuals may be at a rate higher than those  
108 established for other participants. The cost of the high  
109 risk participants' health care insurance premiums may  
110 be partially subsidized by the health care insurance  
111 fund. The rules shall provide for a schedule of the  
112 subsidization, which shall be based on need, cost and  
113 funds available.

114 (h) The rules shall contain provisions that limit any  
115 assistance provided pursuant to the plan to that which  
116 can be provided within the funds available.

#### **§5-16A-6. Legislative report.**

1 The public employees insurance agency, with the

2 advice and assistance of the legislative task force on  
3 uncompensated health care and medicaid expenditures,  
4 shall cooperate to prepare and submit reports to the  
5 Legislature before it convenes in the years, one thousand  
6 nine hundred ninety, one thousand nine hundred ninety-  
7 one and one thousand nine hundred ninety-two, with  
8 studies, findings, conclusions and recommendations,  
9 including any recommendations for legislation, all  
10 relating to the purpose and effect of the health care  
11 insurance plan created herein. Said report shall be in  
12 addition to any report prepared by the legislative task  
13 force on uncompensated health care and medicaid  
14 expenditures pursuant to the provisions of article  
15 twenty-nine-c, chapter sixteen of this code.

**§5-16A-7. Availability of data of department of employ-  
ment security.**

1 In furtherance of the purposes of this article, the  
2 department of employment security shall, notwithstand-  
3 ing the provisions of section eleven, article ten, chapter  
4 twenty-one-a of this code, cooperate to make available  
5 to the public employees insurance agency and the  
6 legislative task force on uncompensated health care and  
7 medicaid expenditures such information as they may  
8 request for purposes consistent with this article to  
9 identify and facilitate contact with small business  
10 employers who may be eligible for participation in the  
11 plan. The provisions of this section shall be liberally  
12 construed by the department of employment security in  
13 order to effectuate the development of the health care  
14 insurance plan.

15 Information thus obtained by the public employees  
16 insurance agency and the legislative task force on  
17 uncompensated health care and medicaid expenditures  
18 shall be maintained as strictly confidential and shall be  
19 exempt from disclosure to the public.

**§5-16A-8. Exemption from state antitrust laws and  
insurance laws.**

1 The health care insurance plan and those responsible  
2 for developing and implementing it under the provisions  
3 of this article are exempted from the provisions of

4 section five, article eighteen, chapter forty-seven of this  
5 code and any otherwise applicable provisions of chapter  
6 thirty-three of this code.

**§5-16A-9. Termination of health care insurance plan.**

1 The health care insurance plan shall be terminated  
2 pursuant to the provisions of article ten, chapter four of  
3 this code on the first day of July, one thousand nine  
4 hundred ninety-two, unless continued or reestablished  
5 pursuant to the provisions of that article.

**§5-16A-10. Misrepresentation by employee or provider;  
penalty.**

1 Any person who knowingly secures or attempts to  
2 secure benefits payable under this article to which the  
3 person is not entitled, or willfully misrepresents any  
4 material fact relating to any other information re-  
5 quested by the public employees insurance agency or  
6 who willfully overcharges for services provided, or who  
7 willfully misrepresents the diagnosis or nature of the  
8 service provided, may be found to be overpaid and shall  
9 be civilly liable for any overpayment. In addition to the  
10 civil remedy provided herein, the public employees  
11 insurance agency shall withhold payment of any benefits  
12 due to that person until any overpayment has been  
13 recovered or may directly set off, after holding internal  
14 administrative proceedings to assure due process, any  
15 such overcharges or improperly derived payment  
16 against benefits due such person hereunder. Nothing in  
17 this section shall be construed to limit any other remedy  
18 or civil or criminal penalty provided by law.

**§5-16A-11. Exceptions.**

1 Even though a state agency or various state agencies  
2 may implement this insurance program, the employers  
3 and individuals provided insurance coverage by this  
4 article are not entitled to access to health care providers  
5 as presently mandated in article twenty-nine-d, chapter  
6 sixteen of this code.

7 Health care providers may be given the right to treat  
8 individuals under this plan but shall not be required to  
9 provide health care service to any firm or individual  
10 under the insurance plan provided in this article.

## CHAPTER 89

(Com. Sub. for H. B. 2144—By Delegates Spencer and Mezzatesta)

[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen, relating to creation of a commission for the hearing-impaired, statement of legislative findings, definitions, membership requirements for the commission, terms of office for commission members, goals of the commission, provisions for seminars and training sessions in deaf education, requirement for assistance from other state agencies, duties of the executive director, and provision for payment of expenses of certain members.

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

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fourteen, to read as follows:

### ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE HEARING-IMPAIRED.

- §5-14-1. Legislative findings.
- §5-14-2. Definitions.
- §5-14-3. Establishment of commission; membership.
- §5-14-4. Terms of office; quorum.
- §5-14-5. Powers and duties of the commission; register of hearing-impaired; duty to report to the commission; census; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.
- §5-14-6. Seminars and training sessions.
- §5-14-7. Assistance of other agencies.
- §5-14-8. Executive director; staff.
- §5-14-9. Reports and recommendations.
- §5-14-10. Grants and gifts; contracts.
- §5-14-11. Reimbursement for expenses.

#### §5-14-1. Legislative findings.

- 1 The Legislature hereby finds and declares that:

2 (a) There is a need for West Virginia to adequately  
3 identify the hearing-impaired population and provide  
4 efficient and effective services to such population;

5 (b) Hearing-impaired people need to be more involved  
6 in the decisions and programs that affect their lives by  
7 soliciting and seriously considering their collective  
8 opinion on appropriate matters;

9 (c) Cooperation among state and local agencies must  
10 be facilitated in an effort to ensure that adequate and  
11 appropriate services are available and provided;

12 (d) In order to further the aforementioned goals it is  
13 necessary to determine what services exist and what  
14 services can be developed in order to match services to  
15 individual needs;

16 (e) A rubella epidemic from one thousand nine  
17 hundred sixty-three to one thousand nine hundred sixty-  
18 five caused a number of infants in West Virginia to be  
19 born hearing-impaired. These individuals are approach-  
20 ing the ages where they will no longer be eligible for  
21 educational services, thus requiring services as young  
22 adults. The Legislature, therefore, declares that there is  
23 an unprecedented and imperative need to plan and  
24 prepare for the multiplicity of services required in order  
25 to ensure a life-long continuum of services to this  
26 particular population;

27 (f) There must be more emphasis on the use of  
28 interpreters for deaf and hard-of-hearing people and on  
29 the quality control of such services;

30 (g) There must be more emphasis on the use of  
31 telecommunication devices for the deaf (tdds) and means  
32 to provide them for hearing-impaired people;

33 (h) Through the implementation of the provisions of  
34 this article, the deaf and hard-of-hearing population of  
35 West Virginia will be aided in their efforts to live  
36 independent and productive lives.

#### §5-14-2. Definitions.

1 As used in this article:



2 "Deaf" means severe to profound impairment of the  
3 sense of hearing whereby the understanding of speech  
4 is unattainable through the ear alone with or without  
5 amplification, and visual communication is used as the  
6 primary mode of communication.

7 "Hard-of-hearing" means significant impairment to  
8 the sense of hearing, but not to the extent that the  
9 person must rely primarily on visual communication.

10 "Hearing-impaired" means persons who are either  
11 deaf or hard-of-hearing.

**§5-14-3. Establishment of commission; membership.**

1 There is hereby established within the executive  
2 department a commission to be known as the "West  
3 Virginia Commission for the Hearing-Impaired" consist-  
4 ing of fifteen persons, eight of whom shall serve ex  
5 officio, to be appointed by the governor within sixty days  
6 after the effective date of this article by and with the  
7 advice and consent of the Senate. The commission shall  
8 meet no less than four times annually. All meetings and  
9 activities held by the commission shall be attended by  
10 at least two qualified interpreters who shall be hired at  
11 the commission's expense or provided free of charge by  
12 agencies, organizations or individuals willing to volun-  
13 teer qualified interpreters. The members are:

14 (a) The commissioner, or his or her designee, of the  
15 department of human services; the commissioner, or his  
16 or her designee, of the department of labor; the director,  
17 or his or her designee, of the department of health; the  
18 state superintendent of schools, or his or her designee,  
19 of the state board of education; the director, or his or  
20 designee, of the division of rehabilitation; the director,  
21 or his or her designee, of the division of handicapped  
22 children's services in the department of human services;  
23 the chairman, or his or her designee, of the advisory  
24 council for the education of exceptional children; and the  
25 superintendent, or his or her designee, of the West  
26 Virginia School for the deaf, all of whom shall serve ex-  
27 officio;

28 (b) Seven persons appointed by the governor, at least

29 three of whom are deaf or hard-of-hearing, one of whom  
30 is the parent of a deaf child, one of whom is a certified  
31 teacher of the hearing-impaired, one audiologist and one  
32 otolaryngologist. Of the three deaf people, at least two  
33 shall be selected from a list of four people recommended  
34 by the board of the West Virginia association of the deaf.

**§5-14-4. Terms of office; quorum.**

1 Members of the commission who do not serve ex  
2 officio shall be appointed for the following terms: Three  
3 members shall be appointed for a term of three years;  
4 three for a term of two years and one for a term of one  
5 year. When a vacancy occurs, an appointment shall be  
6 made for the unexpired term. The members shall  
7 annually elect a chairman. A majority of the members  
8 constitutes a quorum for the transaction of business.

**§5-14-5. Powers and duties of the commission; register of hearing-impaired; duty to report to the commission; census; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.**

1 The commission shall maintain a complete register of  
2 persons who are deaf or hard-of-hearing in the state. For  
3 each hearing-impaired person, the register shall describe  
4 the condition and cause of the hearing problem,  
5 the person's capacity for education and industrial  
6 training and any other facts the commission considers  
7 valuable. Identifying information contained in the  
8 register is confidential: *Provided*, That information  
9 collected and maintained in the register will be  
10 available upon request to other government agencies in  
11 order to facilitate services to their hearing-impaired  
12 clients. Every health, educational and social agency, and  
13 physician or other medical professional serving hearing-  
14 impaired individuals shall report to the commission, in  
15 writing, the name, age and residence of persons who are  
16 deaf or hard-of-hearing.

17 In addition to the register, the commission is respon-  
18 sible for conducting and maintaining a census of both  
19 the deaf and hard-of-hearing populations in West  
20 Virginia. Such census shall contain state, county and

21 city figures.

22 The commission shall maintain a clearinghouse of  
23 information, the purpose of which is to aid hearing-  
24 impaired persons and others in obtaining appropriate  
25 services or information about such services including,  
26 but not limited to, education, communication (including  
27 interpreters), group home facilities, independent living  
28 skills, recreational facilities, employment, vocational  
29 training, health and mental health services, substance  
30 abuse and other services necessary to assure their ability  
31 to function in society. The commission shall consult  
32 existing public and private agencies and organizations  
33 in compiling and maintaining the clearinghouse.

34 The commission shall establish, maintain and coordi-  
35 nate a statewide service to provide courts, state and local  
36 legislative bodies and others with a list of qualified and  
37 certified interpreters for the deaf and a list of qualified  
38 and certified teachers of American sign language. To  
39 establish and maintain these lists the commission may  
40 accept the certification of the National Registry of  
41 Interpreters for the Deaf and/or the state established  
42 quality assurance evaluation.

43 The commission shall develop an outreach program to  
44 familiarize the public with the rights and needs of  
45 hearing-impaired people and of available services.

46 The commission shall investigate the condition of the  
47 hearing-impaired in this state with particular attention  
48 to those who are aged, homeless, needy, victims of  
49 rubella and victims of abuse or neglect. It shall  
50 determine the means the state possesses for establishing  
51 group homes for its hearing-impaired citizens and the  
52 need for additional facilities. The commission shall also  
53 determine the advisability and necessity of providing  
54 services to the multihandicapped hearing-impaired.

#### §5-14-6. Seminars and training sessions.

1 The commission may establish one or more training  
2 sessions or workshops for the teaching of interpretive  
3 skills, in-service training and counseling for the deaf  
4 and hard-of-hearing. Seminars and training sessions

5 may be conducted and are encouraged to work with the  
6 existing facilities and organizations established to  
7 accomplish the same goals.

**§5-14-7. Assistance of other agencies.**

1 To effectuate the purposes of this article, the commis-  
2 sion may request from any department, board, bureau,  
3 commission or other agency of the state, and the same  
4 are authorized to provide such assistance, services and  
5 data as will enable the commission to properly carry out  
6 its powers and duties hereunder.

**§5-14-8. Executive director; staff.**

1 There shall be within the commission an executive  
2 director who shall be appointed by the commission and  
3 whose compensation shall be fixed by the commission  
4 within the budgetary appropriation thereof. The exec-  
5 utive director shall be in the exempt class of civil service  
6 and may not be a member of the commission. The  
7 executive director may attend all meetings of the  
8 commission, as well as its committees, but has no vote  
9 on decisions or actions of the commission or its commit-  
10 tees. The executive director shall carry out the decisions  
11 and actions of the commission, hire all staff, administer  
12 all affairs of the commission in accordance with its  
13 policies and discharge such other duties as the commis-  
14 sion shall from time to time determine. The commission  
15 may employ such other officers, employees and clerical  
16 assistants as it considers necessary and may fix their  
17 compensation within the amounts made available by  
18 appropriation. To the extent possible, the executive  
19 director shall be hearing-impaired and shall be profi-  
20 cient in communicating with hearing-impaired individ-  
21 uals using varying communication modes.

**§5-14-9. Reports and recommendations.**

1 The commission shall make an annual report to the  
2 governor and the Legislature which shall include its  
3 recommendations and programs.

**§5-14-10. Grants and gifts; contracts.**

1 The commission, with the approval of the governor,

2 may agree to accept and contract as agent of the state  
3 any gift, grant, devise or bequest, including federal  
4 grants, for any of the purposes of this article. Any  
5 moneys so received may be expended by the commission  
6 to effectuate any purpose of this article, subject to the  
7 same limitations as to approval of expenditures and  
8 audit as are prescribed for state moneys appropriated  
9 for the purposes of this article.

10 The commission may enter into contracts with any  
11 person, firm, corporation, municipality or governmental  
12 agency to effectuate the purposes of this article.

#### §5-14-11. Reimbursement for expenses.

1 The members of the commission, other than its ex  
2 officio members, are entitled to reimbursement for their  
3 actual and necessary expenses incurred in the perfor-  
4 mance of official duties.

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## CHAPTER 90

(Com. Sub. for H. B. 2395—By Delegates Pitrolo and Bradley)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-a, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to horse and dog racing; applications for Sunday racing; local option election procedures; protest procedures against approval; petition calling for a local option election for Sunday racing, and an alternative method for approval or rejection of Sunday racing.

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

That section eight-a, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

#### ARTICLE 23. HORSE AND DOG RACING.

##### PART V-A. SUNDAY RACING.

**§19-23-8a. Applications for Sunday racing; local option election procedures; protest procedures against approval.**

1 (a) A racing association licensed under the provisions  
2 of section one of this article and operating a horse or  
3 dog racetrack in a county may make application for  
4 permission to conduct horse or dog racing on Sunday,  
5 between the hours of one p.m. and six p.m., local time.

6 Such application shall be filed with the racing  
7 commission. The racing commission shall prescribe  
8 blank forms to be used in making such application.

9 The racing commission, if it finds such application to  
10 be in order, may grant tentative approval of such  
11 application and, if it grants tentative approval of the  
12 application, shall prepare and publish a notice to the  
13 public that the racing commission has granted tentative  
14 approval of the application, that the racing commission  
15 solicits public comment from the citizens of the county  
16 and will hold a public hearing in the county on a date  
17 specified in the notice in the county wherein the horse  
18 racing track or dog racing track is located, that the  
19 racing commission shall take such comment into  
20 consideration in deciding whether or not to grant or  
21 deny final approval, and that the racing commission will  
22 make final approval of such application at the expira-  
23 tion of sixty days from the date of the first publication  
24 of such notice, which date shall be specified in said  
25 notice, unless within that time in accordance with  
26 subsection (c) of this section, the county commission of  
27 the county in which such racetrack is located shall order  
28 an election. Such notice shall be published as a Class II  
29 legal advertisement in compliance with the provisions of  
30 article three, chapter fifty-nine of this code, and the  
31 publication area for such publication shall be the county  
32 in which the racetrack is located: *Provided*, That prior  
33 to granting final approval hereunder, the racing  
34 commission shall solicit public comment from the  
35 citizens of the county, and hold a public hearing in the  
36 county on a date specified in the hearing notice specified  
37 above, in the county wherein the horse racing track or  
38 dog racing track is located and shall take such comment

39 into consideration in deciding whether or not to grant  
40 final tentative approval. If no such election is ordered,  
41 the racing commission shall proceed to consider final  
42 approval of the application.

43 (b) The county commission shall, upon the written  
44 petition of qualified voters residing within the county  
45 equal to at least fifteen percent of the number of persons  
46 who voted in that county in the next preceding general  
47 election, received within the period specified in subsec-  
48 tion (a) of this section, which petition may be in any  
49 number of counterparts, order an election to determine  
50 whether it is the will of the voters of said county that  
51 racing be permitted on Sundays in said county, which  
52 election shall be held at the next primary or general  
53 election held in such county. The racing commission  
54 shall permit such racing pending certification of the  
55 results of the election.

56 (c) If such election is ordered, the county commission  
57 shall give notice of such election by publication of such  
58 notice as a Class II-0 legal advertisement in accordance  
59 with the provisions of article three, chapter fifty-nine of  
60 this code. Such notice shall be published within twenty-  
61 one consecutive days next preceding the date of said  
62 election.

63 (d) The ballot, or the ballot labels where voting  
64 machines are used, shall have printed thereon substan-  
65 tially the following:

66 "Shall the West Virginia Racing Commission be  
67 authorized to approve horse racing on Sundays between  
68 the hours of one p.m. and six p.m. in \_\_\_\_\_ County,  
69 West Virginia?

70  Yes  No

71 (Place a cross mark in the square opposite your  
72 choice.)"

73 In a county in which dog racing is conducted, the term  
74 "dog racing" shall be substituted for "horse racing" on  
75 the ballot or ballot label.

76 (e) Each individual qualified to vote in said county

77 shall be qualified to vote at such election. The votes in  
78 said election shall be counted and returns made by the  
79 election officers and the results certified by the  
80 commissioners of election to said county commission,  
81 which shall canvass the ballots, all in accordance with  
82 the laws of this state relating to general elections insofar  
83 as the same are applicable. The county commission  
84 shall, without delay, canvass the votes cast at such  
85 election and certify the results thereof to the racing  
86 commission, and shall transmit a certified copy of said  
87 results to the secretary of state.

88 (f) After the certification of the results of such  
89 election, the racing commission shall: (1) grant final  
90 approval of an application for a license which contains  
91 racing dates which fall on Sunday if a majority of the  
92 voters voting at such election vote yes, and on such  
93 racing dates all racing and other activities authorized  
94 by this article shall be lawful, any other provisions of  
95 this code to the contrary notwithstanding; or (2) deny  
96 final approval of an application for a license which  
97 contains racing dates which fall on Sunday if less than  
98 a majority of the voters voting at such election vote yes.

99 (g) After an election to determine whether it is the  
100 will of the voters of said county that racing be permitted  
101 on Sundays in said county, another election on such issue  
102 shall not be held for a period of five years.

103 (h) After five years from such final approval, it shall  
104 be the duty of the county commission upon a petition in  
105 writing of qualified voters residing within the county  
106 equal to at least fifteen percent of the number of persons  
107 who voted in that county in the next preceding general  
108 election, which petition may be in any number of  
109 counterparts, to order an election to determine whether  
110 it is the will of the voters of said county that racing on  
111 Sundays be discontinued in said county. The provisions  
112 of subsections (c) and (e) of this section shall govern said  
113 election. The ballot, or the ballot labels where voting  
114 machines are used, shall have printed thereon substan-  
115 tially the following:



116 "Shall racing of horses on Sunday in \_\_\_\_\_ County,  
117 West Virginia, be discontinued?

118  Yes  No

119 (Place a cross mark in the square opposite your  
120 choice.)"

121 In a county in which dog racing is conducted, the  
122 word "dogs" shall be substituted for "horses" on the  
123 ballot or ballot label. If it be the will of a majority of  
124 the voters of said county that Sunday racing be  
125 discontinued in said county, it shall be the duty of the  
126 racing commission thereafter, for a period of at least  
127 five years and until a subsequent election shall other-  
128 wise direct, to deny applications to race on Sundays in  
129 said county.

130 (i) Upon the written petition of qualified voters  
131 residing within the county equal to at least thirty  
132 percent of the number of persons who voted in that  
133 county in the next preceding general election, which  
134 petition may be in any number of counterparts, pre-  
135 sented to the racing commission within sixty days after  
136 the expiration of such publication protesting against  
137 such tentative approval, the approval may not become  
138 effective and another petition may not be filed for a  
139 period of five years.

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## CHAPTER 91

(Com. Sub. for S. B. 6—By Senators Chernenko and Blatnik)

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[Passed March 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting racetrack wagering on property controlled by the racing association that is contiguous to a racetrack, subject to certain requirements.

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

That section twelve-a, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 23. HORSE AND DOG RACING.**

**§19-23-12a. Pari-mutuel wagering on interstate and intrastate horse and dog racing.**

1 (1) Notwithstanding any other provisions of this code,  
2 a racing association licensed in this state to conduct race  
3 meetings may, with the consent of the racing commis-  
4 sion and the written approval of the authorized repre-  
5 sentative of a majority of the owners and trainers who  
6 hold the permit required by section two of this article  
7 at the horse racetrack, contract with any legal wagering  
8 entity in this or any other state to accept wagers on any  
9 race or races conducted by such legal wagering entity.  
10 Unless the wager becomes part of the host licensee's  
11 pari-mutuel pool, such wagering shall be conducted  
12 within the confines of such licensee's racetrack or at a  
13 hotel as defined in section three, article six, chapter  
14 sixteen of this code, controlled by such licensee and  
15 contiguous to the licensee's property, subject to the  
16 following requirements:

17 (a) That such hotel contain at least one hundred rooms  
18 and be in existence on the effective date of this section;

19 (b) That the licensee shall have invested at least one  
20 million dollars in the hotel; and

21 (c) That such hotel is within one-half mile of the  
22 licensee's racetrack surface.

23 (2) Such horse association shall retain a basic commis-  
24 sion not to exceed seventeen and twenty-five one-  
25 hundredths percent of all money wagered, plus an  
26 additional amount equal to one and seventy-five one-  
27 hundredths percent of the amount wagered each day on  
28 all multiple wagers determined by a combination of two  
29 winning horses, including, but not limited to, the daily  
30 double, quinella and perfecta or plus an additional  
31 amount equal to seven and seventy-five one-hundredths  
32 percent of the amount wagered each day on all trifecta

33 wagers or any other multiple wager which involves a  
34 single betting interest on three or more horses. Break-  
35 age shall be calculated and distributed in the manner  
36 provided by subsection (c), section nine of this article.

37 (3) The commission deducted by any licensee from the  
38 pari-mutuel pools on dog racing shall not exceed sixteen  
39 and one-fourth percent of the total of such pari-mutuel  
40 pools for the day.

41 (4) Out of the commission retained or deducted by a  
42 licensee under the provisions of subsections (2) and (3)  
43 of this section, the licensee shall pay one tenth of one  
44 percent into the general fund of the county commission  
45 of the county in which the racetrack is located, except  
46 if within a municipality, then to such municipality's  
47 general fund.

48 (5) The association shall pay each day a pari-mutuel  
49 pools tax calculated under the provisions of section ten  
50 of this article.

51 (6) After deducting the county or municipal share  
52 provided for in subsection (4) of this section and the  
53 pari-mutuel pools tax required by subsection (5) of this  
54 section, and the amount required to be paid under the  
55 terms of the contract with the legal wagering entity of  
56 this or another state and the cost of transmission, the  
57 horse racing association shall make a deposit equal to  
58 fifty percent of the remainder into the purse fund  
59 established under the provisions of subdivision (b),  
60 subsection (1), section nine of this article.

61 (7) All of the provisions of the "Federal Interstate  
62 Horseracing Act of 1978," also known as Public Law 95-  
63 515, section 3001-3007 of title 15, U.S. Code, shall be  
64 instructive as the intent of this section.

65 (8) For the purposes of this section the words "legal  
66 wagering entity" shall be limited to any person engaged  
67 in horse racing or dog racing pursuant to a license or  
68 other permission granted by the state in which such  
69 person's racetrack is situated and conducting race  
70 meetings, with a pari-mutuel wagering system permit-  
71 ted under that state's laws and in which the participants  
72 are wagering with each other and not the operator.

## CHAPTER 92

(Com. Sub. for H. B. 2516—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, eight, nine and eleven, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the human rights commission; policy; powers; objects; functions; services; definitions; adding discrimination on the grounds of familial status as an unlawful discriminatory practice; exemptions; complaints; subpoenae and subpoenae duces tecum; hearings; delegation of authority to hearing examiners; commission review of hearing examiner's final decision; conciliation agreements; unlawful discriminatory practices generally; and appeal and enforcement of commission orders.

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

That sections two, three, four, eight, nine and eleven, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 11. HUMAN RIGHTS COMMISSION.

- §5-11-2. Declaration of policy.
- §5-11-3. Definitions.
- §5-11-4. Human rights commission continued; status, powers and objects.
- §5-11-8. Commission powers; functions; services.
- §5-11-9. Unlawful discriminatory practices.
- §5-11-11. Appeal and enforcement of commission orders.

#### §5-11-2. Declaration of policy.

- 1 It is the public policy of the state of West Virginia to
- 2 provide all of its citizens equal opportunity for employ-
- 3 ment, equal access to places of public accommodations,
- 4 and equal opportunity in the sale, purchase, lease, rental
- 5 and financing of housing accommodations or real
- 6 property. Equal opportunity in the areas of employment
- 7 and public accommodations is hereby declared to be a

8 human right or civil right of all persons without regard  
9 to race, religion, color, national origin, ancestry, sex,  
10 age, blindness or handicap. Equal opportunity in  
11 housing accommodations or real property is hereby  
12 declared to be a human right or civil right of all persons  
13 without regard to race, religion, color, national origin,  
14 ancestry, sex, blindness, handicap, or familial status.

15 The denial of these rights to properly qualified  
16 persons by reason of race, religion, color, national origin,  
17 ancestry, sex, age, blindness, handicap, or familial  
18 status is contrary to the principles of freedom and  
19 equality of opportunity and is destructive to a free and  
20 democratic society.

### §5-11-3. Definitions.

1 When used in this article:

2 (a) The term "person" means one or more individuals,  
3 partnerships, associations, organizations, corporations,  
4 labor organizations, cooperatives, legal representatives,  
5 trustees, trustees in bankruptcy, receivers and other  
6 organized groups of persons;

7 (b) The term "commission" means the West Virginia  
8 human rights commission;

9 (c) The term "director" means the executive director  
10 of the commission;

11 (d) The term "employer" means the state, or any  
12 political subdivision thereof, and any person employing  
13 twelve or more persons within the state: *Provided*, That  
14 such terms shall not be taken, understood or construed  
15 to include a private club;

16 (e) The term "employee" shall not include any individ-  
17 ual employed by his parents, spouse or child, or in the  
18 domestic service of any person;

19 (f) The term "labor organization" includes any  
20 organization which exists for the purpose, in whole or  
21 in part, for collective bargaining or for dealing with  
22 employers concerning grievances, terms or conditions of  
23 employment, or for other mutual aid or protection in  
24 relation to employment;

25 (g) The term "employment agency" includes any  
26 person undertaking with or without compensation to  
27 procure, recruit, refer or place employees. A newspaper  
28 engaged in the activity of advertising in the normal  
29 course of its business shall not be deemed to be an  
30 employment agency;

31 (h) The term "discriminate" or "discrimination"  
32 means to exclude from, or fail or refuse to extend to,  
33 a person equal opportunities because of race, religion,  
34 color, national origin, ancestry, sex, age, blindness,  
35 handicap, or familial status and includes to separate or  
36 segregate;

37 (i) The term "unlawful discriminatory practices"  
38 includes only those practices specified in section nine of  
39 this article;

40 (j) The term "place of public accommodations" means  
41 any establishment or person, as defined herein, includ-  
42 ing the state, or any political or civil subdivision thereof,  
43 which offers its services, goods, facilities or accommo-  
44 dations to the general public, but shall not include any  
45 accommodations which are in their nature private;

46 (k) The term "housing accommodations" means any  
47 building or portion thereof, which is used or intended  
48 for use as the residence or sleeping place of one or more  
49 persons. Nothing contained in this definition or this  
50 article shall apply to the rental of a room or rooms in  
51 a rooming house occupied by the owner as a place of  
52 residence and containing no more than four rented  
53 rooms, or rooms to be rented;

54 (l) The term "real property" includes real estate,  
55 lands, leaseholds, commercial or industrial buildings  
56 and any vacant land offered for sale or rent on which  
57 the construction of a housing accommodation, commer-  
58 cial or industrial building is intended, and any land  
59 operated as a trailer camp or rented or leased for the  
60 use, parking or storage of mobile homes or house  
61 trailers;

62 (m) The term "real estate broker" includes any  
63 person, firm or corporation who, for a fee, commission

64 or other valuable consideration, or by reason of a  
65 promise or reasonable expectation thereof, lists for sale,  
66 sells, exchanges, buys or rents, or offers or attempts to  
67 negotiate a sale, exchange, purchase, or rental of real  
68 estate or an interest therein, or collects or offers or  
69 attempts to collect rent for the use of real estate or  
70 solicits for a prospective purchaser or assists or directs  
71 in the procuring of prospects or the negotiation or  
72 closing of any transaction which does or is contemplated  
73 to result in the sale, exchange, leasing, renting or  
74 auctioning of any real estate or negotiates, offers or  
75 attempts or agrees to negotiate a loan secured or to be  
76 secured by mortgage or other encumbrance upon  
77 transfer of any real estate for others, or any person who,  
78 for pecuniary gain or expectation of pecuniary gain,  
79 conducts a public or private competitive sale of lands or  
80 any interest in lands. In the sale of lots, the term "real  
81 estate broker" shall also include any person, partner-  
82 ship, association or corporation employed by or on behalf  
83 of the owner or owners of lots or other parcels of real  
84 estate, at a stated salary, or upon a commission, or upon  
85 a salary and commission, or otherwise to sell such real  
86 estate, or any parts thereof, in lots or other parcels, and  
87 who shall sell or exchange, or offer or attempt or agree  
88 to negotiate the sale or exchange, of any such lot or  
89 parcel of real estate. A newspaper engaged in the  
90 activity of advertising in the normal course of its  
91 business shall not be deemed to be a real estate broker;

92 (n) The term "real estate salesman" includes any  
93 person who, for compensation, valuable consideration or  
94 commission, or other thing of value, or by reason of a  
95 promise or reasonable expectation thereof, is employed  
96 by and operates under the supervision of a real estate  
97 broker to sell, buy or offer to buy or negotiate the  
98 purchase, sale or exchange of real estate, offers or  
99 attempts to negotiate a loan secured or to be secured by  
100 a mortgage or other encumbrance upon or transfer of  
101 real estate for others, or to collect rents for the use of  
102 real estate, or to solicit for prospective purchasers or  
103 lessees of real estate, or who is employed by a licensed  
104 real estate broker to sell or offer to sell lots or other  
105 parcels of real estate, at a stated salary, or upon a

106 commission, or upon a salary and commission, or  
107 otherwise to sell real estate, or any parts thereof, in lots  
108 or other parcels;

109 (o) The term "purchaser" includes any occupant,  
110 prospective occupant, lessee, prospective lessee, renter,  
111 prospective renter, buyer or prospective buyer;

112 (p) The term "owner" shall include the owner, lessee,  
113 sublessee, assignee, manager, agents, or other person,  
114 firm or corporation having the right to sell, rent or lease  
115 any housing accommodation or real property within the  
116 state of West Virginia or any agent of any of these;

117 (q) The term "age" means the age of forty or above;

118 (r) The term "rooming house" means a house or  
119 building where there are one or more bedrooms which  
120 the proprietor can spare for the purpose of giving  
121 lodgings to such persons as he chooses to receive;

122 (s) For the purpose of this article, a person shall be  
123 considered to be blind only if his central visual acuity  
124 does not exceed twenty/two hundred in the better eye  
125 with correcting lenses, or if his visual acuity is greater  
126 than twenty/two hundred but is occasioned by a  
127 limitation in the fields of vision such that the widest  
128 diameter of the visual field subtends an angle no greater  
129 than twenty degrees;

130 (t) The term "handicap" means a person who:

131 (1) Has a mental or physical impairment which  
132 substantially limits one or more of such person's major  
133 life activities; the term "major life activities" includes  
134 functions such as caring for one's self, performing  
135 manual tasks, walking, seeing, hearing, speaking,  
136 breathing, learning, and working;

137 (2) Has a record of such impairment; or

138 (3) Is regarded as having such an impairment.

139 For the purposes of this article, this term does not  
140 include persons whose current use of or addiction to  
141 alcohol or drugs prevents such individual from perform-  
142 ing the duties of the job in question or whose employ-



143 ment, by reason of such current alcohol or drug abuse,  
144 would constitute a direct threat to property or the safety  
145 of others.

146 (u) The term "familial status" means one or more  
147 individuals (who have not attained the age of eighteen  
148 years) being domiciled with:

149 (1) A parent or another person having legal custody  
150 of such individual or individuals; or

151 (2) The designee of such parent or other person  
152 having such custody, with the written permission of  
153 such parent or other person. The protections afforded  
154 against discrimination on the basis of familial status  
155 shall apply to any person who is pregnant or is in the  
156 process of securing legal custody of any individual who  
157 has not attained the age of eighteen years. Nothing in  
158 this definition restricts advertisements of dwellings  
159 which are intended and operated for occupancy by older  
160 persons and which constitute housing for older persons.

**§5-11-4. Human rights commission continued; status, powers and objects.**

1 The West Virginia human rights commission, hereto-  
2 fore created, is hereby continued. The commission shall  
3 have the power and authority and shall perform the  
4 functions and services as in this article prescribed and  
5 as otherwise provided by law. The commission shall  
6 encourage and endeavor to bring about mutual under-  
7 standing and respect among all racial, religious and  
8 ethnic groups within the state and shall strive to  
9 eliminate all discrimination in employment and places  
10 of public accommodations by virtue of race, religion,  
11 color, national origin, ancestry, sex, age, blindness or  
12 handicap and shall strive to eliminate all discrimination  
13 in the sale, purchase, lease, rental or financing of  
14 housing and other real property by virtue of race,  
15 religion, color, national origin, ancestry, sex, blindness,  
16 handicap, or familial status.

**§5-11-8. Commission powers; functions; services.**

1 The commission is hereby authorized and empowered:

2 (a) To cooperate and work with federal, state and  
3 local government officers, units, activities and agencies  
4 in the promotion and attainment of more harmonious  
5 understanding and greater equality of rights between  
6 and among all racial, religious and ethnic groups in this  
7 state;

8 (b) To enlist the cooperation of racial, religious and  
9 ethnic units, community and civic organizations,  
10 industrial and labor organizations and other identifiable  
11 groups of the state in programs and campaigns devoted  
12 to the advancement of tolerance, understanding and the  
13 equal protection of the laws of all groups and peoples;

14 (c) To receive, investigate and pass upon complaints  
15 alleging discrimination in employment or places of  
16 public accommodations, because of race, religion, color,  
17 national origin, ancestry, sex, age, blindness or han-  
18 dicap, and complaints alleging discrimination in the  
19 sale, purchase, lease, rental and financing of housing  
20 accommodations or real property because of race,  
21 religion, color, national origin, ancestry, sex, blindness,  
22 handicap, or familial status, and to initiate its own  
23 consideration of any situations, circumstances or  
24 problems, including therein any racial, religious or  
25 ethnic group tensions, prejudice, disorder or discrimina-  
26 tion reported or existing within the state relating to  
27 employment, places of public accommodations, housing  
28 accommodations and real property;

29 (d) To hold and conduct public and private hearings  
30 in the county where the respondent resides or transacts  
31 business or where agreed to by the parties or where the  
32 acts complained of occurred, on complaints, matters and  
33 questions before the commission and, in connection  
34 therewith, relating to discrimination in employment, or  
35 places of public accommodations, housing accommoda-  
36 tions or real property and during the investigation of  
37 any formal complaint before the commission relating to  
38 employment, places of public accommodations, housing  
39 accommodations or real property to:

40 (1) Issue subpoenas and subpoenas duces tecum upon  
41 the approval of the executive director or the chairperson

42 of the commission; administer oaths; take the testimony  
43 of any person under oath; and make reimbursement for  
44 travel and other reasonable and necessary expenses in  
45 connection with such attendance;

46 (2) Furnish copies of public hearing records to parties  
47 involved therein upon their payment of the reasonable  
48 costs thereof to the commission;

49 (3) Delegate to a hearing examiner who shall be an  
50 attorney, duly licensed to practice law in West Virginia,  
51 the power and authority to hold and conduct hearings,  
52 as herein provided, to determine all questions of fact and  
53 law presented during the hearing and to render a final  
54 decision on the merits of the complaint, subject to the  
55 review of the commission as hereinafter set forth.

56 Any respondent or complainant who shall feel ag-  
57 grieved at any final action of a hearing examiner shall  
58 file a written notice of appeal with the commission by  
59 serving such notice on the executive director and upon  
60 all other parties within thirty days after receipt of the  
61 hearing examiner's decision. The commission shall limit  
62 its review upon such appeals to whether the hearing  
63 examiner's decision is:

64 (a) In conformity with the constitution and the laws  
65 of the state and the United States;

66 (b) Within the commission's statutory jurisdiction or  
67 authority;

68 (c) Made in accordance with procedures required by  
69 law or established by appropriate rules or regulations  
70 of the commission;

71 (d) Supported by substantial evidence on the whole  
72 record; or

73 (e) Not arbitrary, capricious or characterized by  
74 abuse of discretion or clearly unwarranted exercise of  
75 discretion.

76 (4) To enter into conciliation agreements and consent  
77 orders.

78 Each conciliation agreement shall include provisions

79 requiring the respondent to refrain from the commission  
80 of unlawful discriminatory practices in the future and  
81 shall contain such further provisions as may be agreed  
82 upon by the commission and the respondent.

83 If the respondent and the commission agree upon  
84 conciliation terms, the commission shall serve upon the  
85 complainant a copy of the proposed conciliation agree-  
86 ment. If the complainant agrees to the terms of the  
87 agreement or fails to object to such terms within fifteen  
88 days after its service upon him, the commission shall  
89 issue an order embodying such conciliation agreement.  
90 If the complainant objects to the agreement, he shall  
91 serve a specification of his objections upon the commis-  
92 sion within such period. Unless such objections are met  
93 or withdrawn within ten days after service thereof, the  
94 commission shall notice the complaint for hearing.

95 Notwithstanding any other provisions of this section,  
96 the commission may, where it finds the terms of the  
97 conciliation agreement to be in the public interest,  
98 execute such agreement, and limit the hearing to the  
99 objections of the complainant.

100 If a conciliation agreement is entered into, the  
101 commission shall serve a copy of the order embodying  
102 such agreement upon all parties to the proceeding.

103 Not later than one year from the date of a conciliation  
104 agreement, the commission shall investigate whether  
105 the respondent is complying with the terms of such  
106 agreement. Upon a finding of noncompliance, the  
107 commission shall take appropriate action to assure  
108 compliance;

109 (5) To apply to the circuit court of the county where  
110 the respondent resides or transacts business for enforce-  
111 ment of any conciliation agreement or consent order by  
112 seeking specific performance of such agreement or  
113 consent order;

114 (6) To issue cease and desist orders against any person  
115 found, after a public hearing, to have violated the  
116 provisions of this article or the rules and regulations of  
117 the commission;

118 (7) To apply to the circuit court of the county where  
119 the respondent resides or transacts business for an order  
120 enforcing any lawful cease and desist order issued by  
121 the commission;

122 (e) To recommend to the governor and Legislature  
123 policies, procedures, practices and legislation in matters  
124 and questions affecting human rights;

125 (f) To delegate to its executive director such powers,  
126 duties and functions as may be necessary and expedient  
127 in carrying out the objectives and purposes of this  
128 article;

129 (g) To prepare a written report on its work, functions  
130 and services for each year ending on the thirtieth day  
131 of June and to deliver copies thereof to the governor on  
132 or before the first day of December next thereafter;

133 (h) To do all other acts and deeds necessary and  
134 proper to carry out and accomplish effectively the  
135 objects, functions and services contemplated by the  
136 provisions of this article, including the promulgation of  
137 legislative rules in accordance with the provisions of  
138 article three, chapter twenty-nine-a of this code,  
139 implementing the powers and authority hereby vested  
140 in the commission;

141 (i) To create such advisory agencies and conciliation  
142 councils, local, regional or statewide, as in its judgment  
143 will aid in effectuating the purposes of this article, to  
144 study the problems of discrimination in all or specific  
145 fields or instances of discrimination because of race,  
146 religion, color, national origin, ancestry, sex, age,  
147 blindness, handicap, or familial status; to foster, through  
148 community effort or otherwise, goodwill, cooperation  
149 and conciliation among the groups and elements of the  
150 population of this state, and to make recommendations  
151 to the commission for the development of policies and  
152 procedures, and for programs of formal and informal  
153 education, which the commission may recommend to the  
154 appropriate state agency. Such advisory agencies and  
155 conciliation councils shall be composed of representative  
156 citizens serving without pay. The commission may itself  
157 make the studies and perform the acts authorized by

158 this subdivision. It may, by voluntary conferences with  
159 parties in interest, endeavor by conciliation and persua-  
160 sion to eliminate discrimination in all the stated fields  
161 and to foster goodwill and cooperation among all  
162 elements of the population of the state;

163 (j) To accept contributions from any person to assist  
164 in the effectuation of the purposes of this section and to  
165 seek and enlist the cooperation of private, charitable,  
166 religious, labor, civic and benevolent organizations for  
167 the purposes of this section;

168 (k) To issue such publications and such results of  
169 investigation and research as in its judgment will tend  
170 to promote goodwill and minimize or eliminate discrim-  
171 ination: *Provided*, That the identity of the parties  
172 involved shall not be disclosed.

#### §5-11-9. Unlawful discriminatory practices.

1 (a) It shall be an unlawful discriminatory practice,  
2 unless based upon a bona fide occupational qualification,  
3 or except where based upon applicable security regula-  
4 tions established by the United States or the state of  
5 West Virginia or its agencies or political subdivisions:

6 (1) For any employer to discriminate against an  
7 individual with respect to compensation, hire, tenure,  
8 terms, conditions or privileges of employment if the  
9 individual is able and competent to perform the services  
10 required even if such individual is blind or handicapped:  
11 *Provided*, That it shall not be unlawful discriminatory  
12 practice for an employer to observe the provisions of any  
13 bona fide pension, retirement, group or employee  
14 insurance, or welfare benefit plan or system not adopted  
15 as a subterfuge to evade the provisions of this  
16 subdivision;

17 (2) For any employer, employment agency or labor  
18 organization, prior to the employment or admission to  
19 membership, to (A) elicit any information or make or  
20 keep a record of or use any form of application or  
21 application blank containing questions or entries  
22 concerning the race, religion, color, national origin,  
23 ancestry, sex or age of any applicant for employment or

24 membership; (B) print or publish or cause to be printed  
25 or published any notice or advertisement relating to  
26 employment or membership indicating any preference,  
27 limitation, specifications or discrimination based upon  
28 race, religion, color, national origin, ancestry, sex or  
29 age; or (C) deny or limit, through a quota system,  
30 employment or membership because of race, religion,  
31 color, national origin, ancestry, sex, age, blindness or  
32 handicap;

33 (3) For any labor organization because of race,  
34 religion, color, national origin, ancestry, sex, age,  
35 blindness or handicap of any individual to deny full and  
36 equal membership rights to any individual or otherwise  
37 to discriminate against such individual with respect to  
38 hire, tenure, terms, conditions or privileges of employ-  
39 ment or any other matter, directly or indirectly, related  
40 to employment;

41 (4) For an employer, labor organization, employment  
42 agency or any joint labor-management committee  
43 controlling apprentice training programs to:

44 (A) Select individuals for an apprentice training  
45 program registered with the state of West Virginia on  
46 any basis other than their qualifications as determined  
47 by objective criteria which permit review;

48 (B) Discriminate against any individual with respect  
49 to his right to be admitted to or participate in a  
50 guidance program, an apprenticeship training program,  
51 on-the-job training program, or other occupational  
52 training or retraining program;

53 (C) Discriminate against any individual in his pursuit  
54 of such programs or to discriminate against such a  
55 person in the terms, conditions or privileges of such  
56 programs;

57 (D) Print or circulate or cause to be printed or  
58 circulated any statement, advertisement or publication,  
59 or to use any form of application for such programs or  
60 to make any inquiry in connection with such program  
61 which expresses, directly or indirectly, discrimination  
62 or any intent to discriminate, unless based upon a bona  
63 fide occupational qualification;

64 (5) For any employment agency to fail or refuse to  
65 classify properly, refer for employment or otherwise to  
66 discriminate against any individual because of his race,  
67 religion, color, national origin, ancestry, sex, age,  
68 blindness or handicap;

69 (6) For any person being the owner, lessee, proprietor,  
70 manager, superintendent, agent or employee of any  
71 place of public accommodations to:

72 (A) Refuse, withhold from or deny to any individual  
73 because of his race, religion, color, national origin,  
74 ancestry, sex, age, blindness or handicap, either directly  
75 or indirectly, any of the accommodations, advantages,  
76 facilities, privileges or services of such place of public  
77 accommodations;

78 (B) Publish, circulate, issue, display, post or mail,  
79 either directly or indirectly, any written or printed  
80 communication, notice or advertisement to the effect  
81 that any of the accommodations, advantages, facilities,  
82 privileges or services of any such place shall be refused,  
83 withheld from or denied to any individual on account of  
84 race, religion, color, national origin, ancestry, sex, age,  
85 blindness or handicap, or that the patronage or custom  
86 thereat of any individual, belonging to or purporting to  
87 be of any particular race, religion, color, national origin,  
88 ancestry, sex or age or who is blind or handicapped, is  
89 unwelcome, objectionable, not acceptable, undesired or  
90 not solicited;

91 (7) For the owner, lessee, sublessee, assignee or  
92 managing agent of, or other person having the right of  
93 ownership or possession of or the right to sell, rent,  
94 lease, assign or sublease any housing accommodations or  
95 real property or part or portion thereof, or any agent,  
96 or employee of any of them; or for any real estate broker,  
97 real estate salesman, or employee or agent thereof:

98 (A) To refuse to sell, rent, lease, assign or sublease or  
99 otherwise to deny to or withhold from any person or  
100 group of persons any housing accommodations or real  
101 property, or part or portion thereof, because of race,  
102 religion, color, national origin, ancestry, sex, blindness,  
103 handicap or familial status of such person or group of  
104 persons: *Provided*, That this provision shall not require



105 any person named herein to rent, lease, assign or  
106 sublease any housing accommodations or real property,  
107 or any portion thereof to both sexes where the facilities  
108 of such housing accommodations or real property, or any  
109 portion thereof, are suitable for only one sex;

110 (B) To discriminate against any person or group of  
111 persons because of the race, religion, color, national  
112 origin, ancestry, sex, blindness, handicap, or familial  
113 status of such person or group of persons in the terms,  
114 conditions or privileges of the sale, rental or lease of any  
115 housing accommodations or real property, or part or  
116 portion thereof, or in the furnishing of facilities or  
117 services in connection therewith;

118 (C) To print, publish, circulate, issue, display, post or  
119 mail, or cause to be printed, published, circulated,  
120 issued, displayed, posted or mailed any statement,  
121 advertisement, publication, or sign or to use any form  
122 of application for the purchase, rental, lease, assignment  
123 or sublease of any housing accommodations or real  
124 property, or part or portion thereof, or to make any  
125 record or inquiry in connection with the prospective  
126 purchase, rental, lease, assignment or sublease of any  
127 housing accommodations or real property or part or  
128 portion thereof, which expresses, directly or indirectly,  
129 any discrimination as to race, religion, color, national  
130 origin, ancestry, sex, blindness, handicap, or familial  
131 status or any intent to make any such discrimination  
132 and the production of any statement, advertisement,  
133 publicity, sign, form of application, record or inquiry  
134 purporting to be made by any such person shall be  
135 prima facie evidence in any action that the same was  
136 authorized by such person: *Provided*, That with respect  
137 to sex discrimination, this provision shall not apply to  
138 any person named herein whose housing accommoda-  
139 tions or real property, or any portion thereof, have  
140 facilities which are suitable for only one sex;

141 (8) For any person or financial institution or lender  
142 to whom application is made for financial assistance for  
143 the purchase, acquisition, construction, rehabilitation,  
144 repair or maintenance of any housing accommodations

145 or real property, or part or portion thereof, or any agent  
146 or employee thereof to:

147 (A) Discriminate against any person or group of  
148 persons because of race, religion, color, national origin,  
149 ancestry, sex, blindness, handicap, or familial status of  
150 such person or group of persons or of the prospective  
151 occupants or tenants of such housing accommodations or  
152 real property, or part or portion thereof, in the granting,  
153 withholding, extending, modifying or renewing, or in  
154 the fixing of the rates, terms, conditions or provisions  
155 of any such financial assistance or in the extension of  
156 services in connection therewith;

157 (B) Use any form of application for such financial  
158 assistance or to make any record of inquiry in connec-  
159 tion with applications for such financial assistance  
160 which expresses, directly or indirectly, any discrimina-  
161 tion as to race, religion, color, national origin, ancestry,  
162 sex, blindness, handicap, or familial status or any intent  
163 to make any such discrimination;

164 (9) For any person, employer, employment agency,  
165 labor organization, owner, real estate broker, real estate  
166 salesman or financial institution to:

167 (A) Engage in any form of threats or reprisal, or to  
168 engage in, or hire, or conspire with others to commit  
169 acts or activities of any nature, the purpose of which is  
170 to harass, degrade, embarrass, or cause physical harm  
171 or economic loss or to aid, abet, incite, compel or coerce  
172 any person to engage in any of the unlawful discrimi-  
173 natory practices defined in this section;

174 (B) Willfully obstruct or prevent any person from  
175 complying with the provisions of this article, or to resist,  
176 prevent, impede or interfere with the commission or any  
177 of its members or representatives in the performance of  
178 duty under this article;

179 (C) Engage in any form of reprisal or otherwise  
180 discriminate against any person because he has opposed  
181 any practices or acts forbidden under this article or  
182 because he has filed a complaint, testified or assisted in  
183 any proceeding under this article;

184 (D) Induce or attempt to induce for profit any person  
185 to sell or rent or to not sell or rent any housing

186 accommodations or real property by representations  
187 regarding the entry or prospective entry into the  
188 neighborhood of a person or persons who are blind or  
189 handicapped or who are of a particular race, religion,  
190 color, national origin, ancestry or sex, or a person or  
191 persons against whom discrimination on the basis of  
192 familial status is prohibited by this article: *Provided*,  
193 That for the purposes of this article it shall not be an  
194 unlawful discriminatory practice for any person,  
195 employer or owner to refuse to make any unreasonable  
196 capital expenditure to accommodate the physical or  
197 mental impairment of any handicapped person.

198 (b) Solely for purposes of familial status, nothing in  
199 subdivision (7) of subsection (a) (other than subsection  
200 (c)) of this section shall apply to:

201 (1) Any single-family house sold or rented by an  
202 owner: *Provided*, That such private individual owner  
203 does not own more than three such single-family houses  
204 at any one time: *Provided, however*, That in the case of  
205 the sale of any such single-family house by a private  
206 individual owner not residing in such house at the time  
207 of such sale or who was not the most recent resident of  
208 such house prior to such sale, the exemption granted by  
209 this subsection shall apply only with respect to one such  
210 sale within any twenty-four month period: *Provided*  
211 *further*, That such bona fide private individual owner  
212 does not own any interest in, nor is there owned or  
213 reserved on his behalf, under any express or voluntary  
214 agreement, title to or any right to all or a portion of the  
215 proceeds from the sale or rental of, more than three such  
216 single-family houses at any one time: *And provided*  
217 *further*, That the sale or rental of any such single-family  
218 house shall be excepted from the application of this  
219 subchapter only if such house is sold or rented  
220 (A) without the use in any manner of the sales or rental  
221 facilities or the sales or rental services of any real estate  
222 broker, agent, or salesman, or of such facilities or  
223 services of any person in the business of selling or  
224 renting dwellings, or of any employee or agent of any  
225 such broker, agent, salesman, or person and (B) without  
226 the publication, posting or mailing, after notice of any  
227 advertisement or written notice in violation of para-

228 graph (C), subdivision (7), subsection (a) of this section;  
229 but nothing in this proviso shall prohibit the use of  
230 attorneys, escrow agents, abstractors, title companies,  
231 and other such professional assistance as necessary to  
232 perfect or transfer the title, or

233 (2) Rooms or units in dwellings containing living  
234 quarters occupied or intended to be occupied by no more  
235 than four families living independently of each other, if  
236 the owner actually maintains and occupies one of such  
237 living quarters as his residence.

238 (c) For the purposes of subsection (b) of this section,  
239 a person shall be deemed to be in the business of selling  
240 or renting dwellings if:

241 (1) He has, within the preceding twelve months,  
242 participated as principal in three or more transactions  
243 involving the sale or rental of any dwelling or any  
244 interest therein, or

245 (2) He has, within the preceding twelve months,  
246 participated as agent, other than in the sale of his own  
247 personal residence in providing sales or rental facilities  
248 or sales or rental services in two or more transactions  
249 involving the sale or rental of any dwelling or any  
250 interest therein, or

251 (3) He is the owner of any dwelling designed or  
252 intended for occupancy by, or occupied by, five or more  
253 families.

254 (d) (1) Nothing in this article limits the applicability  
255 of any reasonable local, state, or federal restrictions  
256 regarding the maximum number of occupants permitted  
257 to occupy a dwelling. Nor does any provision in this  
258 article regarding familial status apply with respect to  
259 housing for older persons.

260 (2) As used in this section "housing for older persons"  
261 means housing:

262 (A) Provided under any state or federal program that  
263 is specifically designed and operated to assist elderly  
264 persons (as defined in the state or federal program); or

265 (B) Intended for, and solely occupied by, persons  
266 sixty-two years of age or older; or

267 (C) Intended and operated for occupancy by at least  
268 one person fifty-five years of age or older per unit. In  
269 determining whether housing qualifies as housing for  
270 older persons under this subsection, the commission  
271 shall develop regulations which require at least the  
272 following factors:

273 (i) The existence of significant facilities and services  
274 specifically designed to meet the physical or social needs  
275 of older persons, or if the provision of such facilities and  
276 services is not practicable, that such housing is neces-  
277 sary to provide important housing opportunities for  
278 older persons; and

279 (ii) That at least eighty percent of the units are  
280 occupied by at least one person fifty-five years of age  
281 or older per unit; and

282 (iii) The publication of, and adherence to, policies and  
283 procedures which demonstrate an intent by the owner  
284 or manager to provide housing for persons fifty-five  
285 years of age or older.

286 (3) Housing shall not fail to meet the requirements for  
287 housing for older persons by reason of:

288 (A) Persons residing in such housing as of the first  
289 day of July, one thousand nine hundred eighty-nine, who  
290 do not meet the age requirements of paragraphs (B) or  
291 (C), subdivision (2) of this subsection: *Provided*, That  
292 new occupants of such housing meet the age require-  
293 ments of paragraphs (B) or (C), subdivision (2) of this  
294 subsection; or

295 (B) Unoccupied units: *Provided*, That such units are  
296 reserved for occupancy by persons who meet the age  
297 requirements of paragraphs (B) or (C), subdivision  
298 (2) of this subsection.

#### §5-11-11. Appeal and enforcement of commission orders.

1 (a) From any final order of the commission, an  
2 application for review may be prosecuted by either  
3 party to the supreme court of appeals within thirty days  
4 from the receipt thereof by the filing of a petition  
5 therefor to such court against the commission and the  
6 adverse party as respondents, and the clerk of such  
7 court shall notify each of the respondents and the

8 commission of the filing of such petition. The commis-  
9 sion shall, within ten days after receipt of such notice,  
10 file with the clerk of the court the record of the  
11 proceedings had before it, including all the evidence.  
12 The court or any judge thereof in vacation may  
13 thereupon determine whether or not a review shall be  
14 granted. And if granted to a nonresident of this state,  
15 he shall be required to execute and file with the clerk  
16 before such order or review shall become effective, a  
17 bond, with security to be approved by the clerk,  
18 conditioned to perform any judgment which may be  
19 awarded against him thereon. The commission may  
20 certify to the court and request its decision of any  
21 question of law arising upon the record, and withhold  
22 its further proceeding in the case, pending the decision  
23 of court on the certified question, or until notice that the  
24 court has declined to docket the same. If a review be  
25 granted or the certified question be docketed for  
26 hearing, the clerk shall notify the board and the parties  
27 litigant or their attorneys and the commission of the fact  
28 by mail. If a review be granted or the certified question  
29 docketed, the case shall be heard by the court in the  
30 manner provided for other cases: *Provided*, That in the  
31 following cases the appellant may prosecute the appeal  
32 in the circuit court of Kanawha County pursuant to  
33 section four, article five, chapter twenty-nine-a of this  
34 code: (1) Cases in which the commission awards  
35 damages other than back pay exceeding five thousand  
36 dollars; (2) cases in which the commission awards back  
37 pay exceeding thirty thousand dollars; and (3) cases in  
38 which the parties agree that the appeal should be  
39 prosecuted in circuit court. In such cases the appellee  
40 shall respond within thirty days of filing and the court  
41 shall make a determination within the following thirty  
42 days: *Provided, however*, That appeals filed erroneously  
43 in the circuit court after the first day of April, one  
44 thousand nine hundred eighty-seven, and prior to the  
45 first day of July, one thousand nine hundred eighty-nine,  
46 may be prosecuted in the supreme court of appeals  
47 without regard to the time limits specified herein:  
48 *Provided further*, That any party adversely affected by  
49 the final judgment of the circuit court of Kanawha

50 County may seek review thereof by appeal to the  
51 supreme court of appeals pursuant to section one, article  
52 six, chapter twenty-nine-a of this code filed within thirty  
53 days of entry of the final order of the circuit court.

54 The appeal procedure contained in this subsection  
55 shall be the exclusive means of review, notwithstanding  
56 the provisions of chapter twenty-nine-a of this code:  
57 *Provided*, That such exclusive means of review shall not  
58 apply to any case wherein an appeal or a petition for  
59 enforcement of a cease and desist order has been filed  
60 with a circuit court of this state prior to the first day  
61 of April, one thousand nine hundred eighty-seven.

62 (b) In the event that any person shall fail to obey a  
63 final order of the commission within thirty days after  
64 receipt of the same, or, if applicable, within thirty days  
65 after a final order of the circuit court or the supreme  
66 court of appeals, a party or the commission may seek  
67 an order from the circuit court for its enforcement. Such  
68 proceedings shall be initiated by filing of a petition in  
69 said court, and served upon the respondent in the  
70 manner provided by law for the service of summons in  
71 civil actions; a hearing shall be held on such petition  
72 within sixty days of the date of service. The court may  
73 grant appropriate temporary relief, and shall make and  
74 enter upon the pleadings, testimony and proceedings  
75 such order as is necessary to enforce the order of the  
76 commission or supreme court of appeals.

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## CHAPTER 93

(Com. Sub. for H. B. 2167—By Delegates Flanigan and White)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight; and to further amend said chapter by adding thereto a new article, designated article eight, all relating to establishment of a charity food bank

advisory committee and assistance fund; requiring local human services offices and the department of human services to provide information and referral service; giving exemption from civil and criminal liability; directing diversion of state surplus food to food banks; establishing collection and distribution centers; setting minimum standards for food banks; directing use of state surplus buildings and equipment for food banks; providing that nonprofit organizations and food stamp programs not be affected; establishing food bank advisory committee and setting method of appointment and terms of members; setting duties of committee; and establishing food bank assistance fund.

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

That article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eight; and that said chapter be further amended by adding thereto a new article, designated article eight, all to read as follows:

**Article**

2. Department of Human Services and Office of Commissioner of Human Services; Powers, Duties and Responsibilities Generally.
8. Charity Food Banks.

**ARTICLE 2. DEPARTMENT OF HUMAN SERVICES AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.**

**§9-2-8. Information and referral services.**

1 (a) Each local human services office shall compile,  
2 maintain and post a current list of charity food banks  
3 and other emergency food providers in the area served  
4 by the local food stamp office and refer individuals who  
5 need food to local programs that may be able to provide  
6 assistance.

7 (b) The department shall utilize its existing statewide  
8 toll free telephone number to provide emergency food  
9 information and to refer needy individuals to local  
10 programs that may be able to provide assistance. The  
11 department shall publish the telephone number for



12 referrals in the emergency telephone numbers section of  
13 local telephone books. The department shall display this  
14 telephone number in all its offices that issue food  
15 stamps.

#### ARTICLE 8. CHARITY FOOD BANKS.

- §9-8-1. Purpose.
- §9-8-2. Donation of food items; exemption from civil and criminal liability.
- §9-8-3. Definitions.
- §9-8-4. Authorization of donations; diversion of products by directors to organizations.
- §9-8-5. Surplus food collection and distribution centers.
- §9-8-6. Minimum standards for food banks.
- §9-8-7. State surplus buildings and equipment; availability to charity food banks.
- §9-8-8. Effect of article on other nonprofit organizations.
- §9-8-9. Application of article to food stamp act.
- §9-8-10. Charity food bank advisory committee; terms; compensation; officers; duties.
- §9-8-11. Charity food bank assistance fund; restriction.

##### §9-8-1. Purpose.

1 The purpose of this article is to address the wide-  
2 spread and growing problem of hunger in this state by  
3 improving the distribution of food to the hungry,  
4 providing a means of funding agencies which distribute  
5 food on an emergency basis, gathering and disseminat-  
6 ing information related to the problem of hunger,  
7 assuring that distribution activities are responsive to the  
8 needs of local charity food banks, facilitating the  
9 creation of charity food banks and ensuring maximum  
10 access to food banks.

##### §9-8-2. Donation of food items; exemption from civil and criminal liability.

1 Any person who makes a good faith donation of  
2 prepared or perishable food which appears to be fit for  
3 human consumption at the time it is donated to a  
4 charitable or nonprofit organization is not liable for  
5 damages in any civil action or subject to criminal  
6 prosecution for any injury or death due to the condition  
7 of such food unless the injury or death is a direct result  
8 of the gross negligence, recklessness or intentional  
9 misconduct of the donor.

10 A charitable or nonprofit organization or an officer,  
11 employee or volunteer of such an organization that in  
12 good faith receives and distributes, without charge, food  
13 which appears to be fit for human consumption at the  
14 time it is distributed is not liable for damages in any  
15 civil action or subject to criminal prosecution for any  
16 injury or death due to the condition of such food unless  
17 the injury or death is a direct result of the gross  
18 negligence, recklessness or intentional misconduct of the  
19 organization or its officers, employees or volunteer  
20 workers.

21 This section applies to all good faith donations of  
22 perishable food which is not readily marketable due to  
23 appearance, freshness, grade, surplus supply or other  
24 conditions.

### §9-8-3. Definitions.

1 In this article, unless the context otherwise requires:

2 "Agricultural product" means any fowl, animal,  
3 vegetable or other item, product or article which is  
4 customary food or which is proper food for human  
5 consumption.

6 "Charity food bank" means a nonprofit organization  
7 that solicits, stores, or redistributes food products to  
8 charitable organizations and individuals for the purpose  
9 of feeding needy families and individuals.

10 "Nonprofit charitable organization" means an organ-  
11 ization which is organized and operates for a charitable  
12 purpose.

### §9-8-4. Authorization of donations; diversion of products by directors to organizations.

1 A person engaged in the business of processing,  
2 distributing or selling any agricultural product may  
3 donate, free of charge, any agricultural product to a  
4 charity food bank.

5 To assist in accomplishing the purposes of this section,  
6 the director of each department of state government  
7 shall divert, whenever possible, surplus agricultural  
8 products to organizations operating pursuant to this  
9 article.

**§9-8-5. Surplus food collection and distribution centers.**

1 The department of agriculture shall establish and  
2 publicize the services of an information and food  
3 collection center for receiving and transmitting infor-  
4 mation concerning available agricultural products; or  
5 what organization desires or needs donated agricultural  
6 products to be donated; and for collecting, receiving,  
7 handling, storing and distributing donated agricultural  
8 products. A nonprofit charitable organization which  
9 regularly needs agricultural products may be listed  
10 with a food collection center to be notified if agricultural  
11 products are available.

**§9-8-6. Minimum standards for food banks.**

1 In order to qualify as a charity food bank, an  
2 organization shall meet all of the following minimum  
3 standards:

4 (a) Have access to storage facilities and refrigeration  
5 equipment for the purpose of collecting, receiving,  
6 handling, storing and distributing donated agricultural  
7 products;

8 (b) Be incorporated as a nonprofit tax exempt organ-  
9 ization and eligible as a charitable organization under  
10 the Internal Revenue Code (26 United States code  
11 section 501 (c) (3)) or affiliated with a qualified  
12 organization;

13 (c) Maintain records for the proper control of  
14 inventory;

15 (d) Demonstrate the availability of adequate liability  
16 insurance to cover the activities conducted pursuant to  
17 this article; and

18 (e) Show local support through funding sources,  
19 letters of endorsement and a board of directors which  
20 reflects the community and population to be served.

**§9-8-7. State surplus buildings and equipment; availability to charity food banks.**

1 The commissioner of the department of finance and  
2 administration shall assist a food bank by locating and

3 providing available state surplus buildings or equip-  
4 ment necessary for the operation of a charity food bank  
5 for use without charge.

**§9-8-8. Effect of article on other nonprofit organizations.**

1 Nothing in this article may restrict or limit the  
2 operation of any other nonprofit organization which is  
3 engaged in the distribution of agricultural products to  
4 nonprofit charitable organizations.

**§9-8-9. Application of article to food stamp act.**

1 Consonant with 7 C.F.R. 273.9(c)(1), programs oper-  
2 ated in accordance with this article shall complement  
3 and not in any way lessen assistance to families and  
4 individuals pursuant to the Food Stamp Act of 1977 as  
5 amended, (7 U.S.C. 2011 through 7 U.S.C. 2026).

**§9-8-10. Charity food bank advisory committee; terms;  
compensation; officers; duties.**

1 A charity food bank advisory committee is estab-  
2 lished. The members shall be appointed by the governor  
3 with the advice and consent of the Senate. The commit-  
4 tee shall consist of five members who shall serve  
5 staggered three year terms. Vacancies occurring shall  
6 be filled in the same manner for the balance of the  
7 unexpired term.

8 The committee shall consist of three members who  
9 have been active members of a food bank, one food  
10 industry representative and one member who is actively  
11 engaged in agriculture. The committee shall select a  
12 chairman and vice chairman. The committee shall meet  
13 at the call of the chairman, but at least four times a  
14 year. The initial meeting shall be called by the governor  
15 within sixty days after the committee has been  
16 appointed.

17 The committee shall:

18 (a) Provide information to the citizens of this state  
19 regarding food bank programs;

20 (b) Review procedures that assure that storage,  
21 transportation and distribution activities conducted

22 under the authority of this article are efficiently carried  
23 out and are responsive to the needs of local food banks  
24 and community organizations involved in food  
25 distribution;

26 (c) Review procedures that assure maximum access  
27 for food banks and community organizations involved in  
28 food distribution to all available federal, state, county  
29 and city surplus food, supplies and equipment and to all  
30 potential private contributions;

31 (d) Review procedures that assure that necessary  
32 technical assistance is available to facilitate the creation  
33 of food banks in areas of this state in which they are  
34 needed and to facilitate food banks and community  
35 organizations in obtaining and effectively utilizing  
36 surplus agricultural commodities; and

37 (e) Submit an annual report to the governor, speaker  
38 of the House of Delegates and president of the Senate  
39 on or before the first day of January of each year.

**§9-8-11. Charity food bank assistance fund; restriction.**

1 A charity food bank assistance fund is established  
2 which shall consist of moneys provided by appropria-  
3 tion. A charity food bank which meets the minimum  
4 standards for food banks may qualify, subject to  
5 available moneys, for assistance from this fund for any  
6 of its operations.

7 Assistance granted pursuant to this article shall be  
8 administered by the commissioner of the department of  
9 human services. No more than five percent of the  
10 assistance granted to a charity food bank pursuant to  
11 this article may be used for administrative purposes.

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## CHAPTER 94

(Com. Sub. for S. B. 367—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated

section sixteen-a, relating to the department of human services and medicaid-certified nursing homes; requiring screening of persons applying for admission to or residing in such nursing homes to determine if they have mental illness or mental retardation; and providing for reimbursement of hospitals for certain days required for such screening.

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

That article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section sixteen-a, to read as follows:

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§9-5-16a. Medicaid-certified nursing homes; screening of applicants and residents for mental illness; reimbursement of hospitals.**

1 (a) The department of human services and depart-  
2 ment of health shall cause individuals applying for  
3 admission to or residing in a medicaid-certified nursing  
4 home to be screened as required by the Omnibus Budget  
5 Reconciliation Act of 1987.

6 (b) Effective the first day of April, one thousand nine  
7 hundred eighty-nine, hospitals shall receive administra-  
8 tive day payment at a rate set by the medicaid agency  
9 to reimburse the hospitals for days required for the  
10 screening of medicaid eligible patients required by  
11 subsection (a) of this section.

12 (c) The secretary of the department of health and  
13 human resources is authorized to promulgate rules and  
14 regulations to fully implement this section.

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## CHAPTER 95

(H. B. 2571—By Mr. Speaker, Mr. Chambers, and Delegate Martin)

[Passed March 15, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated

section twenty-two, to provide that business facilities and projects acquired, constructed or financed, in whole or in part, by the West Virginia industry and jobs development corporation shall not be included in any definition in the code of the term "public improvement."

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

That article one, chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-two, to read as follows:

**ARTICLE 1. WEST VIRGINIA INDUSTRY AND JOBS DEVELOPMENT CORPORATION.**

**§5C-1-22. Projects not to be considered public improvements.**

- 1 No project, enterprise or business facility which
- 2 conducts as its primary activity a manufacturing
- 3 process or other nongovernmental or nonpublic activity
- 4 may be deemed to be a "public improvement" within the
- 5 meaning of the provisions of article five-a, chapter
- 6 twenty-one of this code.

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## CHAPTER 96

(Com. Sub. for H. B. 2417—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section eight, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article twenty of said chapter; to amend and reenact section six, article twenty-four of said chapter; to amend and reenact section eight, article twenty-five of said chapter; and to amend section eight, article twenty-five-a of said chapter, all relating to extending of the rate and form filings review period on all rate and form filings involving insurance to sixty days; and notice of rate increase requests.

3 established pursuant to subdivision (2), subsection (c),  
4 section three of this article, rules and rates, every rating  
5 plan and every modification of any of the foregoing  
6 which it proposes to use for casualty insurance to which  
7 this article applies.

8 (2) Every insurer shall file with the commissioner,  
9 except as to inland marine risks which by general  
10 custom of the business are not written according to  
11 manual rates or rating plans, every manual, minimum,  
12 class rate, rating schedule or rating plan and every  
13 other rating rule and every modification of any of the  
14 foregoing which it proposes to use for fire and marine  
15 insurance to which this article applies. Specific inland  
16 marine rates on risks specially rated, made by a rating  
17 organization, shall be filed with the commissioner.

18 (b) Every such filing shall state the proposed effective  
19 date thereof and shall indicate the character and extent  
20 of the coverage contemplated. When a filing is not  
21 accompanied by the information upon which the insurer  
22 supports such filing, and the commissioner does not have  
23 sufficient information to determine whether such filing  
24 meets the requirements of this article, he shall require  
25 such insurer to furnish the information upon which it  
26 supports such filing and in such event the waiting  
27 period shall commence as of the date such information  
28 is furnished. The information furnished in support of a  
29 filing may include (1) the experience or judgment of the  
30 insurer or rating organization making the filing, (2) the  
31 experience or judgment of the insurer or rating  
32 organization in the territorial rate areas established by  
33 subdivision (2), subsection (c), section three of this  
34 article, (3) its interpretation of any statistical data it  
35 relies upon, (4) the experience of other insurers or rating  
36 organizations or (5) any other relevant factors. A filing  
37 and any supporting information shall be open to public  
38 inspection as soon as the filing is received by the  
39 commissioner. Any interested party may file a brief  
40 with the commissioner supporting his position concern-  
41 ing the filing. Any person or organization may file with  
42 the commissioner a signed statement declaring and



43 supporting his or its position concerning the filing. Upon  
44 receipt of such statement prior to the effective date of  
45 the filing, the commissioner shall mail or deliver a copy  
46 of such statement to the filer, which may file such reply  
47 as it may desire to make. This section shall not be  
48 applicable to any memorandum or statement of any kind  
49 by any employee of the commissioner.

50 (c) An insurer may satisfy its obligation to make such  
51 filing by becoming a member of, or a subscriber to, a  
52 licensed rating organization which makes such filings,  
53 and by authorizing the commissioner to accept such  
54 filings on its behalf: *Provided*, That nothing contained  
55 in this article shall be construed as requiring any  
56 insurer to become a member of or a subscriber to any  
57 rating organization.

58 (d) The commissioner shall review filings as soon as  
59 reasonably possible after they have been made in order  
60 to determine whether they meet the requirements of this  
61 article.

62 (e) Subject to the exceptions specified in subsections  
63 (f) and (g) of this section, each filing shall be on file for  
64 a waiting period of sixty days before it becomes  
65 effective. Upon written application by such insurer or  
66 rating organization, the commissioner may authorize a  
67 filing which he has reviewed to become effective before  
68 the expiration of the waiting period. A filing shall be  
69 deemed to meet the requirements of this article unless  
70 disapproved by the commissioner within the waiting  
71 period.

72 (f) Any special filing with respect to a surety bond  
73 required by law or by court or executive order or by  
74 order, rule or regulation of a public body, not covered  
75 by a previous filing, shall become effective when filed  
76 and shall be deemed to meet the requirements of this  
77 article until such time as the commissioner reviews the  
78 filing and so long thereafter as the filing remains in  
79 effect.

80 (g) Specific inland marine rates on risks specially  
81 rated by a rating organization shall become effective

82 when filed and shall be deemed to meet the require-  
83 ments of this article until such time as the commissioner  
84 reviews the filing and so long thereafter as the filing  
85 remains in effect.

86 (h) Under such rules and regulations as he shall adopt  
87 the commissioner may, by written order, suspend or  
88 modify the requirement of filing as to any kind of  
89 insurance, subdivision or combination thereof, or as to  
90 classes of risks, the rates for which cannot practicably  
91 be filed before they are used. Such orders, rules and  
92 regulations shall be made known to insurers and rating  
93 organizations affected thereby. The commissioner may  
94 make such examination as he may deem advisable to  
95 ascertain whether any rates affected by such order meet  
96 the standards set forth in subsection (b), section three  
97 of this article.

98 (i) Upon the written application of the insured,  
99 stating his reasons therefor, filed with and approved by  
100 the commissioner, a rate in excess of that provided by  
101 a filing otherwise applicable may be used on any specific  
102 risks.

103 (j) No insurer shall make or issue a contract or policy  
104 except in accordance with the filings which are in effect  
105 for said insurer as provided in this article or in  
106 accordance with subsection (h) or (i) of this section. This  
107 subsection shall not apply to contracts or policies for  
108 inland marine risks as to which filings are not required.

109 (k) In instances when an insurer files a request for an  
110 increase of automobile liability insurance rates in the  
111 amount of fifteen percent or more, the insurance  
112 commissioner shall provide notice of such increase with  
113 the office of the secretary of state to be filed in the state  
114 register and shall provide interested persons the  
115 opportunity to comment on such request up to the time  
116 the commissioner approves or disapproves such rate  
117 increase.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL  
SERVICE CORPORATIONS, DENTAL SERVICE  
CORPORATIONS AND HEALTH SERVICE  
CORPORATIONS.**

**§33-24-6. Commissioner to enforce article; approval of contracts, forms, rates and fees.**

1 (a) It shall be the duty of the commissioner to enforce  
2 the provisions of this article.

3 (b) No such corporation shall deliver or issue for  
4 delivery any subscriber's contract, changes in the terms  
5 of such contract, application, rider or endorsement, until  
6 a copy thereof and the rates pertaining thereto have  
7 been filed with and approved by the commissioner. All  
8 such forms filed with the commissioner shall be deemed  
9 approved after the expiration of sixty days from the date  
10 of such filing unless the commissioner shall have  
11 disapproved the same, stating his reasons for such  
12 disapproval in writing. Such forms may be used prior  
13 to the expiration of such periods if written approval  
14 thereof has been received from the commissioner.

15 (c) No rates to be charged subscribers shall be used  
16 or established by any such corporation unless and until  
17 the same have been filed with the commissioner and  
18 approved by him. The procedure for such filing and  
19 approval shall be the same as that prescribed in  
20 subsection (b) of this section for the approval of forms.  
21 The commissioner shall approve all such rates which are  
22 not excessive, inadequate or unfairly discriminatory.

23 (d) The commissioner shall pass upon the actuarial  
24 soundness of the schedule of fees to be paid hospitals,  
25 physicians, dentists and other health agencies.

**ARTICLE 25. HEALTH CARE CORPORATIONS.**

**\*§33-25-8. Commissioner to enforce article; approval of contracts, forms and rates; reserve fund; membership fee.**

1 (a) It shall be the duty of the commissioner to enforce  
2 the provisions of this article.

3 (b) No such corporation shall deliver or issue for  
4 delivery any subscriber's contract, changes in the terms  
5 of such contract, application, rider or endorsement until

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\*Clerk's Note: This section was also amended by H. B. 2588, which passed subsequent to this act.

6 a copy thereof and the rates pertaining thereto have  
7 been filed with and approved by the commissioner. All  
8 such forms filed with the commissioner shall be deemed  
9 approved after the expiration of sixty days from the date  
10 of such filing unless the commissioner shall have  
11 disapproved the same, stating his reasons for such  
12 disapproval in writing. Such forms may be used prior  
13 to the expiration of such periods if written approval  
14 thereof has been received from the commissioner.

15 (c) No rates to be charged subscribers shall be used  
16 or established by any such corporation unless and until  
17 the same have been filed with the commissioner and  
18 approved by him. The procedure for such filing and  
19 approval shall be the same as that prescribed in  
20 subsection (b) of this section for the approval of forms.  
21 The commissioner shall approve all such rates which are  
22 not excessive, inadequate, or unfairly discriminatory.

23 (d) The commissioner shall pass upon the actuarial  
24 soundness of all direct health care services plans.

25 (e) The corporation shall accumulate a fund to be  
26 derived from a minimum of two percent of every  
27 subscriber's monthly premium which shall be known as  
28 a contingency and liability reserve fund except that the  
29 same shall not exceed an amount equal to three months'  
30 average obligation of said corporation, nor shall it fall  
31 below a minimum of one month's average obligation of  
32 said corporation. Said fund shall be expended by the  
33 corporation according to rules and regulations to be  
34 promulgated by the commissioner.

35 In addition to the above requirements, every sub-  
36 scriber shall pay into the corporation a membership fee  
37 equal to one monthly premium. The membership fee  
38 shall be collected in full by said corporation within  
39 ninety days of said subscriber's application for  
40 membership.

41 (f) Each such rate filing and each such form filing  
42 made with the commissioner pursuant to this section is  
43 subject to the filing fee of section thirty-four, article six  
44 of this chapter.

## ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

**§33-25A-8. Evidence of coverage; charges for health care services; cancellation of contract by enrollee.**

1 (1) (a) Every enrollee is entitled to evidence of  
2 coverage in accordance with this section. The health  
3 maintenance organization or its designated representa-  
4 tive shall issue the evidence of coverage.

5 (b) No evidence of coverage, or amendment thereto,  
6 shall be issued or delivered to any person in this state  
7 until a copy of the form of the evidence of coverage, or  
8 amendment thereto, has been filed with and approved  
9 by the commissioner.

10 (c) An evidence of coverage shall contain a clear,  
11 concise and complete statement of (i) the health care  
12 services and the insurance or other benefits, if any, to  
13 which the enrollee is entitled; (ii) any exclusions or  
14 limitations on the services, kind of services, benefits, or  
15 kind of benefits, to be provided, including any copay-  
16 ments; (iii) where and in what manner information is  
17 available as to how services, including emergency and  
18 out-of-area services, may be obtained; (iv) the total  
19 amount of payment and copayment, if any, for health  
20 care services and the indemnity or service benefits, if  
21 any, which the enrollee is obligated to pay with respect  
22 to individual contracts, or an indication whether the  
23 plan is contributory or noncontributory with respect to  
24 group certificates; and (v) a description of the health  
25 maintenance organization's method for resolving enrol-  
26 lee complaints.

27 (d) Any subsequent approved change in an evidence  
28 of coverage shall be issued to each enrollee.

29 (e) A copy of the form of the evidence of coverage to  
30 be used in this state, and any amendment thereto, shall  
31 be subject to the filing and approval requirements of  
32 subdivision (b), subsection (1) of this section, unless the  
33 commissioner promulgates a regulation dispensing with  
34 this requirement or unless it is subject to the jurisdiction  
35 of the commissioner under the laws governing health

36 insurance or, hospital or medical service corporations,  
37 in which event the filing and approval provisions of such  
38 laws shall apply. To the extent, however, that such  
39 provisions do not apply, the requirements in subdivision  
40 (c), subsection (1) of this section shall be applicable.

41 (2) Such charges may be established in accordance  
42 with actuarial principles: *Provided*, That premiums  
43 shall not be excessive, inadequate, or unfairly discrim-  
44 inatory. A certification by a qualified actuary, to the  
45 appropriateness of the charges based on reasonable  
46 assumptions shall accompany the filing along with  
47 adequate supporting information. In determining  
48 whether such charges are reasonable, the commissioner  
49 shall consider whether such health maintenance organ-  
50 ization has (a) made a vigorous, good faith effort to  
51 control rates paid to health care providers; (b) estab-  
52 lished a premium schedule, including copayments, if  
53 any, which encourages enrollees to seek out preventive  
54 health care services; and (c) has made a good faith effort  
55 to secure arrangements whereby basic services can be  
56 obtained by subscribers from all local providers to the  
57 extent that such providers offer such services.

58 (3) The commissioner shall within a reasonable period  
59 approve any form if the requirements of subsection (1)  
60 are met and any schedule of charges if the requirements  
61 of subsection (2) are met. It shall be unlawful to issue  
62 such form or to use such schedule of charges until  
63 approved. If the commissioner disapproves of such  
64 filing, he shall notify the filer promptly. In the notice,  
65 the commissioner shall specify the reasons for his  
66 disapproval and the findings of fact and conclusions  
67 which support his reasons. A hearing will be granted  
68 by the commissioner within fifteen days after a request  
69 in writing, by the person filing, has been received by  
70 the commission. If the commissioner does not disapprove  
71 any form or schedule of charges within sixty days of the  
72 filing of such forms or charges, they shall be deemed  
73 approved.

74 (4) The commissioner may require the submission of  
75 whatever relevant information in addition to the  
76 schedule of charges which he deems necessary in

- 77 determining whether to approve or disapprove a filing  
78 made pursuant to this section.
- 79 (5) An enrollee shall be allowed to cancel a contract  
80 with a health maintenance organization at any time for  
81 any reason provided that a health maintenance organ-  
82 ization may require that he or she give sixty days notice  
83 of disenrollment to such organization.

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## CHAPTER 97

(H. B. 2588—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section thirty-four, article six; sections two and sixteen, article twenty-two; section two, article twenty-three; section four, article twenty-four; section eight, article twenty-five; section twenty-two, article twenty-five-a; section six, article thirty-one; and section three, article thirty-two, all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article twenty-five by adding thereto a new section, designated section eighteen; to further amend said article twenty-five-a by adding thereto a new section, designated section twenty-nine; and to further amend said chapter thirty-three by adding thereto a new article, designated article thirty-three, all relating to domestic insurers, and requiring annual examinations by independent certified public accountants; increasing fees on rate and form filings; requiring farmers mutual fire insurance companies to pay form filing fees with annual reports; and subjecting certain other corporations and organizations to the rate and form filing fees.

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

That section thirty-four, article six; sections two and sixteen, article twenty-two; section two, article twenty-three; section four, article twenty-four; section eight, article twenty-five; section twenty-two, article twenty-five-a; section six, article

thirty-one; and section three, article thirty-two, all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article twenty-five be further amended by adding thereto a new section, designated section eighteen; that said article twenty-five-a be further amended by adding thereto a new section, designated section twenty-nine; and that said chapter thirty-three be further amended by adding thereto a new article, designated article thirty-three, all to read as follows:

### CHAPTER 33. INSURANCE.

#### Article

6. The Insurance Policy.
22. Farmers' Mutual Fire Insurance Companies.
23. Fraternal Benefit Societies.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.
31. Captive Insurance.
32. Risk Retention Act.
33. Annual Audited Financial Report.

#### ARTICLE 6. THE INSURANCE POLICY.

##### §33-6-34. Fee for form and rate filing.

1 A fee of twenty-five dollars for every form filing and  
 2 twenty-five dollars for every rate filing shall be  
 3 submitted with each filing. If a form filing or rate filing  
 4 is made on behalf of more than one insurer, other than  
 5 a filing made by a rating organization licensed by the  
 6 commissioner pursuant to section six, article twenty of  
 7 this chapter, the fee shall be submitted as if the filing  
 8 were made by each individual insurer. Fees submitted  
 9 pursuant to this section shall not be refunded if the form  
 10 filing or rate filing, for which the fee was submitted,  
 11 is disapproved in whole or in part by the commissioner.  
 12 The refiling of a form filing or rate filing previously  
 13 disapproved by the commissioner shall be considered a  
 14 new filing for the purposes of the filing fee: *Provided,*  
 15 That any request by the commissioner for additional  
 16 information pertaining to a form filing shall not be  
 17 considered a new filing for purposes of the filing fee. All  
 18 fees collected pursuant to this section shall be used by



19 the commissioner for the operation of the department of  
20 insurance.

**ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE  
COMPANIES.**

§33-22-2. Other provisions of chapter applicable.

§33-22-16. Fees.

**§33-22-2. Other provisions of chapter applicable.**

1 Each such company to the same extent such provisions  
2 are applicable to domestic mutual insurers shall be  
3 governed by and be subject to the following articles of  
4 this chapter: Article one (definitions), article two  
5 (insurance commissioner), article four (general provi-  
6 sions) except that section sixteen of article four shall not  
7 be applicable thereto, article ten (rehabilitation and  
8 liquidation) except that under the provisions of section  
9 thirty-two of said article ten no assessment shall be  
10 levied against any former member of a farmers' mutual  
11 fire insurance company who is no longer a member of  
12 the company at the time the order to show cause was  
13 issued, article eleven (unfair practices and frauds),  
14 article twelve (agents, brokers and solicitors) except  
15 that the agents' license fee shall be five dollars, article  
16 twenty-six (West Virginia Insurance Guaranty Associ-  
17 ation Act), article thirty (mine subsidence insu-  
18 rance) except that under the provisions of section six,  
19 article thirty, a farmers' mutual insurance company  
20 shall have the option of offering mine subsidence  
21 coverage to all of its policyholders but shall not be  
22 required to do so, and article thirty-three (annual  
23 audited financial report); but only to the extent these  
24 provisions are not inconsistent with the provisions of this  
25 article.

**§33-22-16. Fees.**

1 Such company at the time of making its annual report  
2 shall pay to the commissioner a filing fee of twenty-five  
3 dollars, all fees so collected to be used for the purposes  
4 specified in section thirteen, article three of this chapter.  
5 No other fees or taxes shall be levied against such  
6 companies except the agent's license fee, the form filing  
7 fee required by the provisions of section thirty-four,

8 article six of this chapter and the expenses of examina-  
9 tion thereof by the commissioner.

**ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.**

**\*§33-23-2. Other provisions of chapter applicable.**

1 Every fraternal benefit society shall be governed and  
2 be subject, to the same extent as other insurers  
3 transacting like kinds of insurance, to the following  
4 articles of this chapter: Article one (definitions), article  
5 two (insurance commissioner), article four (general  
6 provisions), article six, section thirty (fee for form and  
7 rate filing), article ten (rehabilitation and liquidation),  
8 article eleven (unfair trade practices), article twelve  
9 (agents, brokers, solicitors and excess lines), article  
10 thirteen (life insurance), article fifteen-a (long-term care  
11 insurance), and article thirty-three (annual audited  
12 financial report).

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL  
SERVICE CORPORATIONS, DENTAL SERVICE  
CORPORATIONS AND HEALTH SERVICE  
CORPORATIONS.**

**\*\*§33-24-4. Exemptions; applicability of other laws.**

1 Every such corporation is hereby declared to be a  
2 scientific, nonprofit institution and as such exempt from  
3 the payment of all property and other taxes. Every such  
4 corporation, to the same extent such provisions are  
5 applicable to insurers transacting similar kinds of  
6 insurance and not inconsistent with the provisions of this  
7 article, shall be governed by and be subject to the  
8 provisions as hereinbelow indicated, of the following  
9 articles of this chapter: Article two (insurance commis-  
10 sioner) except that under section nine of article two  
11 examinations shall be conducted at least once every four  
12 years, article four (general provisions) except that  
13 section sixteen of article four shall not be applicable  
14 thereto, article six, section thirty-four (fee for form and  
15 rate filing), article ten (rehabilitation and liquidation),

\* Clerk's Notes: This section was also amended by H. B. 2526 and H. B. 2286, which passed prior to this act.

\*\* This section was also amended by S. B. 252 and H. B. 2526, which passed prior to this act.

16 article eleven (unfair practices and frauds), article  
17 twelve (agents, brokers and solicitors) except that the  
18 agent's license fee shall be five dollars, article fifteen-  
19 a (long-term care insurance), section three-c, article  
20 sixteen (group accident and sickness insurance), section  
21 three-d, article sixteen (medicare supplement), section  
22 three-f, article sixteen (treatment of temporomandibular  
23 joint disorder and craniomandibular disorder), article  
24 twenty-eight (individual accident and sickness insurance  
25 minimum standards) and article thirty-three (annual  
26 audited financial report); and no other provision of this  
27 chapter shall apply to such corporations unless specif-  
28 ically made applicable by the provisions of this article.  
29 If, however, any such corporation shall be converted into  
30 a corporation organized for a pecuniary profit, or if it  
31 shall transact business without having obtained a license  
32 as required by section five of this article, it shall  
33 thereupon forfeit its right to these exemptions.

#### ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8. Commissioner to enforce article; approval of contracts, forms and rates; reserve fund; membership fee.

§33-25-18. Annual audited financial report.

**\*§33-25-8. Commissioner to enforce article; approval of contracts, forms and rates; reserve fund; membership fee.**

1 (a) It shall be the duty of the commissioner to enforce  
2 the provisions of this article.

3 (b) No such corporation shall deliver or issue for  
4 delivery any subscriber's contract, changes in the terms  
5 of such contract, application, rider or endorsement until  
6 a copy thereof and the rates pertaining thereto have  
7 been filed with and approved by the commissioner. All  
8 such forms filed with the commissioner shall be deemed  
9 approved after the expiration of thirty days from the  
10 date of such filing unless the commissioner shall have  
11 disapproved the same, stating his reasons for such  
12 disapproval in writing, except that such period may be  
13 extended for an additional period not to exceed fifteen  
14 days upon written notice thereof from the commissioner  
15 to the applicant. Such forms may be used prior to the

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\*Clerk's Note: This section was also amended by H. B. 2417, which passed prior to this act.

16 expiration of such periods if written approval thereof  
17 has been received from the commissioner.

18 (c) No rates to be charged subscribers shall be used  
19 or established by any such corporation unless and until  
20 the same have been filed with the commissioner and  
21 approved by him. The procedure for such filing and  
22 approval shall be the same as that prescribed in  
23 subsection (b) of this section for the approval of forms.  
24 The commissioner shall approve all such rates which are  
25 not excessive, inadequate, or unfairly discriminatory.

26 (d) The commissioner shall pass upon the actuarial  
27 soundness of all direct health care services plans.

28 (e) The corporation shall accumulate a fund to be  
29 derived from a minimum of two percent of every  
30 subscriber's monthly premium which shall be known as  
31 a contingency and liability reserve fund except that the  
32 same shall not exceed an amount equal to three months'  
33 average obligation of said corporation, nor shall it fall  
34 below a minimum of one month's average obligation of  
35 said corporation. Said fund shall be expended by the  
36 corporation according to rules and regulations to be  
37 promulgated by the commissioner.

38 In addition to the above requirements, every subscriber  
39 shall pay into the corporation a membership fee equal to  
40 one monthly premium. The membership fee shall be  
41 collected in full by said corporation within ninety days  
42 of said subscriber's application for membership.

43 (f) Each such rate filing and each such form filing  
44 made with the commissioner pursuant to this section is  
45 subject to the filing fee of section thirty-four, article six  
46 of this chapter.

### **§33-25-18. Annual audited financial report.**

1 Every health care organization organized under the  
2 laws of this state is subject to the provisions of article  
3 thirty-three of this chapter.

### **ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

§33-25A-22. Fees.

§33-25A-29. Annual audited financial report.

**§33-25A-22. Fees.**

1 Every health maintenance organization subject to this  
2 article shall pay to the commissioner the following fees:  
3 For filing an application for a certificate of authority  
4 or amendment thereto, two hundred dollars; for each  
5 form filing and for each rate filing, the fee as provided  
6 in section thirty-four, article six of this chapter; and for  
7 filing each annual report, twenty-five dollars. Fees  
8 charged under this section shall be for the purposes set  
9 forth in section thirteen, article three of this chapter.

**§33-25A-29. Annual audited financial report.**

1 Every health maintenance organization organized  
2 under the laws of this state is subject to the provisions  
3 of article thirty-three of this chapter.

**ARTICLE 31. CAPTIVE INSURANCE.**

**§33-31-6. Formation of captive insurance companies in  
this state.**

1 (a) A pure captive insurance company shall be  
2 incorporated as a stock insurer with its capital divided  
3 into shares and held by the stockholders.

4 (b) An association captive insurance company or an  
5 industrial insured captive insurance company may be  
6 incorporated:

7 (1) As a stock insurer with its capital divided into  
8 shares and held by the stockholders; or

9 (2) As a mutual insurer without capital stock, the  
10 governing body of which is elected by the member  
11 organizations of its association.

12 (c) A captive insurance company shall have at least  
13 one incorporator who shall be a resident of this state.

14 (d) Before the articles of association are transmitted  
15 to the secretary of state, the incorporators shall petition  
16 the commissioner to issue a certificate setting forth his  
17 finding that the establishment and maintenance of the  
18 proposed corporation will promote the general good of

19 the state. In arriving at such finding the commissioner  
20 shall consider:

21 (1) The character, reputation, financial standing and  
22 purpose of the incorporators;

23 (2) The character, reputation, financial responsibility,  
24 insurance experience and business qualifications of the  
25 officers and directors; and

26 (3) Such other aspects as the commissioner shall deem  
27 advisable.

28 (e) The articles of association, such certificate and the  
29 organization fee shall be transmitted to the secretary of  
30 state, who shall thereupon record both the articles of  
31 incorporation and the certificate.

32 (f) The capital stock of a captive insurance company  
33 incorporated as a stock insurer shall be issued at not less  
34 than par value.

35 (g) At least one of the members of the board of  
36 directors of a captive insurance company incorporated  
37 in this state shall be a resident of this state.

38 (h) Captive insurance companies formed under the  
39 provisions of this chapter shall have the privileges and  
40 be subject to the provisions of the general corporation  
41 law as well as the applicable provisions contained in this  
42 chapter. Captive insurance companies are subject to the  
43 provisions of article thirty-three of this chapter. In the  
44 event of conflict between the provisions of said general  
45 corporation law and the provisions of this chapter, the  
46 latter shall control.

#### ARTICLE 32. RISK RETENTION ACT.

##### §33-32-3. Risk retention groups chartered in this state.

1 A risk retention group seeking to be chartered in this  
2 state must be chartered and licensed as a liability  
3 insurance company authorized by the insurance laws of  
4 this state and, except as provided elsewhere in this  
5 article, must comply with all of the laws, rules,  
6 regulations and requirements applicable to such insur-  
7 ers chartered and licensed in this state and with section

8 four of this article to the extent such requirements are  
9 not a limitation on laws, rules, regulations or require-  
10 ments of this state. Risk retention groups are subject to  
11 the provisions of article thirty-three of this chapter.  
12 Before it may offer insurance in any state, each risk  
13 retention group shall also submit for approval to the  
14 insurance commissioner of this state a plan of operation  
15 or a feasibility study and revisions of such plan or study  
16 if the group intends to offer any additional lines of  
17 liability insurance.

### ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

- §33-33-1. Declaration of policy and purpose.
- §33-33-2. Definitions.
- §33-33-3. Filing and extensions for filing of annual audited financial reports.
- §33-33-4. Contents of annual audited financial report.
- §33-33-5. Designation of independent certified public accountant.
- §33-33-6. Qualifications of independent certified public accountant.
- §33-33-7. Consolidated or combined audits.
- §33-33-8. Scope of examination and report of independent certified public accountant.
- §33-33-9. Notification of adverse financial conditions.
- §33-33-10. Evaluation of accounting procedures and system of internal control.
- §33-33-11. Definition, availability and maintenance of certified public accountant (CPA) workpapers.
- §33-33-12. Examinations.
- §33-33-13. Exemptions from compliance.

#### §33-33-1. Declaration of policy and purpose.

1 The purpose of this article is to improve the insurance  
2 commissioner's surveillance of the financial condition of  
3 domestic insurers by requiring an annual examination  
4 by independent certified public accountants of the  
5 financial statements reporting the financial condition  
6 and the results of operations of insurers.

7 This article shall not prohibit or preclude or in any  
8 way limit the commissioner from performing examina-  
9 tions of insurers as specified in section nine, article two  
10 of this chapter or such other examinations as the  
11 commissioner may be authorized to perform by this  
12 chapter.

#### §33-33-2. Definitions.

1 (a) "Accountant," "certified public accountant (CPA)"  
2 and "independent public accountant" means an inde-  
3 pendent certified public accountant or accounting firm  
4 who has a license to practice issued by the state in which  
5 he resides or has his principal place of business.

6 (b) "Annual statement" means the annual financial  
7 statement required to be filed by insurers with the  
8 commissioner pursuant to the provisions of this chapter.

9 (c) "Audited financial report" means and includes  
10 those items specified in section four of this article.

11 (d) "Insurer" for purposes of this article means any  
12 domestic insurer as defined in section six, article one of  
13 this chapter, and includes any domestic stock insurance  
14 company, mutual insurance company, reciprocal insu-  
15 rance company, farmers' mutual fire insurance com-  
16 pany, fraternal benefit society, hospital service corpora-  
17 tion, medical service corporation, health care corpora-  
18 tion, health maintenance organization, captive insurance  
19 company or risk retention group.

**§33-33-3. Filing and extensions for filing of annual  
audited financial reports.**

1 (a) Annual audited financial reports must be filed by  
2 all insurers with the commissioner on or before the first  
3 day of June for the year ending the thirty-first day of  
4 December immediately preceding.

5 (b) Extensions of the filing date on the first day of  
6 June may be granted by the commissioner for thirty-day  
7 periods upon showing by the insurer and its independent  
8 certified public accountant the reasons for requesting  
9 such extension and determination by the commissioner  
10 of good cause for an extension. A request for extension  
11 must be submitted in writing not less than ten days  
12 prior to the due date in sufficient detail to permit the  
13 commissioner to make an informed decision with respect  
14 to the requested extension.

**§33-33-4. Contents of annual audited financial report.**

1 (a) The annual audited financial report shall report  
2 the financial condition of the insurer as of the end of the



3 most recent calendar year and the results of its  
4 operations, changes in financial position and changes in  
5 capital and surplus for the year then ended in confor-  
6 mity with statutory accounting practices for preparation  
7 of the annual statement or as otherwise permitted by the  
8 commissioner.

9 (b) The annual audited financial report shall include  
10 the following:

11 (1) Report of independent certified public accountant;

12 (2) Balance sheet reporting admitted assets, liabili-  
13 ties, capital and surplus;

14 (3) Statement of gain or loss from operations or  
15 statement of revenue and expenses;

16 (4) Statement of changes in financial position or cash  
17 flow statement;

18 (5) Statement of changes in capital and surplus;

19 (6) Notes to financial statements. These notes shall be  
20 those required by generally accepted accounting prin-  
21 ciples and shall include a reconciliation of differences,  
22 if any, between the audited statutory financial state-  
23 ments and the annual statement with a written descrip-  
24 tion of the nature of these differences;

25 (7) The financial statements included in the audited  
26 financial report shall be prepared in a form and using  
27 language and groupings substantially the same as the  
28 relevant sections of the annual statement of the insurer  
29 filed with the commissioner; and:

30 (A) The financial statement shall be comparative,  
31 presenting the amounts as of the thirty-first day of  
32 December of the current year and the amounts as of the  
33 immediately preceding thirty-first day of December.  
34 (However, in the first year in which an insurer is  
35 required to file an audited financial report, the compar-  
36 ative data may be omitted);

37 (B) Amounts may be rounded to the nearest thousand  
38 dollars;

39 (8) Supplementary data and information. This shall

40 include any additional clarifying information or data  
41 which the commissioner may require to be disclosed.

**§33-33-5. Designation of independent certified public accountant.**

1 (a) Each insurer required by this article to file an  
2 annual audited financial report must, within sixty days  
3 after becoming subject to such requirements, register  
4 with the commissioner in writing the name and address  
5 of the certified public accountant or accounting firm  
6 (generally referred to in this article as the "account-  
7 tant") retained to conduct the annual audit set forth in  
8 this article.

9 (b) The insurer shall obtain a letter from such  
10 accountant, and file a copy with the commissioner  
11 stating that the accountant is aware of the provisions of  
12 this code and rules that relate to accounting and  
13 financial matters and affirming that he will express his  
14 opinion on the financial statements in terms of their  
15 conformity to the statutory accounting practices pres-  
16 cribed or otherwise permitted by the commissioner  
17 specifying such exceptions as he may believe  
18 appropriate.

19 (c) If an accountant who was not the accountant for  
20 the immediately preceding filed audited financial report  
21 is engaged to audit the insurer's financial statements,  
22 the insurer shall within thirty days of the date the  
23 accountant is engaged notify the commissioner of this  
24 event. The insurer shall also furnish the commissioner  
25 with a separate letter stating whether in the twenty-four  
26 months preceding such engagement there were any  
27 disagreements with the former accountant on any  
28 matter of accounting principles or practices, financial  
29 statement disclosure, or auditing scope or procedure,  
30 which disagreements, if not resolved to the satisfaction  
31 of the former accountant, would have caused him to  
32 make reference to the subject matter of the disagree-  
33 ment in connection with his opinion. The insurer shall  
34 also in writing request such former accountant to  
35 furnish it a letter addressed to the insurer stating  
36 whether the accountant agrees with the statements

37 contained in the insurer's letter and, if not, stating the  
38 reasons for which he does not agree; and the insurer  
39 shall furnish such responsive letter from the former  
40 accountant to the commissioner together with its own.

**§33-33-6. Qualifications of independent certified public accountant.**

1 (a) The commissioner shall not recognize any person  
2 as an independent certified public accountant who does  
3 not meet the requirements for the definition of "accoun-  
4 tant" under section two of this article.

5 (b) The commissioner may hold a hearing to deter-  
6 mine whether a certified public accountant is independ-  
7 ent and considering the evidence presented, may rule  
8 that the accountant is not independent for purposes of  
9 expressing his opinion on the financial statements in the  
10 audited financial report made pursuant to this article  
11 and require the insurer to replace the accountant with  
12 another whose relationship with the insurer is independ-  
13 ent within the meaning of this article.

**§33-33-7. Consolidated or combined audits.**

1 (a) The commissioner may, upon written application,  
2 permit any insurer that is a member of an insurance  
3 holding company system to file audited, consolidated or  
4 combined financial statements in lieu of separate annual  
5 audited financial statements if the commissioner, in his  
6 discretion, deems such method of filing reasonable and  
7 appropriate. Consolidated or combined filings will be  
8 considered reasonable and appropriate if the commis-  
9 sioner determines that the audit work performed under  
10 a consolidated filing is adequate to ascertain the  
11 financial condition of the insurer. If such approval is  
12 granted, a columnar consolidating or combining work-  
13 sheet shall be filed with the report incorporating the  
14 following:

15 (1) Amounts shown on the consolidated or combined  
16 audited financial report shall be shown on the  
17 worksheet;

18 (2) Amounts for each insurer subject to this section  
19 shall be stated separately;

20 (3) Noninsurance operations may be shown on the  
21 worksheet on a combined or individual basis;

22 (4) Explanations of consolidating and eliminating  
23 entries shall be included; and

24 (5) A reconciliation shall be included of any differen-  
25 ces between the amounts shown in the individual insurer  
26 columns of the worksheet and comparable amounts  
27 shown on the annual statements of the insurers.

28 (b) The commissioner shall require any insurer to file  
29 separate annual audited financial statements although  
30 permission had previously been given to file on a  
31 consolidated basis or combined basis if the commissioner  
32 determines the reasons or circumstances given for  
33 approval of the consolidated audit, pursuant to subsec-  
34 tion (a) of this section, no longer exist.

**§33-33-8. Scope of examination and report of independ-  
ent certified public accountant.**

1 The examination of the insurer's financial statements  
2 by the independent certified public accountant shall be  
3 conducted in accordance with generally accepted  
4 auditing standards and such other procedures illus-  
5 trated in the examiners' handbook promulgated by the  
6 national association of insurance commissioners as the  
7 independent certified public accountant deems neces-  
8 sary. The commissioner may from time to time pres-  
9 cribe that additional auditing procedures be observed by  
10 the accountant in the examination of the financial  
11 statements of insurers pursuant to this article.

**§33-33-9. Notification of adverse financial conditions.**

1 The independent certified public accountant shall  
2 immediately notify, in writing, an officer or director of  
3 the insurer and the commissioner of any determination  
4 by the independent certified public accountant that the  
5 insurer has materially misstated its financial condition  
6 as reported to the commissioner as of the thirty-first day  
7 of December immediately preceding, or of any determi-  
8 nation that the insurer does not meet the applicable  
9 minimum capital and surplus requirement of this  
10 chapter or in the case of an insurer not subject to capital  
11 and surplus requirement, that the surplus of the insurer

12 is less than one hundred thousand dollars as of the  
13 thirty-first day of December immediately preceding.  
14 For purposes of this article, material misstatement shall  
15 mean a misstatement that overstates the surplus as  
16 regards policyholders in single financial statement  
17 items by five percent or more, or when taken together  
18 with all financial statement items, the surplus as  
19 regards policyholders is overstated by ten percent or  
20 more.

**§33-33-10. Evaluation of accounting procedures and  
system of internal control.**

1 (a) In addition to the annual audited financial reports,  
2 each insurer shall furnish the commissioner with a  
3 report of evaluation performed by the accountant, in  
4 connection with his examination, of the accounting  
5 procedures of the insurer and its system of internal  
6 control.

7 (b) A report of the evaluation by the accountant of the  
8 accounting procedures of the insurer and its system of  
9 internal control, including any remedial action taken or  
10 proposed, shall be filed annually by the insurer with the  
11 commissioner at the time of filing of the annual audited  
12 financial report.

13 (c) This report shall follow generally the form for  
14 reports on internal control based on audits as prescribed  
15 in the then current volume of the professional standards  
16 of the American institute of certified public accountants.

**§33-33-11. Definition, availability and maintenance of  
certified public accountant (CPA)  
workpapers.**

1 (a) Workpapers shall be kept by the independent  
2 certified public accountant of the procedures followed,  
3 the tests performed, the information obtained and the  
4 conclusions reached pertinent to this examination of the  
5 financial statements of an insurer. Workpapers shall  
6 include work programs, analyses, memoranda, letters of  
7 conformation and representation, abstracts of company  
8 documents and schedules or commentaries prepared or  
9 obtained by the independent certified public accountant  
10 in the course of his examination of the financial

11 statements of an insurer and which support his opinion  
12 thereon.

13 (b) Every insurer required to file an audited financial  
14 report pursuant to this article shall require the account-  
15 tant to make available for review by the commissioner  
16 the workpapers prepared in the conduct of his exami-  
17 nation. The insurer shall require that the accountant  
18 retain the audit workpapers for a period of not less than  
19 five years after the period reported thereon.

20 (c) In the conduct of the aforementioned periodic  
21 review by the commissioner, it shall be agreed that  
22 photocopies of pertinent audit workpapers may be made  
23 and retained by the commissioner.

### §33-33-12. Examinations.

1 Examinations of insurers conducted by the commis-  
2 sioner pursuant to section nine, article two of this  
3 chapter may, at the discretion of the commissioner,  
4 include and be supplemented by audit procedures  
5 performed by an independent certified public account-  
6 tant as herein provided.

### §33-33-13. Exemptions from compliance.

1 Upon written application by an insurer, the commis-  
2 sioner may grant an exemption from compliance with  
3 this article if the commissioner finds, upon review of the  
4 application, that compliance with this article would  
5 constitute a financial or organizational hardship upon  
6 the insurer. An exemption may be granted at any time  
7 and from time to time for a specified period or periods.  
8 Within ten days of a denial of an insurer's written  
9 request for an exemption from this article, such insurer  
10 may request in writing a hearing on its application for  
11 an exemption.

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## CHAPTER 98

(Com. Sub. for S. B. 264—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

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[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code West

Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-b, relating to providing a mechanism to regulate the declination of automobile liability policies.

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

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six-b, to read as follows:

**ARTICLE 6B. DECLINATION OF AUTOMOBILE LIABILITY INSURANCE.**

§33-6B-1. Purpose of article.

§33-6B-2. Definitions.

§33-6B-3. Declinations; prohibited reasons.

§33-6B-4. Notification.

§33-6B-5. Hearings and administrative procedure.

§33-6B-6. Sanctions.

§33-6B-7. Severability.

**§33-6B-1. Purpose of article.**

- 1 The purpose of this article is to regulate the declina-
- 2 tion of automobile liability policies.

**§33-6B-2. Definitions.**

- 1 "Declination" means either the refusal of an insurer
- 2 to issue an automobile liability insurance policy upon
- 3 receipt of a written nonbinding application or written
- 4 request for coverage from its agent or an applicant. For
- 5 the purposes of this article, the offering of insurance
- 6 coverage with a company within an insurance group
- 7 which is different from the company requested on the
- 8 nonbinding application or written request for coverage,
- 9 or the offering of policy coverage or rates substantially
- 10 less favorable than requested in the nonbinding appli-
- 11 cation or written request for coverage, shall not be
- 12 considered a declination. Further, for the purposes of
- 13 this article "declination" shall include the cancellation
- 14 of an automobile liability policy which has been in effect
- 15 less than sixty days and the nonrenewal of an automo-
- 16 bile liability policy which has been in effect less than
- 17 two years.

**§33-6B-3. Declinations; prohibited reasons.**

1 The declination of an application for a policy of  
2 automobile liability insurance by an insurer, agent or  
3 broker is prohibited if the declination is:

4 (a) Based upon the race, religion, nationality, or  
5 ethnic group, of the applicant or named insured;

6 (b) Based solely upon the lawful occupation or  
7 profession of the applicant or named insured, unless  
8 such decision is for a business purpose which is not a  
9 mere pretext for unfair discrimination: *Provided*, That  
10 this provision shall not apply to any insurer, agent or  
11 broker which limits its market to one lawful occupation  
12 or profession or to several related lawful occupations or  
13 professions;

14 (c) Based upon the principal location of the insured  
15 motor vehicle unless such decision is for a business  
16 purpose which is not a mere pretext for unfair  
17 discrimination;

18 (d) Based solely upon the age, sex or marital status  
19 of an applicant or an insured, except that this subsection  
20 shall not prohibit rating differentials based on age, sex  
21 or marital status;

22 (e) Based upon the fact that the applicant has  
23 previously obtained insurance coverage with a substand-  
24 ard insurance carrier;

25 (f) Based upon the fact that the applicant has not  
26 previously been insured;

27 (g) Based upon the fact that the applicant did not  
28 have insurance coverage for a period of time prior to the  
29 application;

30 (h) Based upon the fact that the applicant or named  
31 insured previously obtained insurance coverage through  
32 a residual market insurance mechanism;

33 (i) Based upon the fact that another insurer pre-  
34 viously declined to insure the applicant or terminated  
35 an existing policy in which the applicant was the named  
36 insured.



37 Nothing in this section shall be construed as prohib-  
38 iting an insurer, agent, or broker from using legitimate,  
39 documented, underwriting data in making their own  
40 independent risk assessment of an applicant for insu-  
41 rance.

#### §33-6B-4. Notification.

1 In the event of a declination, the insurer shall, within  
2 thirty days of the receipt of the written nonbinding  
3 application or written request for coverage, provide the  
4 applicant reasons for such declination.

#### §33-6B-5. Hearings and administrative procedure.

1 Hearings for the violation of any provision of this  
2 article, and the administrative procedure prior to,  
3 during, and following these hearings, shall be conducted  
4 in accordance with the provisions of article two of this  
5 chapter.

#### §33-6B-6. Sanctions.

1 If the commissioner determines in a final order that:

2 (a) An insurer has violated section three or four of this  
3 article, he may require the insurer to:

4 (1) Accept the application or written request for  
5 insurance coverage at a rate and on the same terms and  
6 conditions as are available to its other risks with similar  
7 characteristics; or

8 (2) Reinstate insurance coverage to the end of the  
9 policy period; or

10 (3) Continue insurance coverage at a rate and on the  
11 same terms and conditions as are available to its other  
12 risks with similar characteristics.

13 (b) Any person has violated any provision of this  
14 article, he may:

15 (1) Issue a cease and desist order to restrain the  
16 person from engaging in practices which violate this  
17 article;

18 (2) Assess a penalty against the person of up to five

19 thousand dollars for each willful and knowing violation  
20 of this article.

**§33-6B-7. Severability.**

1 If any provision of this article or the application  
2 thereof to any person or circumstance is for any reason  
3 held to be invalid, the remainder of the article and the  
4 application of such provision to other persons or  
5 circumstances shall not be affected thereby.

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## CHAPTER 99

(S. B. 440—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

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[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-five, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twelve by adding thereto a new section, designated section twenty-five-a, all relating to insurance; agents, brokers, solicitors and excess line; revocation, suspension or refusal to renew license; civil penalty; and notice of termination to represent insurer.

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

That section twenty-five, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-five-a, all to read as follows:

**ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.**

§33-12-25. Revocation, suspension or refusal to renew license; penalty in lieu thereof.

§33-12-25a. Termination of authority to represent insurer.

**§33-12-25. Revocation, suspension or refusal to renew license; penalty in lieu thereof.**

1 (a) The commissioner may revoke or suspend the

2 license of any agent, solicitor, broker or excess line  
3 broker if, after notice to the licensed person and  
4 hearing, the commissioner determines such person has:

5 (1) Violated any insurance law or any lawful rule,  
6 regulation, or order of the commissioner;

7 (2) Improperly withheld, misappropriated, or con-  
8 verted to his own use any money received in the course  
9 of business and belonging to policyholders, insurers,  
10 beneficiaries, or others;

11 (3) Misrepresented the terms of any existing or  
12 proposed insurance contract to the detriment of the  
13 applicant or insured;

14 (4) Engaged in any pattern of unfair method of  
15 competition or unfair or deceptive acts or practices in  
16 the business of insurance as defined in article eleven of  
17 this chapter;

18 (5) Forged another person's name to an application  
19 for insurance or to any other document or fraudulently  
20 procured a forged signature to an insurance application  
21 or any other document, knowing such signature to be  
22 forged;

23 (6) Knowingly and willfully made or permitted a false  
24 or fraudulent statement or misrepresentation in or  
25 relative to an application for a policy of insurance;

26 (7) Been convicted of or pleaded nolo contendere to any  
27 felony;

28 (8) Been convicted of or pleaded nolo contendere to a  
29 misdemeanor in connection with his activities as an  
30 agent, solicitor, broker or excess line broker;

31 (9) Obtained the license for the purpose of writing  
32 controlled business, as described in subsection (d),  
33 section two, article twelve of this chapter;

34 (10) Had an agent's or broker's license suspended or  
35 revoked in any other state, district, or territory of the  
36 United States or any province of Canada;

37 (11) Not demonstrated trustworthiness and compet-

38 ency in his activities as an agent, solicitor, broker or  
39 excess line broker; or

40 (12) Obtained the license through misrepresentation,  
41 fraud, or any other act for which issuance of the license  
42 could have been refused had it been known to the  
43 commissioner at the time of issuance.

44 (b) In lieu of revoking or suspending such license, the  
45 commissioner may in his discretion order such licensee  
46 to pay to the state of West Virginia a penalty in a sum  
47 not to exceed one thousand dollars and upon the failure  
48 of such licensee to pay such penalty by delivery of such  
49 sum to the commissioner within thirty days of notice  
50 thereof, the commissioner shall revoke or suspend such  
51 license.

**§33-12-25a. Termination of authority to represent insurer.**

1 (a) An insurer shall give to the commissioner and the  
2 agent, on a form prescribed by the commissioner,  
3 written notice of the termination of an agent's authority  
4 to represent the insurer within five working days of the  
5 termination. The notice of termination shall state the  
6 cause and circumstances of such termination.

7 (b) In the absence of fraud or bad faith, there shall  
8 be no liability on the part of, and a cause of action of  
9 any nature shall not arise against the commissioner or  
10 his employees, or an insurer or its employees for any  
11 information furnished pursuant to this section.

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## CHAPTER 100

(S. B. 523—By Senators Spears, Rundle, Blatnik, Pritt, Lucht and Boley)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-c; to amend article sixteen, chapter thirty-three of said code by adding thereto a

new section, designated section three-g; to amend article twenty-four of said chapter thirty-three by adding thereto a new section, designated section seven-b; to amend article twenty-five of said chapter by adding thereto a new section, designated section eight-a; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-a, all relating to insurance; and requiring third party reimbursement for mammography and pap smear testing.

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

That article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-c; that article sixteen, chapter thirty-three of said code be amended by adding thereto a new section, designated section three-g; that article twenty-four of said chapter be amended by adding thereto a new section, designated section seven-b; that article twenty-five of said chapter be amended by adding thereto a new section, designated section eight-a; and that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section eight-a, all to read as follows:

### CHAPTER 33. INSURANCE.

#### Article

15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

#### ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

##### §33-15-4c. Third party reimbursement for mammography or pap smear testing.

- 1 Notwithstanding any provision of any policy, provi-
- 2 sion, contract, plan or agreement to which this article
- 3 applies, whenever reimbursement or indemnity for
- 4 laboratory or X-ray services are covered, reimburse-
- 5 ment or indemnification shall not be denied for mam-
- 6 mograms or pap smears when performed for cancer

7 screening or diagnostic purposes, at the direction of a  
8 person licensed to practice medicine and surgery by the  
9 board of medicine: (1) A baseline mammogram for  
10 women age thirty-five to thirty-nine, inclusive; (2) a  
11 mammogram for women age forty to forty-nine, inclu-  
12 sive, every two years or more frequently based on the  
13 woman's physician's recommendation; (3) a mammo-  
14 gram every year for women age fifty and over; (4) a pap  
15 smear annually or more frequently based on the  
16 woman's physician's recommendation for women age  
17 eighteen or over. A policy, provision, contract, plan or  
18 agreement may apply to mammograms or pap smears,  
19 the same deductibles, coinsurance and other limitations  
20 as apply to other covered services.

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

**§33-16-3g. Third party reimbursement for mammo-  
graphy or pap smear testing.**

1 Notwithstanding any provision of any policy, provi-  
2 sion, contract, plan or agreement to which this article  
3 applies, whenever reimbursement or indemnity for  
4 laboratory or X-ray services are covered, reimburse-  
5 ment or indemnification shall not be denied for mam-  
6 mograms or pap smears when performed for cancer  
7 screening or diagnostic purposes, at the direction of a  
8 person licensed to practice medicine and surgery by the  
9 board of medicine: (1) A baseline mammogram for  
10 women age thirty-five to thirty-nine, inclusive; (2) a  
11 mammogram for women age forty to forty-nine, inclu-  
12 sive, every two years or more frequently based on the  
13 woman's physician's recommendation; (3) a mammo-  
14 gram every year for women age fifty and over; (4) a pap  
15 smear annually or more frequently based on the  
16 woman's physician's recommendation for women age  
17 eighteen or over. A policy, provision, contract, plan or  
18 agreement may apply to mammograms or pap smears,  
19 the same deductibles, coinsurance and other limitations  
20 as apply to other covered services.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL  
SERVICE CORPORATIONS, DENTAL SERVICE  
CORPORATIONS AND HEALTH SERVICE  
CORPORATIONS.**

**§33-24-7b. Third party reimbursement for mammography or pap smear testing.**

1 Notwithstanding any provision of any policy, provi-  
2 sion, contract, plan or agreement to which this article  
3 applies, whenever reimbursement or indemnity for  
4 laboratory or X-ray services are covered, reimburse-  
5 ment or indemnification shall not be denied for mam-  
6 mograms or pap smears when performed for cancer  
7 screening or diagnostic purposes, at the direction of a  
8 person licensed to practice medicine and surgery by the  
9 board of medicine: (1) A baseline mammogram for  
10 women age thirty-five to thirty-nine, inclusive; (2) a  
11 mammogram for women age forty to forty-nine, inclu-  
12 sive, every two years or more frequently based on the  
13 woman's physician's recommendation; (3) a mammo-  
14 gram every year for women age fifty and over; (4) a pap  
15 smear annually or more frequently based on the  
16 woman's physician's recommendation for women age  
17 eighteen or over. A policy, provision, contract, plan or  
18 agreement may apply to mammograms or pap smears,  
19 the same deductibles, coinsurance and other limitations  
20 as apply to other covered services.

**ARTICLE 25. HEALTH CARE CORPORATIONS.**

**§33-25-8a. Third party reimbursement for mammography or pap smear testing.**

1 Notwithstanding any provision of any policy, provi-  
2 sion, contract, plan or agreement to which this article  
3 applies, whenever reimbursement or indemnity for  
4 laboratory or X-ray services are covered, reimburse-  
5 ment or indemnification shall not be denied for mam-  
6 mograms or pap smears when performed for cancer  
7 screening or diagnostic purposes, at the direction of a  
8 person licensed to practice medicine and surgery by the  
9 board of medicine: (1) A baseline mammogram for  
10 women age thirty-five to thirty-nine, inclusive; (2) a  
11 mammogram for women age forty to forty-nine, inclu-  
12 sive, every two years or more frequently based on the  
13 woman's physician's recommendation; (3) a mammo-  
14 gram every year for women age fifty and over; (4) a pap  
15 smear annually or more frequently based on the

16 woman's physician's recommendation for women age  
 17 eighteen or over. A policy, provision, contract, plan or  
 18 agreement may apply to mammograms or pap smears,  
 19 the same deductibles, coinsurance and other limitations  
 20 as apply to other covered services.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**§33-25A-8a. Third party reimbursement for mammo-  
 graphy and pap smear testing.**

1 Notwithstanding any provision of any policy, provi-  
 2 sion, contract, plan or agreement to which this article  
 3 applies, whenever reimbursement or indemnity for  
 4 laboratory or X-ray services are covered, reimburse-  
 5 ment or indemnification shall not be denied for mam-  
 6 mograms or pap smears when performed for cancer  
 7 screening or diagnostic purposes, at the direction of a  
 8 person licensed to practice medicine and surgery by the  
 9 board of medicine: (1) A baseline mammogram for  
 10 women age thirty-five to thirty-nine, inclusive; (2) a  
 11 mammogram for women age forty to forty-nine, inclu-  
 12 sive, every two years or more frequently based on the  
 13 woman's physician's recommendation; (3) a mammo-  
 14 gram every year for women age fifty and over; (4) a pap  
 15 smear annually or more frequently based on the  
 16 woman's physician's recommendation for women age  
 17 eighteen or over. A policy, provision, contract, plan or  
 18 agreement may apply to mammograms or pap smears,  
 19 the same deductibles, coinsurance and other limitations  
 20 as apply to other covered services.

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## CHAPTER 101

(H. B. 2526—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
 By Request of the Executive)

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[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-  
 three, chapter thirty-three of the code of West Virginia,  
 one thousand nine hundred thirty-one, as amended; to  
 amend and reenact section four, article twenty-four of



said chapter; to further amend said chapter by adding thereto a new article, designated article fifteen-a; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to the West Virginia long-term care insurance act; short title; declaration of policy and purpose; applicability; definitions; extraterritorial jurisdiction; group long-term care insurance; disclosure and performance standards for long-term care insurance; and severability.

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

That section two, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section four, article twenty-four of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article fifteen-a; and that section twenty-four, article twenty-five-a of said chapter be amended and reenacted, all to read as follows:

### CHAPTER 33. INSURANCE.

#### Article.

- 15A. West Virginia Long-Term Care Insurance Act.
- 23. Fraternal Benefit Societies.
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25A. Health Maintenance Organization Act.

#### ARTICLE 15A. WEST VIRGINIA LONG-TERM CARE INSURANCE ACT.

- §33-15A-1. Short title.
- §33-15A-2. Declaration of policy and purpose.
- §33-15A-3. Applicability.
- §33-15A-4. Definitions.
- §33-15A-5. Extraterritorial jurisdiction—Group long-term care insurance.
- §33-15A-6. Disclosure and performance standards for long-term care insurance.
- §33-15A-7. Severability.

#### §33-15A-1. Short title.

- 1 This article may be known and cited as the West
- 2 Virginia Long-Term Care Insurance Act.

#### §33-15A-2. Declaration of policy and purpose.

- 1 The purpose of this act is to promote the public

2 interest, to promote the availability of long-term care  
3 insurance policies, to protect applicants for long-term  
4 care insurance, as defined, from unfair or deceptive  
5 sales or enrollment practices, to establish standards for  
6 long-term care insurance, to facilitate public under-  
7 standing and comparison of long-term care insurance  
8 policies, and to facilitate flexibility and innovation in the  
9 development of long-term care insurance coverage.

### §33-15A-3. Applicability.

1 The requirements of this act shall apply to policies  
2 delivered or issued for delivery in this state on or after  
3 the effective date of this act. This act is not intended to  
4 supersede the obligations of entities subject to this act  
5 to comply with the substance of other applicable  
6 insurance laws insofar as they do not conflict with this  
7 act, except that laws and regulations designed and  
8 intended to apply to medicare supplement insurance  
9 policies shall not be applied to long-term care insurance.

### §33-15A-4. Definitions.

1 (a) "Long-term care insurance" means any insurance  
2 policy or rider advertised, marketed, offered or designed  
3 to provide benefits for not less than twenty-four  
4 consecutive months for each covered person on an  
5 expense incurred, indemnity, prepaid or other basis; for  
6 one or more necessary or medically necessary diagnos-  
7 tic, preventive, therapeutic, rehabilitative, maintenance  
8 or personal care services, provided in a setting other  
9 than an acute care unit of a hospital. Such term includes  
10 group and individual policies or riders whether issued  
11 by insurers; fraternal benefit societies; nonprofit health,  
12 hospital, and medical service corporations; prepaid  
13 health plans; health maintenance organizations or any  
14 similar organization. Any insurance policy which is  
15 offered primarily to provide basic medicare supplement  
16 coverage, basic hospital expense coverage, basic medi-  
17 cal-surgical expense coverage, hospital confinement  
18 indemnity coverage, major medical expense coverage,  
19 disability income protection coverage, accident only  
20 coverage, specified disease or specified accident cover-  
21 age, or limited benefit health coverage which also

22 contains long-term care insurance benefits for at least  
23 six months shall comply with the provisions of this act.

24 (b) "Applicant" means:

25 (1) In the case of an individual long-term care  
26 insurance policy, the person who seeks to contract for  
27 benefits, and

28 (2) In the case of a group long-term care insurance  
29 policy, the proposed certificate holder.

30 (c) "Certificate" means, for the purposes of this act,  
31 any certificate issued under a group long-term care  
32 insurance policy, which policy has been delivered or  
33 issued for delivery in this state.

34 (d) "Commissioner" means the insurance commis-  
35 sioner of this state.

36 (e) "Group long-term care insurance" means a long-  
37 term care insurance policy which is delivered or issued  
38 for delivery in this state and issued to:

39 (1) One or more employers or labor organizations, or  
40 to a trust or to the trustees of a fund established by one  
41 or more employers or labor organizations, or a combi-  
42 nation thereof, for employees or former employees or a  
43 combination thereof or for members or former members  
44 or a combination thereof, of the labor organizations; or

45 (2) Any professional, trade or occupational association  
46 for its members or former or retired members, or  
47 combination thereof, if such association:

48 (A) Is composed of individuals all of whom are or  
49 were actively engaged in the same profession, trade or  
50 occupation; and

51 (B) Has been maintained in good faith for purposes  
52 other than obtaining insurance; or

53 (3) An association or a trust or the trustee(s) of a fund  
54 established, created or maintained for the benefit of  
55 members of one or more associations. Prior to advertis-  
56 ing, marketing or offering such policy within this state,  
57 the association or associations, or the insurer of the  
58 association or associations, shall file evidence with the

59 commissioner that the association or associations have at  
60 the outset a minimum of one hundred persons and have  
61 been organized and maintained in good faith for the  
62 purposes other than that of obtaining insurance; have  
63 been in active existence for at least one year; and have  
64 a constitution and by-laws which provide that:

65 (A) The association or associations hold regular  
66 meetings not less than annually to further purposes of  
67 the members;

68 (B) Except for credit unions, the association or  
69 associations collect dues or solicit contributions from  
70 members; and

71 (C) The members have voting privileges and repre-  
72 sentation on the governing board and committees.

73 Thirty days after such filing the association or  
74 associations will be deemed to satisfy such organiza-  
75 tional requirements, unless the commissioner makes a  
76 finding that the association or associations do not satisfy  
77 those organizational requirements.

78 (4) A group other than as described in subdivisions  
79 (1), (2) and (3), subsection (e) of this section, subject to  
80 a finding by the commissioner that:

81 (A) The issuance of the group policy is not contrary  
82 to the best interest of the public;

83 (B) The issuance of the group policy would result in  
84 economies of acquisition or administration;

85 (C) The benefits are reasonable in relation to the  
86 premiums charged.

87 (f) "Policy" means, for the purposes of this act, any  
88 policy, contract, subscriber agreement, rider or endorse-  
89 ment delivered or issued for delivery in this state by an  
90 insurer; fraternal benefit society; nonprofit health,  
91 hospital, or medical service corporation; prepaid health  
92 plan; health maintenance organization or any similar  
93 organization.

**§33-15A-5. Extraterritorial jurisdiction—Group long-  
term care insurance.**

1 (a) No group long-term care insurance coverage may

2 be offered to a resident of this state under a group policy  
3 issued in another state to a group described in subdivi-  
4 sion (4), subsection (e), section four of this article  
5 unless this state or another state having statutory and  
6 regulatory long-term care insurance requirements  
7 substantially similar to those adopted in this state has  
8 made a determination that such requirements have been  
9 met.

10 (b) Any such group policy form and any group  
11 certification form issued under the group, shall be filed  
12 with the commissioner for informational purposes with  
13 evidence of the determination required by subsection (a)  
14 of this section.

**§33-15A-6. Disclosure and performance standards for  
long-term care insurance.**

1 (a) The commissioner may adopt rules and regula-  
2 tions that include standards for full and fair disclosure  
3 setting forth the manner, content and required disclo-  
4 sures for the sale of long-term care insurance policies,  
5 terms of renewability, initial and subsequent conditions  
6 of eligibility, nonduplication of coverage provisions,  
7 coverage of dependents, preexisting conditions, termina-  
8 tion of insurance, continuation or conversion, probation-  
9 ary periods, limitations, exceptions, reductions, elimina-  
10 tion periods, requirements for replacement, recurrent  
11 conditions and definitions of terms.

12 (b) No long-term care insurance policy may:

13 (1) Be canceled, nonrenewed or otherwise terminated  
14 on the grounds of the age or the deterioration of the  
15 mental or physical health of the insured individual or  
16 certificate holder; or

17 (2) Contain a provision establishing a new waiting  
18 period in the event existing coverage is converted to or  
19 replaced by a new or other form within the same  
20 company, except with respect to an increase in benefits  
21 voluntarily selected by the insured individual or group  
22 policyholder; or

23 (3) Provide coverage for skilled nursing care only or  
24 provide significantly more coverage for skilled care in  
25 a facility than coverage for lower levels of care.

26 (c) Preexisting condition:

27 (1) No long-term care insurance policy or certificate  
28 other than a policy or certificate thereunder issued to  
29 a group as defined in subdivision (1), subsection (e),  
30 section four of this article shall use a definition of  
31 "preexisting condition" which is more restrictive than  
32 the following: Preexisting condition means a condition  
33 for which medical advice or treatment was recom-  
34 mended by, or received from a provider of health care  
35 services, within six months preceding the effective date  
36 of coverage of an insured person.

37 (2) No long-term care insurance policy or certificate  
38 other than a policy or certificate thereunder issued to  
39 a group as defined in subdivision (1), subsection (e),  
40 section four of this article may exclude coverage for a  
41 loss or confinement which is the result of a preexisting  
42 condition unless such loss or confinement begins within  
43 six months following the effective date of coverage of an  
44 insured person.

45 (3) The commissioner may extend the limitation  
46 periods set forth in subdivisions (1) and (2), subsection  
47 (c) of this section as to specific age group categories in  
48 specific policy forms upon findings that the extension is  
49 in the best interest of the public.

50 (4) The definition of "preexisting condition" does not  
51 prohibit an insurer from using an application form  
52 designed to elicit a complete health history of an  
53 applicant, and, on the basis of the answers on that  
54 application, from underwriting in accordance with that  
55 insurer's established underwriting standards. Unless  
56 otherwise provided in the policy or certificate, a  
57 preexisting condition, regardless of whether it is  
58 disclosed on the application, need not be covered until  
59 the waiting period described in subdivision (2), subsec-  
60 tion (c) of this section expires. No long-term care  
61 insurance policy or certificate may exclude or use  
62 waivers or riders of any kind to exclude, limit or reduce  
63 coverage or benefits for specifically named or described  
64 preexisting diseases or physical conditions beyond the  
65 waiting period described in subdivision (2), subsection  
66 (c) of this section.

67 (d) Prior hospitalization/institutionalization:

68 (1) Effective July 1, 1990, no long-term care insurance  
69 policy may be delivered or issued for delivery in this  
70 state if such policy:

71 (A) Conditions eligibility for any benefits on a prior  
72 hospitalization requirement; or

73 (B) Conditions eligibility for benefits provided in an  
74 institutional care setting on the receipt of a higher level  
75 of institutional care.

76 (2) Effective July 1, 1990, a long-term care insurance  
77 policy containing any limitations or conditions for  
78 eligibility other than those prohibited above in para-  
79 graph (1) shall clearly label in a separate paragraph of  
80 the policy or certificate entitled "Limitations or Condi-  
81 tions on Eligibility for Benefits" such limitations or  
82 conditions, including any required number of days of  
83 confinement.

84 (A) A long-term care insurance policy containing a  
85 benefit advertised, marketed or offered as a home health  
86 care or home care benefit may not condition receipt of  
87 benefits on a prior institutionalization requirement.

88 (B) A long-term care insurance policy which condi-  
89 tions eligibility of noninstitutional benefits on the prior  
90 receipt of institutional care shall not require a prior  
91 institutional stay of more than thirty (30) days for which  
92 benefits are paid.

93 (3) No long-term care insurance policy which provides  
94 benefits only following institutionalization shall condi-  
95 tion such benefits upon admission to a facility for the  
96 same or related conditions within a period of less than  
97 thirty days after discharge from the institution.

98 (e) The commissioner may adopt regulations estab-  
99 lishing loss ratio standards for long-term care insurance  
100 policies provided that a specific reference to long-term  
101 care insurance policies is contained in the regulation.

102 (f) Right to return-free look:

103 (1) Individual long-term care insurance policyholders

104 shall have the right to return the policy within ten days  
105 of its delivery and to have the premium refunded if,  
106 after examination of the policy, the policyholder is not  
107 satisfied for any reason. Individual long-term care  
108 insurance policies shall have a notice prominently  
109 printed on the first page of the policy or attached thereto  
110 stating in substance that the policyholder shall have the  
111 right to return the policy within ten days of its delivery  
112 and to have the premium refunded if, after examination  
113 of the policy, the policyholder is not satisfied for any  
114 reason.

115 (2) A person insured under a long-term care insu-  
116 rance policy issued pursuant to a direct response  
117 solicitation shall have the right to return the policy  
118 within thirty days of its delivery and to have the  
119 premium refunded if, after examination, the insured  
120 person is not satisfied for any reason. Long-term care  
121 insurance policies issued pursuant to a direct response  
122 solicitation shall have a notice prominently printed on  
123 the first page or attached thereto stating in substance  
124 that the insured person shall have the right to return  
125 the policy within thirty days of its delivery and to have  
126 the premium refunded if after examination the insured  
127 person is not satisfied for any reason.

128 (g) Outline of coverage:

129 (1) An outline of coverage shall be delivered to a  
130 prospective applicant for long-term care insurance at  
131 the time of initial solicitation through means which  
132 prominently direct the attention of the recipient to the  
133 document and its purpose.

134 (A) The commissioner shall prescribe a standard  
135 format, including style, arrangement and overall  
136 appearance, and the content of an outline of coverage.

137 (B) In the case of agent solicitations, an agent must  
138 deliver the outline of coverage prior to the presentation  
139 of an application or enrollment form.

140 (C) In the case of direct response solicitations, the  
141 outline of coverage must be presented in conjunction  
142 with any application or enrollment form.



- 143 (2) The outline of coverage shall include:
- 144 (A) A description of the principal benefits and  
145 coverage provided in the policy;
- 146 (B) A statement of the principal exclusions, reduc-  
147 tions, and limitations contained in the policy;
- 148 (C) A statement of the terms under which the policy  
149 or certificate, or both, may be continued in force or  
150 discontinued, including any reservation in the policy of  
151 a right to change premium. Continuation or conversion  
152 provisions of group coverage shall be specifically  
153 described;
- 154 (D) A statement that the outline of coverage is a  
155 summary only, not a contract of insurance, and that the  
156 policy or group master policy contain governing  
157 contractual provisions;
- 158 (E) A description of the terms under which the policy  
159 or certificate may be returned and premium refunded;  
160 and
- 161 (F) A brief description of the relationship of cost of  
162 care and benefits.
- 163 (h) A certificate issued pursuant to a group long-term  
164 care insurance policy which policy is delivered or issued  
165 for delivery in this state shall include:
- 166 (1) A description of the principal benefits and cover-  
167 age provided in the policy;
- 168 (2) A statement of the principal exclusions, reductions  
169 and limitations contained in the policy; and
- 170 (3) A statement that the group master policy deter-  
171 mines governing contractual provisions.
- 172 (i) Any policy advertising, marketing or offering long-  
173 term care or nursing home insurance benefits shall  
174 comply with the provisions of this act.

### §33-15A-7. Severability.

- 1 If any provision of this act or the application thereof  
2 to any person or circumstance is for any reason held to  
3 be invalid, the remainder of the act and application of

4 such provision to other persons or circumstances shall  
5 not be affected thereby.

**ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.**

**\*§33-23-2. Other provisions of chapter applicable.**

1 Every fraternal benefit society shall be governed and  
2 be subject, to the same extent as other insurers  
3 transacting like kinds of insurance, to the following  
4 articles of this chapter:

5 Article one [33-1-1 et seq.] (definitions), article two  
6 [33-2-1 et seq.] (insurance commissioner), article four  
7 [33-4-1 et seq.] (general provisions), article ten [33-10-1  
8 et seq.] (rehabilitation and liquidation), article eleven  
9 [33-11-1 et seq.] (unfair trade practices) article thirteen  
10 [33-13-1 et seq.] (life insurance) and article fifteen-a [33-  
11 15A-1 et seq.] (long-term care insurance).

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL  
SERVICE CORPORATIONS, DENTAL SERVICE  
CORPORATIONS AND HEALTH SERVICE  
CORPORATIONS.**

**\*\*§33-24-4. Exemptions; applicability of other laws.**

1 Every such corporation is hereby declared to be a  
2 scientific, nonprofit institution and as such exempt from  
3 the payment of all property and other taxes. Every such  
4 corporation, to the same extent such provisions are  
5 applicable to insurers transacting similar kinds of  
6 insurance and not inconsistent with the provisions of this  
7 article, shall be governed by and be subject to the  
8 provisions, as hereinbelow indicated, of the following  
9 articles of this chapter: Article two [33-2-1 et seq.]  
10 (insurance commissioner) except that under section nine  
11 [33-2-9] of article two examinations shall be conducted  
12 at least once every four years, article four [33-4-1 et seq.]  
13 (general provisions) except that section sixteen [33-4-16]  
14 of article four shall not be applicable thereto, article ten

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\* Clerk's Note: This section was also amended by H. B. 2286 and H. B. 2588, which passed prior to this act.

\*\* Clerk's Note: This section (§33-24-4) was also amended by S. B. 252 and H. B. 2588, which passed subsequent to this act.

15 [33-10-1 et seq.] (rehabilitation and liquidation), article  
16 eleven [33-11-1 et seq.] (unfair practices and frauds),  
17 article twelve [33-12-1 et seq.] (agents, brokers and  
18 solicitors) except that the agent's license fee shall be five  
19 dollars, article fifteen-a [33-15A-1 et seq.] (long-term  
20 care insurance), section three-c [33-16-3c], article sixteen  
21 (group accident and sickness insurance), section three-  
22 d [33-16-3d], article sixteen (medicare supplement) and  
23 article twenty-eight [33-28-1 et seq.] (individual accident  
24 and sickness insurance minimum standards); and no  
25 other provision of this chapter shall apply to such  
26 corporations unless specifically made applicable by the  
27 provisions of this article. If, however, any such corpo-  
28 ration shall be converted into a corporation organized  
29 for a pecuniary profit, or if it shall transact business  
30 without having obtained a license as required by section  
31 five [33-24-5] of this article, it shall thereupon forfeit its  
32 right to these exemptions.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**\*§33-25A-24. Statutory construction and relationship to other laws.**

1 (1) Except as otherwise provided in this article,  
2 provisions of the insurance law and provisions of  
3 hospital or medical service corporation laws shall not be  
4 applicable to any health maintenance organization  
5 granted a certificate of authority under this article. This  
6 provision shall not apply to an insurer or hospital or  
7 medical service corporation licensed and regulated  
8 pursuant to the insurance laws or the hospital or  
9 medical service corporation laws of this state except  
10 with respect to its health maintenance corporation  
11 activities authorized and regulated pursuant to this  
12 article.

13 (2) Factually accurate advertising or solicitation  
14 regarding the range of services provided, the premiums  
15 and copayments charged, the sites of services and hours  
16 of operation, and any other quantifiable, nonprofessional  
17 aspects of its operation by a health maintenance  
18 organization granted a certificate of authority, or its

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\*Clerk's Note: This section was also amended by S. B. 252, which passed subsequent to this act.

19 representative shall not be construed to violate any  
20 provision of law relating to solicitation or advertising by  
21 health professions: *Provided*, That nothing contained  
22 herein shall be construed as authorizing any solicitation  
23 or advertising which identifies or refers to any individ-  
24 ual provider, or makes any qualitative judgment  
25 concerning any provider.

26 (3) Any health maintenance organization authorized  
27 under this article shall not be deemed to be practicing  
28 medicine and shall be exempt from the provision of  
29 chapter thirty of this code, relating to the practice of  
30 medicine.

31 (4) Any long-term care insurance policy delivered or  
32 issued for delivery in this state by a health maintenance  
33 organization shall comply with the provisions of article  
34 fifteen-a of this chapter.

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## CHAPTER 102

(Com. Sub. for S. B. 252—By Senators Jackson, Tomblin, Jones and Lucht)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact section four, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-four, article twenty-five-a of said chapter; and to amend article sixteen of said chapter by adding thereto a new section, designated section three-f, all relating to insurance policies; hospital service corporations, medical service corporations and dental service corporations; exemptions; health maintenance organizations; and requiring the insurance commissioner to promulgate rules and regulations for the treatment of temporomandibular joint disorder and craniomandibular disorder.

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

That section four, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, be amended and reenacted; that section twenty-four, article twenty-five-a of said chapter be amended and reenacted; and that article sixteen of said chapter be amended by adding thereto a new section, designated section three-f, all to read as follows:

Article

- 16. Group Accident and Sickness Insurance.
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25A. Health Maintenance Organization Act.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

**§33-16-3f. Required policy provisions—Treatment of temporomandibular joint disorder and craniomandibular disorder.**

1 (a) The Legislature hereby finds that there is a need  
2 to provide guidelines regarding the coverage of tempo-  
3 romandibular joint disorder and craniomandibular  
4 disorder in policies issued pursuant to this article and  
5 article fifteen of this chapter, in order to provide for the  
6 health of our citizens. The purpose of this section is to  
7 require the insurance commissioner to develop stand-  
8 ards regarding temporomandibular joint disorder and  
9 craniomandibular disorder and to require that all  
10 insurers writing accident and sickness policies which  
11 are covered by this article or article fifteen of this  
12 chapter, and the public employees insurance agency as  
13 set forth in article sixteen of chapter five make available  
14 this coverage to the policyholder or sponsor of each such  
15 policy. For purposes of this section, the public employees  
16 insurance agency is the policyholder.

17 (b) The insurance commissioner shall promulgate  
18 rules and regulations regarding the diagnosis and  
19 treatment for temporomandibular joint disorder and  
20 craniomandibular disorder coverage in accident and  
21 sickness policies covered by this article and article  
22 fifteen of this chapter. Such regulations shall prescribe  
23 the manner by which such coverage shall be offered to  
24 the policyholder or sponsor; that benefits shall apply  
25 whether administered by a physician or dentist, and  
26 findings regarding the projected actuarial costs of  
27 implementing said regulations.

28 (c) The regulations shall be developed by the insu-  
29 rance commissioner with the advice of a six-member  
30 panel to be appointed by the commissioner. Such panel  
31 shall consist of a general practicing dentist who shall be  
32 recommended by the West Virginia Dental Association,  
33 an oral and maxillofacial surgeon who shall be recom-  
34 mended by the West Virginia Society for Oral and  
35 Maxillofacial Dentists, a physician who shall be recom-  
36 mended by the West Virginia State Medical Association,  
37 a member from a Health Services Corporation who shall  
38 be recommended by the Health Services Corporation in  
39 this state, a member representing commercial health  
40 insurers who shall be recommended by the association  
41 representing accident and sickness insurance, and a  
42 representative of the Public Employees Insurance  
43 Association.

44 The insurance commissioner shall make his appoint-  
45 ments to the panel based solely upon said recommenda-  
46 tions thirty days after this section takes effect.

47 (d) This section shall only apply to policies of insu-  
48 rance which provide hospital, surgical or major medical  
49 expense insurance or any combination of these cover-  
50 ages.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL  
SERVICE CORPORATIONS, DENTAL SERVICE  
CORPORATIONS AND HEALTH SERVICE  
CORPORATIONS.**

**\*§33-24-4. Exemptions; applicability of other laws.**

1 Every such corporation is hereby declared to be a  
2 scientific, nonprofit institution and as such exempt from  
3 the payment of all property and other taxes. Every such  
4 corporation, to the same extent such provisions are  
5 applicable to insurers transacting similar kinds of  
6 insurance and not inconsistent with the provisions of this  
7 article, shall be governed by and be subject to the  
8 provisions, as hereinbelow indicated, of the following  
9 articles of this chapter: Article two (insurance commis-  
10 sioner) except that under section nine of article two

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\*Clerk's Note: This section was also amended by H. B. 2526, which passed April 4, 1989, and H. B. 2588, which passed subsequent to this act.

11 examinations shall be conducted at least once every four  
12 years, article four (general provisions) except that  
13 section sixteen of article four shall not be applicable  
14 thereto, article ten (rehabilitation and liquidation),  
15 article eleven (unfair practices and frauds), article  
16 twelve (agents, brokers and solicitors) except that the  
17 agent's license fee shall be five dollars, section three-c,  
18 article sixteen (group accident and sickness insurance),  
19 section three-d, article sixteen (medicare supplement),  
20 article sixteen, section three-f, (treatment of temporo-  
21 mandibular joint disorder and craniomandibular dis-  
22 order), and article twenty-eight (individual accident and  
23 sickness insurance minimum standards); and no other  
24 provision of this chapter shall apply to such corporations  
25 unless specifically made applicable by the provisions of  
26 this article. If, however, any such corporation shall be  
27 converted into a corporation organized for a pecuniary  
28 profit, or if it shall transact business without having  
29 obtained a license as required by section five of this  
30 article, it shall thereupon forfeit its right to these  
31 exemptions.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**\*§33-25A-24. Statutory construction and relationship to other laws.**

1 (1) Except as otherwise provided in this article,  
2 provisions of the insurance law and provisions of  
3 hospital or medical service corporation laws shall not be  
4 applicable to any health maintenance organization  
5 granted a certificate of authority under this article. This  
6 provision shall not apply to an insurer or hospital or  
7 medical service corporation licensed and regulated  
8 pursuant to the insurance laws or the hospital or  
9 medical service corporation laws of this state except  
10 with respect to its health maintenance corporation  
11 activities authorized and regulated pursuant to this  
12 article.

13 (2) Factually accurate advertising or solicitation  
14 regarding the range of services provided, the premiums

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\* Clerk's Note: This section was also amended by H. B. 2526, which passed prior to this act.

15 and copayments charged, the sites of services and hours  
16 of operation, and any other quantifiable, nonprofessional  
17 aspects of its operation by a health maintenance  
18 organization granted a certificate of authority, or its  
19 representative shall not be construed to violate any  
20 provision of law relating to solicitation or advertising by  
21 health professions: *Provided*, That nothing contained  
22 herein shall be construed as authorizing any solicitation  
23 or advertising which identifies or refers to any individ-  
24 ual provider, or makes any qualitative judgment  
25 concerning any provider.

26 (3) Any health maintenance organization authorized  
27 under this article shall not be deemed to be practicing  
28 medicine and shall be exempt from the provision of  
29 chapter thirty of this code, relating to the practice of  
30 medicine.

31 (4) The provisions of section three-f of article sixteen  
32 of this chapter concerning treatment of temporomandib-  
33 ular disorder and craniomandibular disorder shall be  
34 applicable to any health maintenance organization  
35 granted a certificate of authority under this article.

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## CHAPTER 103

(H. B. 2391—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-b, relating to providing for a mechanism for approval or disapproval of premium rate charges for accident and sickness insurance policies; exceptions.

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

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by



adding thereto a new article, designated article sixteen-b, to read as follows:

**ARTICLE 16B. ACCIDENT AND SICKNESS RATES.**

§33-16B-1. Filing and approval of accident and sickness rates.

§33-16B-2. Ratemaking standards.

§33-16B-3. Exceptions.

**§33-16B-1. Filing and approval of accident and sickness rates.**

1 Premium rate charges for any individual accident and  
2 sickness insurance policy or for any group accident and  
3 sickness insurance policy issued pursuant to this chapter  
4 shall be filed with the commissioner for a waiting period  
5 of sixty days before such charges become effective. At  
6 the expiration of such sixty days the premium rate  
7 charges so filed shall be deemed approved unless prior  
8 thereto the charges have been affirmatively approved or  
9 disapproved by the commissioner.

10 The commissioner shall disapprove accident and  
11 health insurance premium rates which are not in  
12 compliance with the requirements of this chapter or any  
13 rule promulgated by the commissioner pursuant to  
14 section two of this article. The commissioner shall send  
15 written notice of such disapproval to the insurer. The  
16 commissioner may approve the premium rates before  
17 the sixty-day period expires by giving written notice of  
18 approval.

**§33-16B-2. Ratemaking standards.**

1 Premium rates charged for any individual accident  
2 and health insurance policy or for any group accident  
3 and health insurance policy issued pursuant to this  
4 chapter shall be reasonable in relation to the benefits  
5 available under the policy. The commissioner shall  
6 promulgate rules pursuant to chapter twenty-nine-a to  
7 establish minimum ratemaking standards in accordance  
8 with accepted actuarial principles and practices.

**§33-16B-3. Exceptions.**

1 This article shall not apply to group accident and

2 health insurance plans upon which premiums are  
 3 negotiated with the individual policyholder and are  
 4 based on the historic and projected loss experience of the  
 5 group to be insured.

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## CHAPTER 104

(S. B. 296—By Senators Tucker, Mr. President, and Harman,  
 By Request of the Executive)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twenty-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that insurers and not insureds be charged with a deficit incurred by the West Virginia essential insurance association as the result of loss due to any rate plan pursuant to the plan of operation.

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

That section five, article twenty-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 20A. WEST VIRGINIA ESSENTIAL INSURANCE COVERAGE ACT.**

**§33-20A-5. General powers.**

1 (a) The association has, for purposes of this article and  
 2 to the extent approved by the commissioner, the general  
 3 powers and authority granted under the laws of this  
 4 state to insurers licensed to transact the kinds of  
 5 insurance as defined in chapter thirty-three, article one  
 6 of this code.

7 (b) The association may take any necessary action to  
 8 make available necessary insurance including, but not  
 9 limited to, the following:

10 (1) Assess participating insurers amounts necessary  
 11 to pay the obligations of the association, administration  
 12 expenses, the cost of examinations and other expenses  
 13 authorized under this article. The assessment of each  
 14 member insurer for the kind or kinds of insurance

15 designated in the plan shall be in the proportion that  
16 the net direct written premiums of the member insurer  
17 for the preceding calendar year bear to the net direct  
18 written premiums of all members for the preceding  
19 calendar year. A member insurer may not be assessed  
20 in any year an amount greater than five percent of his  
21 net direct written premiums for the preceding calendar  
22 year. Each member insurer shall be allowed a premium  
23 tax credit at the rate of twenty percent per year for five  
24 successive years following termination of the association.  
25 Each member insurer shall be allowed a premium tax  
26 credit at the rate of twenty percent per year for five  
27 successive years following payment of the assessment by  
28 the member insurer for any deficit in the plan.

29 (2) Enter into such contracts as are necessary or  
30 proper to carry out the provisions and purposes of the  
31 provisions of this article.

32 (3) Sue or be sued, including taking legal action  
33 necessary to recover any assessments for, on behalf of,  
34 or against participant insurers.

35 (4) Investigate claims brought against the fund and  
36 adjust, compromise, settle, and pay covered claims to the  
37 extent of the association's obligation and deny all other  
38 claims. Claims may be processed through the associa-  
39 tion's employees or through one or more member  
40 insurers or other persons designated as servicing  
41 facilities. Designation of a service facility is subject to  
42 the approval of the commissioner, but such designation  
43 may be declined by a member insurer.

44 (5) Classify risks as may be applicable and equitable.

45 (6) Establish appropriate rates, rate classifications  
46 and rating adjustments, and file such rates with the  
47 commissioner as may be required. Rates, rating plans  
48 and any provision for recoupment shall be based upon  
49 the association's loss and expense experience and  
50 investment income from unearned premium and loss  
51 reserves. Premium rates, including initial premiums,  
52 shall be on an actuarially sound basis and shall be  
53 calculated to be self-supporting.

54 (7) Administer any type of reinsurance program for

55 or on behalf of the association or any participating  
56 carriers.

57 (8) Pool risks among participating carriers.

58 (9) Issue and market through agents, policies of  
59 insurance providing coverage required by this article in  
60 its own name or on behalf of participating carriers.

61 (10) Administer separate pools, separate accounts, or  
62 other plans as may be deemed appropriate for separate  
63 carriers or groups of carriers.

64 (11) Invest, reinvest and administer all funds and  
65 moneys held by the association.

66 (12) Borrow funds needed by the association to effect  
67 the purposes of this section.

68 (13) Develop, effectuate and promulgate any loss  
69 prevention programs aimed at the best interests of the  
70 association and the insured public.

71 (14) Operate and administer any combination of  
72 plans, pools, reinsurance arrangements or other mech-  
73 anisms as deemed appropriate to best accomplish the  
74 fair and equitable operation of the association for the  
75 purposes of making available essential insurance  
76 coverage.

77 (15) Provide for the method of recoupment of deficits  
78 that may be incurred by any plan pursuant to the plan  
79 of operation. In no event shall a deficit incurred by the  
80 association be charged directly or indirectly to any  
81 person other than insurers under its fire and extended  
82 coverage or essential insurance policy. The provisions of  
83 article seventeen, section nine of this chapter shall not  
84 apply to this article.

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## CHAPTER 105

(Com. Sub. for H. B. 2286—By Delegate Ashcraft)

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[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact sections two and thirty-three,  
article twenty-three, chapter thirty-three of the code of  
West Virginia, one thousand nine hundred thirty-one, as

amended, relating to requiring fraternal benefit societies to adhere to the provisions of article twelve of chapter thirty-three which deals with agents, brokers, solicitors and excess lines; and to requiring agents of such societies to be licensed.

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

That sections two and thirty-three, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

#### ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-2. Other provisions of chapter applicable.

§33-23-33. Agents.

#### \*§33-23-2. Other provisions of chapter applicable.

1 Every fraternal benefit society shall be governed and  
2 be subject, to the same extent as other insurers  
3 transacting like kinds of insurance, to the following  
4 articles of this chapter: Article one (definitions); article  
5 two (insurance commissioner); article four (general  
6 provisions); article ten (rehabilitation and liquidation);  
7 article eleven (unfair trade practices); article twelve  
8 (agents, brokers, solicitors and excess lines); and article  
9 thirteen (life insurance).

#### §33-23-33. Agents.

1 Commencing on the first day of June, one thousand  
2 nine hundred eighty-nine, agents for fraternal benefit  
3 societies shall be required to be licensed pursuant to  
4 chapter thirty-three of the code of West Virginia, one  
5 thousand nine hundred thirty-one, as amended:  
6 *Provided*, That any person who was acting as or serving  
7 in the role of an agent for a fraternal benefit society on  
8 or before the first day of July, one thousand nine  
9 hundred eighty-nine, shall be exempt from the exami-  
10 nation requirement of subsection (e), section two, article  
11 twelve of this chapter: *Provided, however*, That any  
12 person who is a salaried officer, employee or member  
13 of a fraternal benefit society and who as an occasional

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\* Clerk's Note: This section was also amended by H. B. 2526 which passed prior to this act and by H. B. 2588, which passed subsequent to it.

14 and incidental duty of such position may solicit a  
15 fraternal insurance contract from a member of such  
16 fraternal benefit society such person shall be exempt  
17 from the continuing education requirements otherwise  
18 made subject to insurance agents by this chapter and  
19 the examination requirements of subsection (e), section  
20 two, article twelve of this chapter if such person receives  
21 no commission or other compensation based directly on  
22 such solicitation of fraternal insurance contracts and if  
23 such person makes no solicitation of insurance of any  
24 kind to or from persons who are not members of such  
25 fraternal benefit society. For the purpose of this article  
26 the solicitation of a fraternal insurance contract by such  
27 salaried officer, employee, or member from a new  
28 member of such society simultaneously with such new  
29 member's joining such society shall be deemed the  
30 solicitation of a member.

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## CHAPTER 106

(S. B. 621—Originating in the Committee on Small Business)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections one, two, five and seven, article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, six, ten and fifteen, article six of said chapter twelve; to further amend said article by adding thereto a new section, designated section nine-c; and to amend and reenact section four, article twenty-two-d, chapter eighteen of said code, all relating to the linked deposit program and to the West Virginia state board of investments; providing definition of director; recognizing importance of involving state treasurer and director of governor's office of community and industrial development in linked deposit program to maximize impact of program; requiring director's approval of all linked deposit loan packages; providing that state, state treasurer and director not liable to any lending institu-

tion for payment of principal and interest on loans; expanding the membership of the West Virginia state board of investments; providing for appointment of members to the board by the governor; the qualifications for appointed members; the term of office for appointed members; providing for a support staff for the board; the compensation for said staff; the creation of a special revenue account; allowing the board to make a charge against the earnings of the funds managed by the board; providing for yearly appropriations by the Legislature, and yearly reports to the Legislature by the board with respect to the status of the special revenue account; providing that any excess in the special revenue account after appropriations be disbursed to fund participants on a pro-rata basis; to authorize the participation of various entities in an investment company or investment trust registered under 15 U.S.C. §80a; providing for semiannual internal audits and annual external audits; and to limit linked deposits as provided for in section four, article twenty-two-d, chapter eighteen of the code of West Virginia, to two million dollars annually and in an aggregate amount of twenty million dollars.

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

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

#### **Chapter**

**12. Public Moneys and Securities.**

**18. Education.**

### **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

#### **Article**

**1A. Linked Deposit Program.**

**6. West Virginia State Board of Investments.**

**ARTICLE 1A. LINKED DEPOSIT PROGRAM.**

§12-1A-1. Definitions.

§12-1A-2. Legislative findings.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

§12-1A-7. Liability of state, state treasurer and director.

**§12-1A-1. Definitions.**

1 (a) "Director" means the director of the governor's  
2 office of community and industrial development.

3 (b) "Eligible small business" means any business  
4 which employs two hundred or less employees or has  
5 gross annual receipts of four million dollars or less.

6 (c) "Eligible lending institution" means a financial  
7 institution that is eligible to make commercial loans, is  
8 a public depository of state funds and agrees to  
9 participate in the linked deposit program.

10 (d) "Linked deposit" means a certificate of deposit  
11 placed by the state treasurer with an eligible lending  
12 institution at up to three percent below current market  
13 rates, as determined and calculated by the state  
14 treasurer, provided the institution agrees to lend the  
15 value of such deposit, according to the deposit agree-  
16 ment provided for by this article, to eligible small  
17 businesses at three percent below the present borrowing  
18 rate applicable to each specific business at the time of  
19 the deposit of state funds in the institution.

**§12-1A-2. Legislative findings.**

1 The Legislature finds that many small businesses  
2 throughout the state are experiencing economic stagna-  
3 tion or decline, that high interest rates have caused  
4 small businesses in this state to suffer disproportionately  
5 in profitability and competition and that such high  
6 interest rates have fostered a serious increase in  
7 unemployment. The linked deposit program provided  
8 for by this article is intended to provide a statewide  
9 availability of lower cost funds for lending purposes that  
10 will materially contribute to the economic revitalization  
11 of this state. Accordingly, it is declared to be the public  
12 policy of the state through the linked deposit program  
13 to create an availability of lower-cost funds to inject



14 needed capital into the business community, sustain or  
15 improve business profitability, protect the jobs of  
16 citizens of this state and assist businesses located in any  
17 county declared to be a federal disaster area by the  
18 Federal Emergency Management Agency. The Legisla-  
19 ture further finds that the involvement of both the state  
20 treasurer and the director in determining which  
21 businesses will receive the benefits of the linked deposit  
22 program is necessary in order for state funds to be used  
23 in the most effective manner possible in assisting small  
24 businesses throughout the state and thereby maximizing  
25 the impact of the program.

**§12-1A-5. Acceptance or rejection of loan package;  
deposit agreement.**

1 (a) The state treasurer may accept or reject a linked  
2 deposit loan package or any portion thereof, based on the  
3 ratio of state funds to be deposited to jobs sustained or  
4 created: *Provided*, That notwithstanding any provision  
5 of this article to the contrary, the state treasurer may  
6 not accept any linked deposit loan package or any  
7 portion thereof unless the same has been reviewed and  
8 approved by the director in his sole discretion.

9 (b) The state treasurer shall reject any linked deposit  
10 loan package if the small business requesting such loan  
11 is not in good standing with the state tax department,  
12 department of employment security and the workers'  
13 compensation fund, and these agencies shall provide the  
14 state treasurer with such information as to the standing  
15 of each small business loan applicant, notwithstanding  
16 any provision of this code to the contrary.

17 (c) Any linked deposit loan package that is being made  
18 to refinance an existing debt, or any portion thereof,  
19 must meet one of the following criteria:

20 (1) The small business can demonstrate in good faith  
21 that it is experiencing a substantial loss in its current  
22 (fiscal or calendar) tax year period;

23 (2) The small business recently experienced a natural  
24 disaster and suffered unreimbursable casualty losses;

25 (3) The small business has filed to recover under the

26 Federal Bankruptcy Act and meets the criteria in (1)  
27 above; or

28 (4) The small business can provide compelling infor-  
29 mation to the state treasurer that jobs will be saved  
30 and/or created as a result of loan refinancing.

31 (d) Upon acceptance of the linked deposit loan  
32 package or any portion thereof by the state treasurer  
33 and the director, the state treasurer may place certif-  
34 icates of deposit with the eligible lending institution at  
35 three percent below current market rates, as deter-  
36 mined and calculated by the state treasurer. Upon  
37 acceptance of the linked deposit loan package for flood  
38 victims or any portion thereof, the state treasurer may  
39 place certificates of deposit with the eligible lending  
40 institution at five percent below current market rates,  
41 as determined and calculated by the state treasurer.  
42 When necessary, the treasurer may place certificates of  
43 deposit prior to acceptance of a linked deposit loan  
44 package.

45 (e) The eligible lending institution shall enter into a  
46 deposit agreement with the state treasurer, which shall  
47 include requirements necessary to carry out the pur-  
48 poses of this article. Such requirements shall reflect the  
49 market conditions prevailing in the eligible lending  
50 institution's lending area. The agreement may include  
51 a specification of the period of time in which the lending  
52 institution is to lend funds upon the placement of a  
53 linked deposit and shall include provisions for the  
54 certificates of deposit to be placed for up to two-year  
55 maturities that may be renewed for up to an additional  
56 two years. Interest shall be paid at the times determined  
57 by the state treasurer.

**§12-1A-7. Liability of state, state treasurer and director.**

1 The state, the state treasurer and the director are not  
2 liable to any eligible lending institution in any manner  
3 for payment of the principal or interest on the loan to  
4 an eligible small business. Any delay in payment or  
5 default on the part of an eligible small business does not  
6 in any manner affect the deposit agreement between the  
7 eligible lending institution and the state treasurer.

**ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.**

§12-6-3. State board of investments continued; body corporate; members; appointment of certain members; qualifications and term of office.

§12-6-4. Officers; organization; surety bonds for members and employees.

§12-6-6. Costs and expenses; fees for services.

§12-6-9c. Authorization of additional investments.

§12-6-10. Restrictions on investments.

§12-6-15. Audits.

**§12-6-3. State board of investments continued; body corporate; members; appointment of certain members; qualifications and term of office.**

1 (a) The state board of investments is hereby continued  
2 as a body corporate of the state authorized to exercise  
3 all of the powers and functions granted to it pursuant  
4 to this article. There shall be seven members of the state  
5 board of investments. The governor, or his designee,  
6 state treasurer and state auditor shall be the members  
7 of the board. There shall be four members appointed by  
8 the governor: *Provided*, That no more than three such  
9 appointed members may belong to the same political  
10 party.

11 (b) The members appointed by the governor shall be  
12 appointed from a list of twelve persons submitted jointly  
13 by the governor, the state treasurer, and the state  
14 auditor. No more than two names submitted by the  
15 governor may be appointed as members to the board.  
16 Of the members appointed by the governor, two shall  
17 be members of the financial community, one shall be a  
18 certified public accountant, and one shall be an attorney  
19 with experience in finance and investment matters.  
20 Appointments shall be made by the governor with the  
21 advice and consent of the Senate.

22 (c) Appointed members shall serve for a term of six  
23 years and may be reappointed at the expiration of their  
24 terms. In the event of a vacancy among appointed  
25 members, an appointment shall be made to fill the  
26 unexpired term.

27 (d) Appointed members of the board shall serve  
28 without compensation, but shall be entitled to their  
29 reasonable and necessary expenses actually incurred in  
30 discharging their duties under this article.

**§12-6-4. Officers; organization; surety bonds for members and employees.**

1 (a) The governor shall be the chairman and the  
2 custodian of all funds, securities and assets held by the  
3 board and the board shall elect an executive secretary  
4 to serve for a term of six years, such election to be held  
5 at the board's first meeting after the effective date of  
6 this article. The office of the state treasurer shall act as  
7 a depository for all funds that may, from time to time,  
8 from whatever source, be made available to the board  
9 for investment. The office of the state treasurer shall act  
10 as staff agency for the board.

11 (b) The board shall meet quarterly and may include  
12 in its bylaws procedures for the calling and holding of  
13 additional meetings.

14 (c) Each member of the board shall give a separate  
15 and additional fidelity bond from a surety company  
16 qualified to do business within this state in a penalty  
17 amount of two hundred fifty thousand dollars for the  
18 faithful performance of his duties as a member of the  
19 board. In addition, the board will purchase a blanket  
20 bond for the faithful performance of its duties in the  
21 amount of five million dollars in excess of the two  
22 hundred fifty thousand dollar individual bond required  
23 of each member by the provisions of this section. The  
24 board may require a fidelity bond from a surety  
25 company qualified to do business in this state for any  
26 person who has charge of, or access to, any securities,  
27 funds or other moneys held by the board, and the  
28 amount of such fidelity bond shall be fixed by the board.  
29 The premiums payable on all fidelity bonds shall be an  
30 expense of the board.

**§12-6-6. Costs and expenses; fees for services.**

1 (a) The board shall make a charge against the  
2 earnings of the various funds managed by the board for  
3 all necessary expenses of the board. Such charge shall  
4 be on a pro-rata basis of actual earnings of the various  
5 funds managed by the board. Such charge shall be  
6 payable into a special revenue account hereby created  
7 in the state treasury and named the "board management

8 account." The board is authorized to expend the moneys  
9 deposited in this account for all costs and expenses of  
10 the board, including fees of professional consultants,  
11 advisors and auditors, brokerage commissions, and all  
12 other necessary expenses of the board incurred in the  
13 performance of its functions: *Provided*, That during any  
14 fiscal year in which the board anticipates spending any  
15 money from the special account, it shall submit to the  
16 executive department during the budget preparation  
17 period prior to the Legislature convening, before that  
18 fiscal year for inclusion in the executive budget  
19 document and budget bill, the request for appropri-  
20 ations: *Provided, however*, That no funds may be ex-  
21 pended from this account unless appropriated by the  
22 Legislature.

23 (b) The board shall make an annual report to the  
24 Legislature on the status of the board management  
25 account, including the previous year's expenditures and  
26 projected expenditures for the next year. Any amounts  
27 remaining in the special account after yearly appropri-  
28 ations by the Legislature shall be distributed on a pro-  
29 rata basis, taking into account average daily balances,  
30 to the participants of the various funds managed by the  
31 board.

#### §12-6-9c. Authorization of additional investments.

1 Notwithstanding the restrictions which may otherwise  
2 be provided by law with respect to the investment of  
3 funds, each board, commission, department, official or  
4 agency charged with the administration of state funds,  
5 all administrators, custodians or trustees of pension  
6 funds, each political subdivision of this state and each  
7 county board of education is authorized to invest funds  
8 in the securities of or any other interest in any  
9 investment company or investment trust registered  
10 under the Investment Company Act of 1940, 15 U.S.C.  
11 §80a, the portfolio of which is limited to direct obliga-  
12 tions of or obligations guaranteed as to the payment of  
13 both principal and interest by the United States of  
14 America and to repurchase agreements fully collateral-  
15 ized by United States Government obligations: *Provided*,  
16 That the investment company or investment trust takes

17 delivery of the collateral either directly or through an  
18 authorized custodian.

**§12-6-10. Restrictions on investments.**

1 Moneys on deposit in the consolidated fund and the  
2 consolidated pension fund shall be invested as permitted  
3 by section nine of this article subject to the restrictions  
4 and conditions contained in this section:

5 (1) At no time shall more than seventy-five percent of  
6 the portfolio of either fund be invested in securities  
7 described in subdivision (g) of said section nine;

8 (2) At no time shall more than twenty percent of the  
9 portfolio of either fund be invested in securities  
10 described in said subdivision (g) which mature within  
11 one year from the date of issuance thereof;

12 (3) At no time shall more than three percent of the  
13 portfolio of either fund be invested in securities issued  
14 by a single private corporation or association.

15 For the purpose of making the computations required  
16 by this section, securities shall be valued in accordance  
17 with generally accepted accounting principles.

**§12-6-15. Audits.**

1 There shall be a continuous postaudit conducted by  
2 the legislative auditor of the investment transactions of  
3 the board, and a copy thereof for the preceding calendar  
4 year shall be furnished to each member of the Legisla-  
5 ture on or before the first day of February of each year.  
6 The board shall further cause to be conducted a  
7 semiannual internal audit of all investment transactions  
8 of the board and an annual external audit of all  
9 investment transactions of the board: *Provided*, That the  
10 board shall on a monthly basis provide to each political  
11 subdivision, state agency and any other entity investing  
12 moneys in the consolidated investment fund an itemized  
13 account reflecting the portfolio value of each said  
14 political subdivision, state agency and any other entities'  
15 investments in the consolidated investment fund. The  
16 board shall further provide a monthly statement  
17 reflecting the interest earned by each said political

- 18 subdivision, state agency or other investing entity and  
19 the method by which said interest has been calculated.

## CHAPTER 18. EDUCATION.

### ARTICLE 22D. HIGHER EDUCATION STUDENT ASSISTANCE LOAN PROGRAM.

#### §18-22D-4. Limitations on investment in linked deposits.

- 1 The state treasurer shall invest in linked deposits as  
2 identified by the board through an approved applica-  
3 tion, provided that at the time of placement of the linked  
4 deposit, exclusive of the linked deposit program pro-  
5 vided for in article one-a, chapter twelve of this code,  
6 not more than two percent of the state's total investment  
7 portfolio is so invested. The total amount initially  
8 deposited in any one year shall not exceed two million  
9 dollars, and the total amount so deposited at any one  
10 time shall not exceed, in the aggregate, twenty million  
11 dollars.

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## CHAPTER 107

(H. B. 2236—By Delegates Moore and Reid)

[Passed March 3, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen and fifteen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the requirement of the posting of bond or other security to secure the payment of wages and fringe benefits by employers engaged in construction work or in the severance, production or transportation of minerals; providing that certain employers may be exempted therefrom and limiting such exemption; requiring certain reports be filed with commissioner of labor with respect to bonds and the nature and content of such reports; the issuance of certain cease and desist orders by the commissioner and the authority of the commissioner with respect thereto; the manner in which such orders are to be issued and to be served upon

the person affected thereby and the time within which such orders are to be served; providing for judicial review of orders and the venue of such appeals; the time within which such appeals must be taken and certain bonding and other requirements with respect thereto; prohibiting the threatening of or interfering with person authorized to enforce the provision of these sections; and providing penalties for violations.

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

That sections fourteen and fifteen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

§21-5-14. Employer's bond for wages and benefits.

§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.

**§21-5-14. Employer's bond for wages and benefits.**

1 (a) *Bond required.*—With the exception of those who  
 2 have been doing business in this state actively and  
 3 actually engaged in construction work, or the severance,  
 4 production or transportation of minerals for at least five  
 5 consecutive years next preceding the posting of the bond  
 6 required by this section, every employer, person, firm  
 7 or corporation engaged in or about to engage in  
 8 construction work, or the severance, production or  
 9 transportation (excluding railroads and water transpor-  
 10 ters) of minerals, shall, prior to engaging in any  
 11 construction work, or the severance, production or  
 12 transportation of minerals, furnish a bond on a form  
 13 prescribed by the commissioner, payable to the state of  
 14 West Virginia, with the condition that the person, firm  
 15 or corporation pay the wages and fringe benefits of his  
 16 or its employees when due. The amount of the bond shall  
 17 be equal to the total of the employer's gross payroll for  
 18 four weeks at full capacity or production, plus fifteen  
 19 percent of the said total of employer's gross payroll for  
 20 four weeks at full capacity or production. The amount  
 21 of the bond shall increase or decrease as the employer's  
 22 payroll increases or decreases: *Provided*, That the



23 amount of the bond shall not be decreased, except with  
24 the commissioner's approval and determination that  
25 there are not outstanding claims against the bond.

26 (b) *Waiver.*—The commissioner shall waive the post-  
27 ing of any bond required by subsection (a) of this section  
28 upon his determination that an employer is of sufficient  
29 financial responsibility to pay wages and fringe benefits.  
30 The commissioner shall promulgate rules and regula-  
31 tions according to the provisions of chapter twenty-nine-  
32 a of this code which prescribe standards for the  
33 granting of such waivers.

34 (c) *Form of bond; filing in office of circuit clerk.*—The  
35 bond may include, with the approval of the commis-  
36 sioner, surety bonding, collateral bonding (including  
37 cash and securities), letters of credit, establishment of  
38 an escrow account or a combination of these methods.  
39 The commissioner shall accept an irrevocable letter of  
40 credit in lieu of any other bonding requirement. If  
41 collateral bonding is used, the employer may deposit  
42 cash, or collateral securities or certificates as follows:  
43 Bonds of the United States or its possessions, or of the  
44 federal land bank, or of the homeowner's loan corpora-  
45 tion; full faith and credit general obligation bonds of the  
46 state of West Virginia or other states, and of any county,  
47 district or municipality of the state of West Virginia or  
48 other states; or certificates of deposit in a bank in this  
49 state, which certificates shall be in favor of the state.  
50 The cash deposit or market value of such securities or  
51 certificates shall be equal to or greater than the sum of  
52 the bond. The commissioner shall, upon receipt of any  
53 such deposit of cash, securities or certificates, promptly  
54 place the same with the state treasurer whose duty it  
55 shall be to receive and hold the same in the name of the  
56 state in trust for the purpose for which such deposit is  
57 made. The employer making the deposit shall be entitled  
58 from time to time to receive from the state treasurer,  
59 upon the written approval of the commissioner, the  
60 whole or any portion of any cash, securities or certifi-  
61 cates so deposited, upon depositing with him in lieu  
62 thereof, cash or other securities or certificates of the  
63 classes herein specified having value equal to or greater

64 than the sum of the bond. The commissioner shall cause  
65 a copy of the bond to be filed in the office of the clerk  
66 of the county commission of the county wherein the  
67 person, firm or corporation is doing business to be  
68 available for public inspection.

69 (d) *Employee cause of action.*—Notwithstanding any  
70 other provision in this article, any employee, whose  
71 wages and fringe benefits are secured by the bond, as  
72 specified in subsection (c) of this section, has a direct  
73 cause of action against the bond for wages and fringe  
74 benefits that are due and unpaid.

75 (e) *Action of commissioner.*—Any employee having  
76 wages and fringe benefits unpaid, may inform the  
77 commissioner of the claim for unpaid wages and fringe  
78 benefits and request certification thereof. If the commis-  
79 sioner, upon notice to the employer and investigation,  
80 finds that such wages and fringe benefits or a portion  
81 thereof are unpaid, he shall make demand of such  
82 employer for the payment of such wages and fringe  
83 benefits. If payment for such wages and fringe benefits  
84 is not forthcoming within the time specified by the  
85 commissioner, not to exceed thirty days, the commis-  
86 sioner shall certify such claim or portion thereof, and  
87 forward the certification to the bonding company or the  
88 state treasurer, who shall provide payment to the  
89 affected employee within fourteen days of receipt of  
90 such certification. The bonding company, or any person,  
91 firm or corporation posting a bond, thereafter shall have  
92 the right to proceed against a defaulting employer for  
93 that part of the claim the employee paid. The procedure  
94 specified herein shall not be construed to preclude other  
95 actions by the commissioner or employee to seek  
96 enforcement of the provisions of this article by any civil  
97 proceedings for the payment of wages and fringe  
98 benefits or by criminal proceedings as may be deemed  
99 appropriate.

100 (f) *Posting and reporting by employer.*—With the  
101 exception of those exempt under subsection (a) of this  
102 section, any employer who is engaged in construction  
103 work or the severance, production or transportation  
104 (excluding railroad and water transporters) of minerals

105 shall post the following in a place accessible to his or  
106 its employees:

107 (1) A copy of the bond or other evidence of surety  
108 specifying the number of employees covered as provided  
109 under subsection (a) of this section, or notification that  
110 the posting of a bond has been waived by the commis-  
111 sioner; and

112 (2) A copy of the notice in the form prescribed by the  
113 commissioner regarding the duties of employers under  
114 this section. During the first two years that any person,  
115 firm or corporation is doing business in this state in  
116 construction work, or in the severance, production or  
117 transportation of minerals, such person, firm or corpo-  
118 ration shall on or before the first day of February, May,  
119 August and November of each calendar year file with  
120 the department a verified statement of the number of  
121 employees, or a copy of the quarterly report filed with  
122 the department of employment security showing the  
123 accurate number of employees, unless the commissioner  
124 waives the filing of the report upon his determination  
125 that the person, firm or corporation is of sufficient  
126 stability that the reporting is unnecessary.

127 (g) *Termination of bond.*—The bond may be termi-  
128 nated, with the approval of the commissioner, after an  
129 employer submits a statement, under oath or affirma-  
130 tion lawfully administered, to the commissioner that the  
131 following has occurred: The employer has ceased doing  
132 business and all wages and fringe benefits have been  
133 paid, or the employer has been doing business in this  
134 state for at least five consecutive years and has paid all  
135 wages and fringe benefits. The approval of the commis-  
136 sioner will be granted only after the commissioner has  
137 determined that the wages and fringe benefits of all  
138 employees have been paid. The bond may also be  
139 terminated upon a determination by the commissioner  
140 that an employer is of sufficient financial responsibility  
141 to pay wages and fringe benefits.

**§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.**

1 (a) Any person, firm or corporation who knowingly

2 and willfully fails to provide and maintain an adequate  
3 bond as required by section fourteen of this article is  
4 guilty of a misdemeanor, and, upon conviction thereof,  
5 shall be fined not less than two hundred dollars nor  
6 more than five thousand dollars, or imprisoned in the  
7 county jail not more than one month, or both fined and  
8 imprisoned.

9 (b) Any person, firm or corporation who knowingly,  
10 willfully and fraudulently disposes of or relocates assets  
11 with intent to deprive employees of their wages and  
12 fringe benefits is guilty of a felony, and, upon conviction  
13 thereof, shall be fined not less than five thousand dollars  
14 nor more than thirty thousand dollars, or imprisoned in  
15 the penitentiary not less than one nor more than three  
16 years, or both fined and imprisoned.

17 (c) (1) At any time the commissioner determines that  
18 a person, firm or corporation has not provided or  
19 maintained an adequate bond, as required by section  
20 fourteen of this article, the commissioner shall issue a  
21 cease and desist order which is to be issued and posted  
22 requiring that said person, firm or corporation either  
23 post an adequate bond or cease further operations in this  
24 state within a period specified by the commissioner;  
25 which period shall be not less than five nor more than  
26 fourteen days. The cease and desist order may be issued  
27 by the commissioner at his own instance or at his  
28 direction, with or without application to or the approval  
29 of any other officer, agent, department or employee of  
30 the state or application to any court for approval thereof.  
31 Any person, firm or corporation who continues to  
32 engage in construction work or the severance, produc-  
33 tion or transportation of minerals without an approved  
34 bond after such specified period shall be guilty of a  
35 felony, and, upon conviction thereof, shall be fined not  
36 less than five thousand dollars nor more than thirty  
37 thousand dollars, or imprisoned in the penitentiary not  
38 less than one nor more than three years, or both fined  
39 and imprisoned. Any cease and desist order issued by  
40 the commissioner pursuant to this subsection may be  
41 directed by the commissioner to the sheriff of the county  
42 wherein the business activity of which the order is the

43 subject, or to any officer or employee of the department,  
44 commanding such sheriff, officer or employee to serve  
45 such order upon the business in question within seventy-  
46 two hours and to make proper return thereof.

47 (2) Any other provision of law to the contrary notwith-  
48 standing, any person against whom a cease and desist  
49 order has been directed shall be entitled to judicial  
50 review thereof by filing a verified petition taking an  
51 appeal therefrom within fifteen days from the date of  
52 service of such order. Such verified petition shall be  
53 filed in the circuit court of the county wherein service  
54 of the order was completed, at the option of the  
55 petitioner, or, in the circuit court of Kanawha County,  
56 West Virginia. If the appeal is not perfected within such  
57 fifteen day period, the cease and desist order shall be  
58 final and shall not thereafter be subject to judicial  
59 review. No appeal shall be deemed to have been  
60 perfected except upon the filing with the clerk of the  
61 circuit court of the county wherein the appeal is taken,  
62 of a bond or other security to be approved by the court,  
63 in an amount of not less than the amount of the bond  
64 otherwise required to be posted under the provisions of  
65 section fourteen of this article. The person so filing a  
66 petition of appeal shall cause a copy of the petition and  
67 bond or other posted security to be served upon the  
68 commissioner by certified mail, return receipt re-  
69 quested, within seven days after the date upon which the  
70 petition for appeal is filed.

71 (d) Any person who threatens any officer, agent or  
72 employee of the department or other person authorized  
73 to assist the commissioner in the performance of his  
74 duties under any provision of section fourteen of this  
75 article or of this section or who shall interfere with or  
76 attempt to prevent any such officer, agent, employee or  
77 other person in the performance of such duties shall be  
78 guilty of a felony, and, upon conviction thereof, shall be  
79 fined in an amount of not less than one thousand dollars  
80 nor more than three thousand dollars or imprisoned in  
81 the penitentiary not less than one nor more than three  
82 years, or both such fine and imprisonment.

## CHAPTER 108

(S. B. 75—By Senator Warner)

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[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seventeen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article five by adding thereto a new section, designated section eighteen, relating to prohibiting employers from discharging employees for time lost by volunteer firemen in performing emergency services in connection with hazardous and toxic materials spills and cleanups; and prohibiting employers from discharging employees for time lost as emergency medical service personnel.

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

That section seventeen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article five be further amended by adding thereto a new section, designated section eighteen, all to read as follows:

### ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.

§21-5-18. Employers prohibited from discharging employees for time lost as emergency medical service personnel.

#### **§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.**

1 No employer may terminate an employee who is a  
2 member of a volunteer fire department and who, in the  
3 line of emergency duty as a volunteer fireman, responds  
4 to an emergency call prior to the time he is due to report  
5 for work and which emergency results in a loss of time  
6 from his employment.

7 Any time lost from employment as provided in this  
8 section may be charged against the employee's regular  
9 pay.

10 At the request of an employer, any employee losing  
11 time as provided herein shall supply his employer with  
12 a statement from the chief of the volunteer fire  
13 department stating that the employee responded to an  
14 emergency call and the time thereof.

15 As used in this section, "emergency" shall mean going  
16 to, attending to or coming from (1) an actual fire call  
17 to prevent the imminent loss of life or property, or (2)  
18 a hazardous or toxic materials spill and cleanup. The  
19 term "employer" includes any individual, partnership,  
20 association, corporation, business trust or any person or  
21 group of persons acting directly or indirectly in the  
22 interest of an employer in relation to any employee.

23 Any employer who willfully and knowingly violates  
24 the provisions of this section shall be required to  
25 reinstate such employee to his former position and shall  
26 be required to pay such employee all lost wages and  
27 benefits for the period between termination and rein-  
28 statement. Any action to enforce the provisions of this  
29 section shall be commenced within a period of one year  
30 after the date of violation and such action shall be  
31 commenced in the circuit court of the county wherein  
32 the place of employment is located.

**§21-5-18. Employers prohibited from discharging em-  
ployees for time lost as emergency medical  
service personnel.**

1 No employer may terminate an employee who is a  
2 member of an emergency medical service and who, in  
3 the line of emergency duty as an emergency medical  
4 service member, responds to an emergency call prior to  
5 the time he is due to report for work and which  
6 emergency results in a loss of time from his  
7 employment.

8 Any time lost from employment as provided in this  
9 section may be charged against the employee's regular  
10 pay.

11 At the request of an employer, any employee losing  
12 time as provided herein shall supply his employer with  
13 a statement from the director of health stating that the  
14 employee responded to an emergency call and the time  
15 thereof.

16 As used in this section, "emergency" shall mean going  
17 to or coming from an actual medical emergency to  
18 prevent the imminent loss of life. The term "employer"  
19 includes any individual, partnership, association,  
20 corporation, business trust or any person or group of  
21 persons acting directly or indirectly in the interest of an  
22 employer in relation to any employee.

23 Any employer who willfully and knowingly violates  
24 the provisions of this section shall be required to  
25 reinstate such employee to his former position and shall  
26 be required to pay such employee all lost wages and  
27 benefits for the period between termination and rein-  
28 statement. Any action to enforce the provisions of this  
29 section shall be commenced within a period of one year  
30 after the date of violation and such action shall be  
31 commenced in the circuit court of the county wherein  
32 the place of employment is located.

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## CHAPTER 109

(Com. Sub. for S. B. 251—By Senator Pritt)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-d, relating to parental leave generally; legislative findings; definitions; scope; position upon return from leave; seniority and employment benefits; and notice.

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

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by



adding thereto a new article, designated article five-d, to read as follows:

**ARTICLE 5D. THE PARENTAL LEAVE ACT.**

- §21-5D-1. Legislative findings.
- §21-5D-2. Definitions.
- §21-5D-3. Scope.
- §21-5D-4. Family leave.
- §21-5D-5. Certification.
- §21-5D-6. Position upon return from leave.
- §21-5D-7. Seniority and employment benefits.
- §21-5D-8. Prohibited acts.
- §21-5D-9. Posting notice.

**§21-5D-1. Legislative findings.**

1       The Legislature hereby finds that there is a growing  
2       crisis in this country and state affecting the stability of  
3       our families, that the family unit is being torn apart due  
4       to the need for families to have two income producing  
5       parents. In order to address this situation and to provide  
6       for the love, nurturing and education of our children, the  
7       Legislature hereby enacts "The Parental Leave Act."

**§21-5D-2. Definitions.**

1       As used in this article:

2       (a) "Commissioner" means the commissioner of the  
3       department of labor.

4       (b) "Dependent" means any person who is living with  
5       or dependent upon the income of any employee whether  
6       related by blood or not.

7       (c) *Employee.*—

8       (1) "Employee" means any individual, hired for  
9       permanent employment, who has worked for at least  
10       twelve consecutive weeks performing services for  
11       remuneration within this state for any department,  
12       division, board, bureau, agency, commission or other  
13       unit of state government, or any county board of  
14       education in the state.

15       (2) "Employee" does not include:

16 (A) Individuals employed by persons who are not  
17 “employers” as defined by this article;

18 (B) Elected public officials or the members of their  
19 immediate personal staffs;

20 (C) Principal administrative officers of any depart-  
21 ment, division, board, bureau, agency, commission or  
22 other unit of state government, or any county board of  
23 education in the state; or

24 (D) A person in a vocational rehabilitation facility  
25 certified under federal law who has been designated an  
26 evaluatee, trainee or work activity client.

27 (d) *Employer*.—“Employer” includes any department,  
28 division, board, bureau, agency, commission or other  
29 unit of state government and any county board of  
30 education in the state.

31 (e) “Employment benefits” means all benefits, other  
32 than salary or wages, provided or made available to  
33 employees by an employer, and includes group life  
34 insurance, health insurance, disability insurance, sick  
35 leave, annual leave, educational benefits and pensions,  
36 regardless of whether such benefits are provided by a  
37 policy or practice of an employer or by an employee  
38 benefit plan as defined in the federal Employee  
39 Retirement Income Security Act of 1974.

40 (f) The term “health care” or “health care services”  
41 means clinically related preventive, diagnostic, treat-  
42 ment or rehabilitative services whether provided in the  
43 home, office, hospital, clinic or any other suitable place,  
44 provided or prescribed by any health care provider or  
45 providers. Such services include, among others, drugs  
46 and medical supplies, appliances, laboratory, preven-  
47 tive, diagnostic, therapeutic and rehabilitative services,  
48 hospital care, nursing home and convalescent care,  
49 medical physicians, osteopathic physicians, chiropractic  
50 physicians, and such other surgical, dental, nursing,  
51 pharmaceutical, and podiatric services and supplies as  
52 may be prescribed by such health care providers.

53 (g) “Health care provider” means a person, partner-

54 ship, corporation, facility or institution licensed,  
55 certified or authorized by law to provide professional  
56 health care services in this state to an individual during  
57 this individual's medical care, treatment or  
58 confinement.

59 (h) "Parent" means a biological, foster or adoptive  
60 parent, a stepparent or a legal guardian.

61 (i) "Serious health condition" means a physical or  
62 mental illness, injury or impairment which involves:

63 (1) Inpatient care in a hospital, hospice or residential  
64 health care facility; or

65 (2) Continuing treatment, health care or continuing  
66 supervision by a health care provider.

67 (j) "Son" or "daughter" means an individual who is a  
68 biological, adopted or foster child, a stepchild or a legal  
69 ward, and is (1) under eighteen years of age; or (2)  
70 eighteen years of age or older and incapable of self-care  
71 because of mental or physical disability.

72 (k) "Spouse" means any person legally married to an  
73 "employee" covered under this article.

### §21-5D-3. Scope.

1 Nothing in this article prohibits an employer from  
2 providing employees with rights to family leave which  
3 are more generous to the employee than the rights  
4 provided under this article.

### §21-5D-4. Family leave.

1 (a) An employee shall be entitled to a total of twelve  
2 weeks of unpaid family leave, following the exhaustion  
3 of all his or her annual and personal leave, during any  
4 twelve-month period:

5 (1) Because of the birth of a son or daughter of the  
6 employee;

7 (2) Because of the placement of a son or daughter with  
8 the employee for adoption; or

9 (3) In order to care for the employee's son, daughter,  
10 spouse, parent or dependent who has a serious health  
11 condition.

12 (b) In the case of a son, daughter, spouse, parent or  
13 dependent who has a serious health condition, such  
14 family leave may be taken intermittently when medi-  
15 cally necessary.

16 (c) An employee may take family leave on a part-time  
17 basis and on a part-time leave schedule, but the period  
18 during which the number of work weeks of leave may  
19 be taken may not exceed twelve consecutive months, and  
20 such leave shall be scheduled so as not to disrupt unduly  
21 the operations of the employer.

22 (d) (1) If a leave because of birth or adoption is  
23 foreseeable, the employee shall provide the employer  
24 with two weeks written notice of such expected birth or  
25 adoption.

26 (2) If a leave under this section is foreseeable because  
27 of planned medical treatment or supervision, the  
28 employee:

29 (A) Shall make a reasonable effort to schedule the  
30 treatment or supervision so as not to disrupt unduly the  
31 operations of the employer, subject to the approval of the  
32 health care provider of the employee's son, daughter,  
33 parent or dependent; and

34 (B) Shall provide the employer with two weeks  
35 written notice of the treatment or supervision.

36 (e) This article shall not be construed as granting an  
37 employee the family leave rights provided in this section  
38 if he or she is entitled to such family leave rights under  
39 any other provision of this code.

#### §21-5D-5. Certification.

1 (a) If an employee requests family leave to care for  
2 a family member with a serious health condition as  
3 authorized in this article, the employer may require the  
4 employee to provide certification by a health care  
5 provider of the health condition.

6 (b) The certification shall be sufficient if it contains  
7 the following:

8 (1) That the child, dependent, parent or employee has  
9 a serious health condition;

10 (2) The date the serious health condition commenced  
11 and its probable duration; and

12 (3) The medical facts regarding the serious health  
13 condition.

**§21-5D-6. Position upon return from leave.**

1 (a) The position held by the employee immediately  
2 before the leave is commenced shall be held upon a  
3 period not to exceed the twelve-week period of the  
4 parental leave and the employee shall be returned to  
5 that position: *Provided*, That the employer may employ  
6 a temporary employee or temporary employees to fill  
7 said position for the period of the parental leave.

8 (b) No employer may, because an employee received  
9 family leave or medical leave, reduce or deny any  
10 employment benefit or seniority which accrued to the  
11 employee before his or her leave commenced.

**§21-5D-7. Seniority and employment benefits.**

1 (a) Nothing in this section entitles any returning  
2 employee to the accrual of any seniority or employment  
3 benefits during any period of family leave.

4 (b) During any family leave by an employee, the  
5 employer shall continue group health insurance cover-  
6 age for such employee: *Provided*, That the employee  
7 shall pay the employer the premium costs of such group  
8 health insurance coverage.

**§21-5D-8. Prohibited acts.**

1 No person may interfere with, restrain or deny the  
2 exercise of any right provided under this article.

**§21-5D-9. Posting notice.**

1 Each employer shall post, in one or more conspicuous  
2 places where notices to employees are customarily  
3 posted, a notice in a form approved by the department  
4 setting forth an employee's rights under this article.

## CHAPTER 110

(H. B. 2853—By Delegate Humphreys)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legislative authorization of legislative rules proposed by various executive agencies following review by the legislative rule-making review committee and recommended by the legislative rule-making review committee as filed, with modifications as filed, as amended, or as directed and authorized; declaration by the Legislature of legislative rules authorized as complying with the intent of the statute under which the legislative rule was proposed.

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

That chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### CHAPTER 64. LEGISLATIVE RULES.

#### Article

1. General Legislative Authorization.
2. Executive Agency Authorization to Promulgate Legislative Rules.

#### ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

- §64-1-1. Legislative authorization.  
 §64-1-2. Effective date of rules.  
 §64-1-3. Technical deficiencies waived.

#### §64-1-1. Legislative authorization.

- 1 Under the provisions of article three, chapter twenty-
- 2 nine-a of the code of West Virginia, the Legislature
- 3 expressly authorizes the promulgation of the rules
- 4 described in article two of this chapter, subject only to
- 5 the limitations set forth with respect to each such rule
- 6 in the section or sections of this chapter authorizing its
- 7 promulgation. The Legislature further declares that all
- 8 rules now or hereafter authorized under article two of
- 9 this chapter are within the legislative intent of the

10 statute which the rule is intended to implement, extend,  
11 apply or interpret.

**§64-1-2. Effective date of rules.**

1 The effective date of the legislative rules authorized  
2 in article two of this chapter shall be governed by the  
3 provisions of section thirteen, article three, chapter  
4 twenty-nine-a, unless the agency promulgating the rules  
5 establishes an effective date which is earlier than that  
6 provided by section thirteen, article three, chapter  
7 twenty-nine-a, in which case the effective date estab-  
8 lished by the agency shall control, unless the Legislature  
9 in the bill authorizing the rules establishes an effective  
10 date for such rules in which case the effective date  
11 established by the Legislature shall control.

**§64-1-3. Technical deficiencies waived.**

1 The Legislature further declares each legislative rule  
2 now or hereafter authorized under article two of this  
3 chapter to have been validly promulgated notwithstand-  
4 ing any failure to comply with any requirement of  
5 chapter twenty-nine-a for the promulgation of rules at  
6 any stage of the promulgation process prior to author-  
7 ization by the Legislature in article two of this chapter.

**ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.**

- §64-2-1. State board of health; director of health.
- §64-2-2. State tax commissioner.
- §64-2-3. State board of investments.
- §64-2-4. West Virginia health care cost review authority.
- §64-2-5. Commissioner of highways.
- §64-2-6. Commissioner of motor vehicles.
- §64-2-7. Department of natural resources.
- §64-2-8. Department of energy.
- §64-2-9. Department of labor.
- §64-2-10. Insurance commissioner.
- §64-2-11. Attorney general.
- §64-2-12. West Virginia library commission.
- §64-2-13. State treasurer.
- §64-2-14. Department of public safety.
- §64-2-15. Air pollution control commission.
- §64-2-16. West Virginia hospital finance authority.
- §64-2-17. Teachers retirement board.
- §64-2-18. Commissioner of agriculture.
- §64-2-19. West Virginia racing commission.

- §64-2-20. Water resources board.
- §64-2-21. Workers' compensation commissioner.
- §64-2-22. State lottery commission.
- §64-2-23. State fire commission.
- §64-2-24. Civil service commission.
- §64-2-25. Secretary of state.
- §64-2-26. West Virginia state board of registration for professional engineers.
- §64-2-27. State board of examiners of land surveyors.
- §64-2-28. State boards of examination or registration; West Virginia board of chiropractic examiners.
- §64-2-29. Radiologic technology board of examiners.
- §64-2-30. Board of medicine.
- §64-2-31. Board of embalmers and funeral directors.
- §64-2-32. Board of examiners for registered professional nurses.
- §64-2-33. West Virginia board of examiners for licensed practical nurses.
- §64-2-34. West Virginia housing development fund.
- §64-2-35. Jail and prison standards commission.
- §64-2-36. Commissioner of banking.
- §64-2-37. State auditor.
- §64-2-38. Board of risk and insurance management.
- §64-2-39. Department of human services; director of the child advocate office.
- §64-2-40. Public employees insurance board.
- §64-2-41. Employee suggestion award board.
- §64-2-42. Commissioner of commerce.
- §64-2-43. West Virginia industrial and trade jobs development corporation.
- §64-2-44. Alcohol beverage control commission.
- §64-2-45. West Virginia board of hearing aid dealers.
- §64-2-46. Nursing home administrators licensing board.
- §64-2-47. Board of examiners of psychologist.
- §64-2-48. Board of pharmacy.
- §64-2-49. State athletic commission.
- §64-2-50. Archives and history commission.
- §64-2-51. Water development authority.
- §64-2-52. Beef industry self-improvement assessment board.
- §64-2-53. Commercial whitewater advisory board.
- §64-2-54. Commissioner of the department of corrections.
- §64-2-55. Governor's committee on crime, delinquency and corrections.
- §64-2-56. Structural barriers compliance board.
- §64-2-57. Department of finance and administration.
- §64-2-58. Enterprise zone authority.
- §64-2-59. Board of barbers and beauticians.

**§64-2-1. State board of health; director of health.**

- 1 (a) The legislative rules filed in the state register on
- 2 the second day of June, one thousand nine hundred
- 3 eighty-two, relating to the state board of health (waste
- 4 water treatment works operations) are authorized.
- 5 (b) The legislative rules filed in the state register on



6 the second day of June, one thousand nine hundred  
7 eighty-two, relating to the state board of health  
8 (laboratory reporting of syphilis and gonorrhea) are  
9 authorized.

10 (c) The legislative rules filed in the state register on  
11 the second day of June, one thousand nine hundred  
12 eighty-two, relating to the state board of health (public  
13 water supply operators) with the modification of §11.02  
14 as presented to the legislative rule-making review  
15 committee on the ninth day of November, one thousand  
16 nine hundred eighty-two, are authorized.

17 (d) The legislative rules filed in the state register on  
18 the twenty-second day of October, one thousand nine  
19 hundred eighty-two, relating to the state board of health  
20 (sewage systems) with the modification presented to the  
21 legislative rule-making review committee on the sixth  
22 day of December, one thousand nine hundred eighty-  
23 two, are authorized except lines ten through seventeen,  
24 page eight of the rules shall be stricken in their entirety  
25 and the remaining paragraphs renumbered.

26 (e) The legislative rules filed in the state register on  
27 the second day of June, one thousand nine hundred  
28 eighty-two, relating to the state board of health  
29 (approval of laboratories) are authorized.

30 (f) The legislative rules filed in the state register on  
31 the twenty-fourth day of November, one thousand nine  
32 hundred eighty-two, relating to the state board of health  
33 (permit fees) are authorized.

34 (g) The legislative rules filed in the state register on  
35 the third day of June, one thousand nine hundred eighty-  
36 two, relating to the state board of health (certificate of  
37 need) are authorized.

38 (h) The legislative rules filed in the state register on  
39 the sixteenth day of August, one thousand nine hundred  
40 eighty-two, relating to the state board of health (eyes of  
41 newborn children) are authorized.

42 (i) The legislative rules filed in the state register on  
43 the thirteenth day of August, one thousand nine hundred  
44 eighty-two, and filed with amendments on the eleventh

45 day of January, one thousand nine hundred eighty-three,  
46 relating to the state board of health (nursing home  
47 licensure), are authorized with the amendment of  
48 §5.15.02 of those rules as set forth below:

49 By striking the word “and” at the end of subdivision  
50 (f), by changing the period at the end of subdivision  
51 (g) to a semicolon, and by adding the following after  
52 subdivision (g): “(h) one (1) member who represents  
53 social work services.”

54 (j) The legislative rules filed in the state register on  
55 the twenty-fourth day of November, one thousand nine  
56 hundred eighty-two, relating to the state board of health  
57 (guardianship service), are authorized with the excep-  
58 tion of section 9.3 of those rules which may not be  
59 promulgated.

60 (k) The legislative rules filed in the state register on  
61 the third day of June, one thousand nine hundred eighty-  
62 two, relating to the state board of health (controlled  
63 substances research program and certification) are  
64 authorized.

65 (l) The legislative rules filed in the state register on  
66 the fifth day of November, one thousand nine hundred  
67 eighty-two, relating to the state board of health  
68 (chemical test for intoxication) are authorized.

69 (m) The legislative rules filed in the state register on  
70 the nineteenth day of December, one thousand nine  
71 hundred eighty-three, relating to the state board of  
72 health (birthing center licensure) are authorized.

73 (n) The legislative rules filed in the state register on  
74 the fourteenth day of November, one thousand nine  
75 hundred eighty-three, relating to the state board of  
76 health (licensure of behavioral health centers), are  
77 authorized with the amendments set forth below:

78 Page 45, §12.8.2. In the first sentence delete the words  
79 “without delay” and insert in lieu thereof the words  
80 “within twenty-four hours after receiving a report of a  
81 complaint.”

82 (o) The legislative rules filed in the state register on

83 the nineteenth day of December, one thousand nine  
84 hundred eighty-three, relating to the state board of  
85 health (procedures for recovery of corneal tissue for  
86 transplant) are authorized.

87 (p) The legislative rules filed in the state register on  
88 the seventh day of September, one thousand nine  
89 hundred eighty-three, relating to the state board of  
90 health (well water regulations) are authorized with the  
91 amendments set forth below:

92 §4.1. In the first sentence delete the word "obtaining"  
93 and insert in lieu thereof the words "applying for." In  
94 the second sentence after "4.3" add "and 4.5."

95 §4.2. At the end of the second sentence, strike the  
96 period and add the words "unless emergency conditions  
97 prevail as noted under §4.3."

98 With the balance of §4.2 and create a new §4.3 with  
99 the following changes: In the first sentence delete the  
100 word "deadline" and insert in lieu thereof the word  
101 "requirements." Add after the first sentence the  
102 sentence, "Emergency conditions and unavoidable  
103 circumstances are those conditions involving acts of God,  
104 water outages or disruption of water service, unsatisfac-  
105 tory water quality or quantity or public health threats."  
106 In the third sentence delete the word "exceed" and insert  
107 in lieu thereof the words "be made in excess of."

108 Renumber §4.3 as §4.4 and add the following two  
109 sentences at the end of the section: "Such standards shall  
110 constitute the minimum standards for the installation,  
111 the alteration or the deepening of water wells. Any plans  
112 approved by the director pursuant to these regulations  
113 shall be in substantial compliance with the heretofore  
114 mentioned standards."

115 Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7  
116 as §4.8 and §4.8 as §4.9.

117 §5.2. Delete the words "four (4)" and insert in lieu  
118 thereof the words "two (2)" and delete the words "active,  
119 continuous."

120 (q) The legislative rules filed in the state register on

121 the third day of October, one thousand nine hundred  
122 eighty-four, relating to the state board of health (trauma  
123 center or facility designation), are authorized.

124 (r) The legislative rules filed in the state register on  
125 the twenty-first day of December, one thousand nine  
126 hundred eighty-four, relating to the state board of  
127 health (reportable diseases) are authorized.

128 (s) The legislative rules filed in the state register on  
129 the twenty-first day of December, one thousand nine  
130 hundred eighty-four, relating to the state board of  
131 health (licensure of medical adult day care centers) are  
132 authorized.

133 (t) The legislative rules filed in the state register on  
134 the third day of October, one thousand nine hundred  
135 eighty-four, relating to the state board of health (retail  
136 food store sanitation) are authorized.

137 (u) The legislative rules filed in the state register on  
138 the seventeenth day of December, one thousand nine  
139 hundred eighty-five, modified by the director of health  
140 to meet the objections of the legislative rule-making  
141 review committee and refiled in the state register on the  
142 fifteenth day of January, one thousand nine hundred  
143 eighty-six, relating to the director of health (adult group  
144 home licensure) are authorized.

145 (v) The legislative rules filed in the state register on  
146 the twenty-ninth day of October, one thousand nine  
147 hundred eighty-five, modified by the state board of  
148 health to meet the objections of the legislative rule-  
149 making review committee and refiled in the state  
150 register on the twenty-seventh day of December, one  
151 thousand nine hundred eighty-five, relating to the state  
152 board of health (licensure of hospice care programs) are  
153 authorized.

154 (w) The legislative rules filed in the state register on  
155 the thirty-first day of October, one thousand nine  
156 hundred eighty-five, modified by the director of health  
157 to meet the objections of the legislative rule-making  
158 review committee and refiled in the state register on the  
159 twenty-seventh day of December, one thousand nine

160 hundred eighty-five, relating to the director of health  
161 (rules governing emergency medical services) are  
162 authorized with the amendments set forth below:

163 On page 3, §3.9 shall read as follows:

164 “3.9 Quorum—When applied to the EMSAC, a major-  
165 ity of the members thereof, except in the instance when  
166 at any meeting of the EMSAC, where a quorum is not  
167 present and the director causes to be deposited in the  
168 United States mail, postage prepaid, return receipt  
169 requested, to each member of the EMSAC within three  
170 days, a notice calling a meeting of the EMSAC at some  
171 convenient place in the state of West Virginia two weeks  
172 after the meeting at which no quorum was present.  
173 Quorum means any number of members of the EMSAC  
174 who attend such subsequent meeting. Any member  
175 missing two consecutive meetings shall be removed from  
176 the EMSAC.”

177 On page 6, §4.7.1 shall be deleted in its entirety, and

178 On page 7, §4.10.1 shall read as follows:

179 “4.10.1 every applicant for certification as an EMSP  
180 prior to such certification, shall demonstrate his or her  
181 knowledge and ability by undergoing a written exam-  
182 ination and a demonstration of skills, and by attaining  
183 a passing score on the same. Passing score shall be the  
184 same for all testing programs.

185 (x) The legislative rules filed in the state register on  
186 the fifth day of September, one thousand nine hundred  
187 eighty-five, relating to the state department of health  
188 (revising the list of hazardous substances) are  
189 authorized.

190 (y) The legislative rules filed in the state register on  
191 the thirteenth day of August, one thousand nine hundred  
192 eighty-six, modified by the director of the department  
193 of health to meet the objections of the legislative rule-  
194 making review committee and refiled in the state  
195 register on the sixteenth of October, one thousand nine  
196 hundred eighty-six, relating to the director of the  
197 department of health (hazardous material treatment  
198 information repository), are authorized.

199 (z) The legislative rules filed in the state register on  
200 the seventeenth day of July, one thousand nine hundred  
201 eighty-six, modified by the state board of health to meet  
202 the objections of the legislative rule-making review  
203 committee and refiled in the state register on the  
204 sixteenth day of October, one thousand nine hundred  
205 eighty-six, relating to the state board of health (methods  
206 and standards for chemical tests for intoxication) are  
207 authorized.

208 (aa) The legislative rules filed in the state register  
209 on the twenty-first day of November, one thousand nine  
210 hundred eighty-six, modified by the state board of  
211 health to meet the objections of the legislative rule-  
212 making review committee and refiled in the state  
213 register on the twenty-third day of December, one  
214 thousand nine hundred eighty-six, relating to the state  
215 board of health (licensure of behavioral health centers),  
216 are authorized.

217 (bb) The legislative rules filed in the state register on  
218 the eighteenth day of April, one thousand nine hundred  
219 eighty-six, modified by the state board of health to meet  
220 the objections of the legislative rule-making review  
221 committee and refiled in the state register on the  
222 seventeenth day of October, one thousand nine hundred  
223 eighty-six, relating to the state board of health (hospital  
224 licensure), are authorized.

225 (cc) The legislative rules filed in the state register on  
226 the ninth day of December, one thousand nine hundred  
227 eighty-six, modified by the state board of health to meet  
228 the objections of the legislative rule-making review  
229 committee and refiled in the state register on the  
230 twenty-third day of December, one thousand nine  
231 hundred eighty-six, relating to the state board of health  
232 (hospital licensure and allowing hospitals to have  
233 licensed hospital professionals, other than licensed  
234 physicians, on their medical staff), are authorized.

235 (dd) The legislative rules filed in the state register on  
236 the ninth day of December, one thousand nine hundred  
237 eighty-six, modified by the state board of health to meet  
238 the objections of the legislative rule-making review

239 committee and refiled in the state register on the  
240 twenty-third day of December, one thousand nine  
241 hundred eighty-six, relating to the state board of health  
242 (vital statistics), are authorized.

243 (ee) The legislative rules filed in the state register on  
244 the eleventh day of September, one thousand nine  
245 hundred eighty-seven, relating to the director of the  
246 department of health (immunization criteria for  
247 transfer students) are authorized.

248 (ff) The legislative rules filed in the state register on  
249 the sixteenth day of November, one thousand nine  
250 hundred eighty-seven, relating to the director of the  
251 department of health (hazardous substances) are auth-  
252 orized with the amendment set forth below:

253 Page 33, section 8, line 8 (unnumbered) by adding at  
254 the end of section 8 the following proviso: "*Provided,*  
255 That the owner's or operator's submissions are based on  
256 the threshold reporting requirements contained in  
257 section 5, article 31, chapter 16."

258 (gg) The legislative rules filed in the state register on  
259 the eighteenth day of November, one thousand nine  
260 hundred eighty-seven, relating to the director of the  
261 department of health (trauma center or facility desig-  
262 nation) are authorized.

263 (hh) The legislative rules filed in the state register on  
264 the twenty-second day of June, one thousand nine  
265 hundred eighty-eight, modified by the state board of  
266 health to meet the objections of the legislative rule-  
267 making review committee and refiled in the state  
268 register on the fifteenth day of September, one thousand  
269 nine hundred eighty-eight, relating to the state board of  
270 health (licensure of hospice care programs) are  
271 authorized.

272 (ii) The legislative rules filed in the state register on  
273 the fifteenth day of September, one thousand nine  
274 hundred eighty-eight, modified by the state board of  
275 health to meet the objections of the legislative rule-  
276 making review committee and refiled in the state  
277 register on the third day of November, one thousand

278 nine hundred eighty-eight, relating to the state board of  
279 health (water wells) are authorized with amendment set  
280 forth below:

281 On page 2, §3.8, shall read as follows:

282 3.8 Water Well—Any excavation or penetration in the  
283 ground, whether drilled, bored, cored, driven or jetted  
284 that enters or passes through an aquifer for purposes  
285 that may include but are not limited to: a water supply,  
286 exploration for water, dewatering or heat pump wells,  
287 except that this definition shall not include ground  
288 water monitoring activities and all activities for the  
289 exploration, development, production, storage and  
290 recovery of coal, oil and gas and other mineral resources  
291 which are regulated under chapter 22, 22a or 22b of the  
292 code.

293 (jj) The legislative rules filed in the state register on  
294 the twenty-second day of June, one thousand nine  
295 hundred eighty-eight, modified by the state board of  
296 health to meet the objections of the legislative rule-  
297 making review committee and refiled in the state  
298 register on the fifteenth day of September, one thousand  
299 nine hundred eighty-eight, relating to the state board of  
300 health (plumbing requirements) are authorized.

301 (kk) The legislative rules filed in the state register on  
302 the twenty-second day of June, one thousand nine  
303 hundred eighty-eight, modified by the state board of  
304 health to meet the objections of the legislative rule-  
305 making review committee and refiled in the state  
306 register on the fifteenth day of September, one thousand  
307 nine hundred eighty-eight, relating to the state board of  
308 health (public water supply operators) are authorized.

309 (ll) The legislative rules filed in the state register on  
310 the nineteenth day of October, one thousand nine  
311 hundred eighty-eight, modified by the state board of  
312 health to meet the objections of the legislative rule-  
313 making review committee and refiled in the state  
314 register on the twentieth day of December, one thousand  
315 nine hundred eighty-eight, relating to the state board of  
316 health (volatile synthetic organic chemicals) are autho-  
317 rized.



**§64-2-2. State tax commissioner.**

1 (a) The legislative rules filed in the state register on  
2 the fifth day of January, one thousand nine hundred  
3 eighty-four, relating to the state tax commissioner  
4 (appraisal of property for periodic statewide reapprai-  
5 sals for ad valorem property tax purposes), are autho-  
6 rized with the amendments set forth below:

7 Page 8, section 11.04 (b)(2), definition of "Active  
8 Mining Property," at the end of the first paragraph  
9 following the "period," by adding the following: "In the  
10 application of the herein provided valuation formula on  
11 'active mining property,' the appropriate formula  
12 calculation will be based upon the actual market to  
13 which the coal from that tract and seam is currently  
14 being sold, whether it is 'metallurgical' or 'steam'."

15 Page 9, section 11.04 (b)(3), definition of "Active  
16 Reserves," at the end of the subsection, following the  
17 "period," by adding the following: "In the application of  
18 the herein provided valuation formula on 'active  
19 reserves,' the appropriate formula calculation will be  
20 based upon the actual market to which the coal from  
21 that tract and seam is currently being sold, whether it  
22 is 'metallurgical' or 'steam'."

23 Page 11, section 11.04 (b)(11), definition of "Mineable  
24 Coal," by striking the subsection and substituting in lieu  
25 thereof the following: "(11) Mineable Coal. Coal which  
26 can be mined under present day mining technology and  
27 economics."

28 Page 25, section 11.04 (c)(2)(C), entitled "Property Tax  
29 Component," by striking the subsection and inserting in  
30 lieu thereof the following: "(C) Property Tax Compo-  
31 nent—This component will be derived by multiplying  
32 the assessment rate by the statewide average of tax  
33 rates on Class III property."

34 Page 30, section 11.04 (c)(4), entitled "Valuation of  
35 Mined-Out/Unmineable/Barren Coal Properties," by  
36 striking the numbers "\$5.00" and inserting in lieu  
37 thereof the following: "\$1.00."

38 Page 31, section 11.04 (c)(5)(B), by striking the words

39 and numbers "Five Dollars (\$5.00)" and inserting in lieu  
40 thereof the following: "One Dollar (\$1.00)."

41 Page 53, section 11.05 (h) by striking the symbol and  
42 figures "\$5.00" and inserting in lieu the following:  
43 "\$1.00)."

44 Page 73, section 11.06 (h) by striking the symbol and  
45 figures "\$5.00" and inserting in lieu the following:  
46 "\$1.00."

47 Page 81, section 11.07 (e)(15)(B)(4) at the end of the  
48 second sentence remove the period after the word  
49 "property" and insert the words "unless the land is used  
50 for some other purpose in which case it will be taxed  
51 according to its actual use."

52 Page 86, section 11.07 (k) delete all of subsection (k).

53 Page 110, section 11.08 (c)(4) by striking the symbol  
54 and figures "\$5.00" and inserting in lieu thereof the  
55 following: "\$1.00."

56 Page 111, section 11.08 (c)(5)(B) by striking the  
57 symbol and figures "\$5.00" and inserting in lieu thereof  
58 the following: "\$1.00."

59 Page 115, section 11.09 (a)(3) in the first sentence,  
60 insert after the word "land" the words "excluding farm  
61 land."

62 (b) The legislative rules filed in the state register on  
63 the twenty-eighth day of September, one thousand nine  
64 hundred eighty-four, relating to the state tax commis-  
65 sioner (estimated personal income tax), are authorized  
66 with the amendments set forth below:

67 55.02(a)(2)(on page 182.2) line 18, after the word  
68 "profession" strike the words "on his own account" and  
69 the comma(,).

70 55.12(b)(1)(page 182.35) at the end of the section,  
71 change the period to a comma, and add the following  
72 language: "and in the case of a court appointed agent,  
73 a copy of the court order of appointment is sufficient."

74 55.12(c)(page 182.36) after the word "for," strike the  
75 word "erroneous."

76 (c) The legislative rules filed in the state register on  
77 the twenty-eighth day of September, one thousand nine  
78 hundred eighty-four, modified by the state tax commis-  
79 sioner to meet the objections of the legislative rule-  
80 making review committee and refiled in the state  
81 register on the fourteenth day of November, one  
82 thousand nine hundred eighty-four, and on the twenty-  
83 first day of March, one thousand nine hundred eighty-  
84 five, relating to the state tax commissioner (estimated  
85 corporation net income tax), are authorized.

86 (d) The legislative rules filed in the state register on  
87 the twelfth day of March, one thousand nine hundred  
88 eighty-five, relating to the state tax commissioner  
89 (identification and appraisal of farmland subsequent to  
90 the base year of statewide reappraisal) are authorized  
91 and directed to be promulgated with the following  
92 amendments:

93 Title page, Subject; following the word "Farmland,"  
94 insert the words "and of Structures Situated Thereon."

95 Page i, Subject; following the word "Farmland,"  
96 insert the words "and of Structures Situated Thereon."

97 Page i, TABLE OF CONTENTS, Section 10; follow-  
98 ing the words "Valuation of Farmland" add the words  
99 "and of Structures Situated Thereon."

100 Page 10.1, Title; following the word "FARMLAND"  
101 insert the words "AND STRUCTURES SITUATED  
102 THEREON."

103 Page 10.1, Section 10, Title; following the word  
104 "Farmland" add the words "and Structures Situated  
105 Thereon."

106 Page 10.1, Section 10.01(b); following the word  
107 "farmland" insert the words "and structures situated  
108 thereon."

109 Page 10.2, Section 10.02(a), first sentence; following  
110 the word "farmland" insert the words "and structures  
111 situated thereon."

112 Page 10.3, Section 10.02(b), first sentence; following  
113 the word "farmland" insert the words "and structures

114 situated thereon." Delete the words "for purposes of the  
115 statewide reappraisal."

116 Page 10.3, Section 10.02(b), last sentence; following  
117 the word "farmland" insert the words "and structures  
118 situated thereon."

119 Page 10.8, Section 10.04(5)(B), last sentence; delete the  
120 period and add "or the incapability to be adapted to  
121 alternative uses."

122 Page 10.9, Section 10.04(6), first sentence; following  
123 the words "land currently being used" insert the words  
124 "as part of a farming operation."

125 Page 10.9, Section 10.04(6), following the last sent-  
126 ence; add the sentence "For the purposes of this  
127 definition, 'contiguous tracts' are farmlands which are  
128 in close proximity, but not necessarily adjacent:  
129 *Provided*, That all such contiguous tracts are operated  
130 as part of the same farm management plan."

131 Page 10.10, Section 10.04(8), is amended to read in its  
132 entirety as follows:

133 "(8) *Farm buildings*.—The term 'farm buildings' shall  
134 mean structures which directly contribute to the  
135 operation of the farm, and shall include tenant houses  
136 and quarters furnished farm employees without rent as  
137 a part of the terms of their employment."

138 Page 10.11, Section 10.04; delete the word "No-  
139 vember" and insert in lieu thereof the word "Sep-  
140 tember." Delete the period following the word "valua-  
141 tion" and add the words "for the assessment year  
142 beginning July first of each year."

143 Page 10.11, Section 10.04, insert the following  
144 subdivision; "(12) Application Form: The application  
145 form required to be filed with the assessor on or before  
146 September first of each year shall require certification  
147 that the farm complies with criteria set forth in Section  
148 10.05(c) of these regulations, and renewal applications  
149 from year to year shall be sufficient upon statement  
150 certifying that no change has been made in the use of  
151 farm property which would disqualify 'farm use'

152 classification for assessment purposes.” Renumber the  
153 subdivisions of Section 10.04 following the new  
154 10.04(12); formerly 10.04(12) through 10.04(28), to  
155 10.04(13) through 10.04(29) respectively.

156 Page 10.14, Section 10.04(28) (formerly 10.04(27));  
157 following the words “woodland products” insert a  
158 comma and the words “such as nuts or fruits harvested”  
159 and add a comma following the words “human consump-  
160 tion” on Page 10.15.

161 Page 10.16, Section 10.05, subsection (a), following the  
162 words “land is used for farm purposes” by striking the  
163 period and inserting in lieu thereof a colon and the  
164 following: “*Provided*, That the true and actual value of  
165 all farm used, occupied and cultivated by their owners  
166 or bona fide tenants shall be arrived at according to the  
167 fair and reasonable value of the property for the purpose  
168 for which it is actually used regardless of what the value  
169 of the property would be if used for some other purpose;  
170 and that the true and actual value shall be arrived at  
171 by giving consideration to the fair and reasonable  
172 income which the same might be expected to earn under  
173 normal conditions in the locality wherein situated, if  
174 rented: *Provided, however*, That nothing herein shall  
175 alter the method of assessment of lands or minerals  
176 owned by domestic or foreign corporations.”

177 Page 10.16, Section 10.05(b), first clause; following the  
178 words “following factors shall be” insert the words  
179 “indicative of but not conclusive” and delete the word  
180 “considered.”

181 Page 10.16, Section 10.05(b)(2); delete the period and  
182 add the words “such as soil conservation, farmland  
183 preservation or federal farm lending agencies.”

184 Page 10.17, Section 10.05(b)(7); delete the section and  
185 insert in lieu thereof the words “(7) Whether or not the  
186 farmer practices ‘custom farming’ on the land in  
187 question.”

188 Page 10.17, Section 10.05(b)(9); following the word  
189 “type” add a comma and insert the word “utility.”

190 Page 10.17, Section 10.05(b)(11), first sentence;

191 following the word "sales" insert the words "for nonfarm  
192 uses."

193 Page 10.17, Section 10.05(b)(12)(A); following the  
194 words "part of" insert the words "or appurtenant to."

195 Page 10.17, Section 10.05(b)(12)(B); following the  
196 words "contiguous to" insert the words "or operated in  
197 common with."

198 Page 10.18, Section 10.05, subsection (c), the first  
199 sentence of which is amended in its entirety to read as  
200 follows: "Qualifying farmland and the structures  
201 situated thereon shall be subject to farm use valuation,  
202 with primary consideration being given to the income  
203 which the property might be expected to earn, in the  
204 locality wherein situate, if rented."

205 Page 10.18, Section 10.05(b)(12)(B); delete the semicol-  
206 ons and the words "it was purchased at the same time  
207 as the tract so used." Delete the period following the  
208 word "purposes" and add the words "or any nonfarm  
209 use."

210 Page 10.19, Section 10.05(c)(2); following the words  
211 "*Provided, That no*" delete the word "reason" and insert  
212 in lieu thereof the words "individual event."

213 Page 10.20, Section 10.05(c)(4)(C); following the words  
214 "(1,000) minimum production value" insert the words  
215 "or the small farm five hundred dollars  
216 (\$500) minimum production and sale."

217 Page 10.23, Section 10.05(d)(3)(B), third sentence;  
218 following the word "If" insert the words "timber from."  
219 Delete the period following the word "purpose" and add  
220 the words "or is being converted to farm production  
221 uses."

222 Page 10.26, Section 10.05(f)(2) is amended in its  
223 entirety to read as follows:

224 "(2) *Farm buildings.*—Rental value of farm buildings  
225 and other improvements on the farmland shall be valued  
226 by determining the replacement cost of the building or  
227 structure by usual farm construction practices, and  
228 farm labor standards and subtracting therefrom

229 depreciation.<sup>1</sup> Both of these determinations shall be  
230 made in accordance with the tax department's real  
231 property appraisal manual<sup>2</sup> as filed in the state register  
232 in accordance with chapter 29A of the code of West  
233 Virginia, 1931, as amended, and as it relates to  
234 agricultural buildings and structures. One (1) acre of  
235 land shall be assigned to all buildings as a unit situate  
236 on the property, regardless of the actual acreage  
237 occupied by such buildings and shall be appraised at its  
238 farm-use valuation based on the highest class of  
239 farmland present on the farm."

240 Page 10.28, Section 10.05(f)(3)(B)(1); following the  
241 words "or more of the" insert the word "usual."

242 Page 10.28, Section 10.05(f)(3)(B)(2); following the  
243 words "(50%) of the" insert the word "usual."

244 Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the  
245 words "(50%) or more of the" insert the word "usual."

246 Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the  
247 words "(50%) of the" insert the word "usual."

248 Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the  
249 last sentence insert the sentence "An individual em-  
250 ployed other than in farming is not an unincorporated  
251 business."

252 Page 10.35, Section 10.07, Title; following the word  
253 "Farmland" insert the words "and Structures Situated  
254 Thereon."

255 Page 10.35, Section 10.07(a), first sentence; following  
256 the word "farmland" insert the words "and structures  
257 situated thereon."

258 Page 10.46, Subject; following the word "Farmland"  
259 insert the words "and Structures Situated Thereon."

260 (e) The legislative rules filed in the state register on  
261 the twenty-second day of May, one thousand nine  
262 hundred eighty-five, relating to the state tax commis-  
263 sioner (rules governing the operation of a statewide  
264 electronic data processing system network, to facilitate  
265 administration of the ad valorem property tax on real  
266 and personal property) are authorized.

267 (f) The legislative rules filed in the state register on  
268 the twenty-sixth day of March, one thousand nine  
269 hundred eighty-six, relating to the state tax commis-  
270 sioner (listing of interests in natural resources for the  
271 first statewide reappraisal; provision for penalties), are  
272 authorized.

273 (g) The legislative rules filed in the state register on  
274 the twenty-sixth day of March, one thousand nine  
275 hundred eighty-six, modified by the state tax commis-  
276 sioner to meet the objections of the legislative rule-  
277 making review committee and refiled in the state  
278 register on the twelfth day of February, one thousand  
279 nine hundred eighty-seven, relating to the state tax  
280 commissioner (review of appraisals by county commis-  
281 sions sitting as administrative appraisal review boards),  
282 are authorized.

283 (h) The legislative rules filed in the state register on  
284 the twenty-sixth day of March, one thousand nine  
285 hundred eighty-six, modified by the state tax commis-  
286 sioner to meet the objections of the legislative rule-  
287 making review committee and refiled in the state  
288 register on the twelfth day of February, one thousand  
289 nine hundred eighty-seven, relating to the state tax  
290 commissioner (review of appraisals by a circuit court on  
291 certiorari), are authorized with the following  
292 amendment:

293 On page 3, §18.3.1 is stricken in its entirety and a new  
294 §18.3.1 is inserted in lieu thereof to read as follows:

295 “18.3.1 *Who May Request Review.*—The property  
296 owner, Tax Commissioner, protestor or intervenor may  
297 request the county commission to certify the evidence  
298 and remove and return the record to the circuit court  
299 of the county on a writ of certiorari. Parties to the  
300 proceeding wherein review by the circuit court is sought  
301 shall pay costs and fees as they are incurred: *Provided,*  
302 That the circuit court upon rendering judgment or  
303 making any order may award costs to any party in  
304 accordance with the provisions of W. Va. Code §53-3-5.”

305 (i) The legislative rules filed in the state register on  
306 the twenty-sixth day of March, one thousand nine



307 hundred eighty-six, modified by the state tax commis-  
308 sioner to meet the objections of the legislative rule-  
309 making review committee and refiled in the state  
310 register on the twelfth day of February, one thousand  
311 nine hundred eighty-seven, relating to the state tax  
312 commissioner (administrative review of appraisals by  
313 the state tax commissioner), are authorized.

314 (j) The legislative rules filed in the state register on  
315 the eighteenth day of August, one thousand nine  
316 hundred eighty-six, modified by the state tax commis-  
317 sioner to meet the objections of the legislative rule-  
318 making review committee and refiled in the state  
319 register on the twelfth day of February, one thousand  
320 nine hundred eighty-seven, relating to the state tax  
321 commissioner (additional review and implementation of  
322 property appraisals), are authorized.

323 (k) The legislative rules filed in the state register on  
324 the eleventh day of August, one thousand nine hundred  
325 eighty-six, relating to the state tax commissioner  
326 (guidelines for assessors to assure fair and uniform  
327 personal property values), are authorized.

328 (l) The legislative rules filed in the state register on  
329 the eighteenth day of August, one thousand nine  
330 hundred eighty-six, modified by the state tax commis-  
331 sioner to meet the objections of the legislative rule-  
332 making review committee and refiled in the state  
333 register on the tenth day of December, one thousand  
334 nine hundred eighty-six, relating to the state tax  
335 commissioner (registration of transient vendors), are  
336 authorized.

337 (m) The legislative rules filed in the state register on  
338 the fourth day of February, one thousand nine hundred  
339 eighty-six, modified by the state tax commissioner to  
340 meet the objection of the legislative rule-making review  
341 committee and refiled in the state register on the  
342 fourteenth day of January, one thousand nine hundred  
343 eighty-seven, relating to the state tax commissioner  
344 (business and occupation tax), are authorized.

345 (n) The legislative rules filed in the state register on  
346 the fourteenth day of August, one thousand nine

347 hundred eighty-seven, modified by the state tax commis-  
348 sioner to meet the objections of the legislative rule-  
349 making review committee and refiled in the state  
350 register on the fourth day of November, one thousand  
351 nine hundred eighty-seven, relating to the state tax  
352 commissioner (telecommunications tax) are authorized.

353 (o) The legislative rules filed in the state register on  
354 the fourteenth day of August, one thousand nine  
355 hundred eighty-seven, relating to the state tax commis-  
356 sioner (business franchise tax) are authorized.

357 (p) The legislative rules filed in the state register on  
358 the seventeenth day of August, one thousand nine  
359 hundred eighty-seven, modified by the state tax commis-  
360 sioner to meet the objections of the legislative rule-  
361 making review committee and refiled in the state  
362 register on the twenty-second day of January, one  
363 thousand nine hundred eighty-eight, relating to the state  
364 tax commissioner (consumers sales and service tax and  
365 use tax) are authorized.

366 (q) The legislative rules filed in the state register on  
367 the fourteenth day of August, one thousand nine  
368 hundred eighty-seven, modified by the state tax commis-  
369 sioner to meet the objections of the legislative rule-  
370 making review committee and refiled in the state  
371 register on the thirteenth day of January, one thousand  
372 nine hundred eighty-eight, relating to the state tax  
373 commissioner (appraisal of property for periodic  
374 statewide reappraisals for ad valorem property tax  
375 purposes) are authorized.

376 (r) The legislative rules filed in the state register on  
377 the fourteenth day of August, one thousand nine  
378 hundred eighty-seven, modified by the state tax commis-  
379 sioner to meet the objections of the legislative rule-  
380 making review committee and refiled in the state  
381 register on the twelfth day of January, one thousand  
382 nine hundred eighty-eight, relating to the state tax  
383 commissioner (severance tax) are authorized.

384 (s) The legislative rules filed in the state register on  
385 the second day of September, one thousand nine  
386 hundred eighty-eight, modified by the state tax commis-

387 sioner to meet the objections of the legislative rule-  
388 making review committee and refiled in the state  
389 register on the twenty-fourth day of February, one  
390 thousand nine hundred eighty-nine, relating to the state  
391 tax commissioner (solid waste assessment fee) are  
392 authorized.

393 (t) The legislative rules filed in the state register on  
394 the twelfth day of August, one thousand nine hundred  
395 eighty-eight, modified by the state tax commissioner to  
396 meet the objections of the legislative rule-making review  
397 committee and refiled in the state register on the  
398 twenty-first day of September, one thousand nine  
399 hundred eighty-eight, relating to the state tax commis-  
400 sioner (electronic data processing system network for  
401 property tax administration) are authorized.

402 (u) The legislative rules filed in the state register on  
403 the nineteenth day of September, one thousand nine  
404 hundred eighty-eight, modified by the state tax commis-  
405 sioner to meet the objections of the legislative rule-  
406 making review committee and refiled in the state  
407 register on the twenty-fourth day of February, one  
408 thousand nine hundred eighty-nine, relating to the state  
409 tax commissioner (exemption of property from ad  
410 valorem property taxation) are authorized.

411 (v) The legislative rules filed in the state register on  
412 the sixteenth day of September, one thousand nine  
413 hundred eighty-eight, modified by the state tax commis-  
414 sioner to meet the objections of the legislative rule-  
415 making review committee and refiled in the state  
416 register on the thirteenth day of January, one thousand  
417 nine hundred eighty-nine, relating to the state tax  
418 commissioner (consumers sales and service tax and use  
419 tax) are authorized.

### §64-2-3. State board of investments.

1 (a) The legislative rules filed in the state register on  
2 the third day of January, one thousand nine hundred  
3 eighty-four, relating to the state board of investments  
4 (selection of state depositories for disbursement accounts  
5 through competitive bidding) are authorized.

6 (b) The legislative rules filed in the state register on  
7 the third day of January, one thousand nine hundred  
8 eighty-four, relating to the state board of investments  
9 (administration of the consolidated fund) are autho-  
10 rized.

**§64-2-4. West Virginia health care cost review authority.**

1 (a) The legislative rules filed in the state register on  
2 the twenty-first day of October, one thousand nine  
3 hundred eighty-three, relating to the health care cost  
4 review authority (limitation on hospital gross patient  
5 revenue) are authorized.

6 (b) The legislative rules filed in the state register on  
7 the nineteenth day of December, one thousand nine  
8 hundred eighty-three, relating to the health care cost  
9 review authority (freeze on hospital rates and granting  
10 temporary rate increases) are authorized.

11 (c) The legislative rules filed in the state register on  
12 the twenty-first day of December, one thousand nine  
13 hundred eighty-four, relating to the health care cost  
14 review authority (implementation of the utilization  
15 review and quality assurance program) are authorized.

16 (d) The legislative rules filed in the state register on  
17 the fifteenth day of August, one thousand nine hundred  
18 eighty-four, relating to the health care cost review  
19 authority (hospital cost containment methodology), are  
20 authorized.

21 (e) The legislative rules filed in the state register on  
22 the twenty-fifth day of November, one thousand nine  
23 hundred eighty-five, modified by the West Virginia  
24 health care cost review authority to meet the objections  
25 of the legislative rule-making review committee and  
26 refiled in the state register on the twenty-eighth day of  
27 January, one thousand nine hundred eighty-six, relating  
28 to the West Virginia health care cost review authority  
29 (interim standards for lithotripsy services) are  
30 authorized.

31 (f) The legislative rules filed in the state register on  
32 the third day of September, one thousand nine hundred  
33 eighty-seven, modified by the West Virginia health care

34 cost review authority to meet the objections of the  
35 legislative rule-making review committee and refiled in  
36 the state register on the twenty-seventh day of January,  
37 one thousand nine hundred eighty-eight, relating to the  
38 West Virginia health care cost review authority (exemp-  
39 tions from certificate of need review) are authorized.

40 (g) The legislative rules filed in the state register on  
41 the nineteenth day of September, one thousand nine  
42 hundred eighty-eight, modified by the health care cost  
43 review authority to meet the objections of the legislative  
44 rule-making review committee and refiled in the state  
45 register on the twenty-first day of February, one  
46 thousand nine hundred eighty-nine, relating to the  
47 health care cost review authority (financial disclo-  
48 sure) are authorized.

#### §64-2-5. Commissioner of highways.

1 (a) The legislative rules filed in the state register on  
2 the twenty-first day of October, one thousand nine  
3 hundred eighty-three, relating to the commissioner of  
4 highways (transportation of hazardous waste by high-  
5 way transporters) are authorized with the amendments  
6 set forth below:

7 Pages 3 and 7 after "40 CFR part 262" add the words  
8 "as amended through March 8, 1986,"

9 Page 7 after "49 CFR parts 171-179" add the words  
10 "as amended through March 8, 1986," and

11 Page 11 after "49 CFR part 171.16" add the words "as  
12 amended through March 8, 1986."

13 (b) The legislative rules filed in the state register on  
14 the tenth day of August, one thousand nine hundred  
15 eighty-four, relating to the commissioner of highways  
16 (construction and reconstruction of state roads), are  
17 authorized with the amendments set forth below:

18 Page 16, Sec. 8.08, line 21 (unnumbered), by inserting  
19 after the word "all" the following language: "reasonable  
20 and necessary" and after the word "project" inserting  
21 the following language: "by the Railroad".

22 Page 16, Sec. 8.08, line 22, (unnumbered), after the  
23 word "the" by striking the words "Railroad's Chief".

24 Page 19, Sec. 8.08, line 25, (unnumbered), by striking  
25 "Railroad's Chief" and adding the following new  
26 language:

27 Any approval by the Department of any activity by  
28 the Contractor upon the right-of-way or premises of any  
29 Railroad which is provided for in this Section (8.08)  
30 (including, but not limited to, approval of work,  
31 methods, or procedures of work to be done, and the  
32 condition of premises after completion of work by the  
33 Contractor) shall in no way create any liability by the  
34 Department to the Railroad except to the extent  
35 provided otherwise by law and the Contractor shall,  
36 during all periods of construction and thereafter,  
37 indemnify and save harmless the department from any  
38 and all liability to the Railroad or any third parties for  
39 any damages as a result of the work of the Contractor,  
40 the methods and procedures for performing work, the  
41 failure of the Contractor to properly remove equipment,  
42 surplus material and other debris upon the Railroad  
43 premises, or the condition of the premises of the  
44 Railroad during construction or after completion of  
45 construction by the Contractor as approved by the  
46 Department or otherwise.

47 Page 18, Sec. 8.08, subdivision (a), line 22, (unnum-  
48 bered), by striking the words "single limit" and  
49 inserting in lieu thereof the following language: "per  
50 occurrence".

51 Page 19, Sec. 8.08, subdivision (b), line 8, (unnum-  
52 bered), by striking the words "single limit" and  
53 inserting in lieu thereof the following language: "per  
54 occurrence".

55 Page 19, Sec. 8.08 (c), line 18, (unnumbered), by  
56 inserting after the word "occurrence" the following  
57 language: "of"; and after the word "injury" insert a  
58 comma and strike the word "or".

59 (c) The legislative rules filed in the state register on  
60 the seventh day of September, one thousand nine  
61 hundred eighty-four, modified by the commissioner of

62 highways to meet the objections of the legislative rule-  
63 making review committee and refiled in the state  
64 register on the fifth day of October, one thousand nine  
65 hundred eighty-four, relating to the commissioner of  
66 highways (transportation of hazardous waste) are  
67 authorized with the amendment set forth below:

68 Page 5, by amending §3.01 by adding thereto a new  
69 subsection, designated subsection (4), to read as follows:  
70 “(4) Before accepting hazardous waste from a rail  
71 transporter, a highway transporter must sign and date  
72 the manifest and provide a copy to the rail transporter.”

73 (d) The legislative rules filed in the state register on  
74 the fourteenth day of August, one thousand nine  
75 hundred eighty-four, modified by the commissioner of  
76 highways to meet the objections of the legislative rule-  
77 making review committee and refiled in the state  
78 register on the fifth day of October, one thousand nine  
79 hundred eighty-four, relating to the commissioner of  
80 highways (disqualification and suspension of  
81 prequalified contractors) are authorized.

82 (e) The legislative rules filed in the state register on  
83 the twelfth day of December, one thousand nine hundred  
84 eighty-five, relating to the commissioner of highways  
85 (transportation of hazardous wastes by vehicle upon the  
86 roads and highways of this state) are authorized with  
87 the amendments set forth below:

88 On page 18, the first line of §3.03 shall read as follows:

89 “3.03. Transporters who only accept Hazardous Waste  
90 from”.

91 (f) The legislative rules filed in the state register on  
92 the first day of December, one thousand nine hundred  
93 eighty-seven, modified by the commissioner of highways  
94 to meet the objections of the legislative rule-making  
95 review committee and refiled in the state register on the  
96 fourteenth day of January, one thousand nine hundred  
97 eighty-eight, relating to the commissioner of highways  
98 (traffic and safety rules and regulations) are authorized  
99 with the amendment set forth below:

100 On page 8, section 7.2, line 9, (unnumbered), by  
101 striking everything after the word "structures".

102 (g) The legislative rules filed in the state register on  
103 the first day of December, one thousand nine hundred  
104 eighty-seven, relating to the commissioner of highways  
105 (construction and reconstruction of state roads) are  
106 authorized.

107 (h) The legislative rules filed in the state register on  
108 the twenty-fifth day of February, one thousand nine  
109 hundred eighty-seven, modified by the commissioner of  
110 highways to meet the objections of the legislative rule-  
111 making review committee and refiled in the state  
112 register on the twenty-third day of November, one  
113 thousand nine hundred eighty-seven, relating to the  
114 commissioner of highways (transportation of hazardous  
115 wastes upon the roads and highways) are authorized.

**§64-2-6. Commissioner of motor vehicles.**

1 (a) The legislative rules filed in the state register on  
2 the second day of December, one thousand nine hundred  
3 eighty-two, relating to the commissioner of motor  
4 vehicles (denial of driving privileges), are authorized  
5 with the amendments set forth below:

6 By inserting the words "licensed in the United States"  
7 after the phrase "physician of the applicant's choice," on  
8 page five, line two, and page seven, line one; and by  
9 striking out the words "licensed vision specialist" and  
10 inserting in lieu thereof the words "an optometrist or  
11 ophthalmologist licensed in the United States," on page  
12 five, line three, and on page seven, line two.

13 (b) The legislative rules filed in the state register on  
14 the ninth day of November, one thousand nine hundred  
15 eighty-three, relating to the commissioner of motor  
16 vehicles (driving under the influence, drivers' license  
17 revocation administrative hearings) are authorized.

18 (c) The legislative rules filed in the state register on  
19 the fifteenth day of December, one thousand nine  
20 hundred eighty-three, relating to the department of  
21 motor vehicles (safety and treatment program) are  
22 authorized.



23 (d) The legislative rules filed in the state register on  
24 the sixteenth day of June, one thousand nine hundred  
25 eighty-three, relating to the commissioner of motor  
26 vehicles (compulsory insurance) are authorized.

27 (e) The legislative rules filed in the state register on  
28 the twentieth day of November, one thousand nine  
29 hundred eighty-four, relating to the commissioner of  
30 motor vehicles (titling a vehicle), are authorized.

31 (f) The legislative rules filed in the state register on  
32 the tenth day of September, one thousand nine hundred  
33 eighty-four, modified by the commissioner of motor  
34 vehicles to meet the objections of the legislative rule-  
35 making review committee and refiled in the state  
36 register on the fifth day of October, one thousand nine  
37 hundred eighty-four, relating to the commissioner of  
38 motor vehicles (compulsory motor vehicle liability  
39 insurance) are authorized.

40 (g) The legislative rules filed in the state register on  
41 the fifth day of August, one thousand nine hundred  
42 eighty-five, modified by the commissioner of motor  
43 vehicles to meet the objections of the legislative rule-  
44 making review committee and refiled in the state  
45 register on the fourth day of October, one thousand nine  
46 hundred eighty-five, relating to the commissioner of  
47 motor vehicles (eligibility for reinstatement following  
48 suspension or revocation of driving privileges), are  
49 authorized.

50 (h) The legislative rules filed in the state register on  
51 the fifth day of August, one thousand nine hundred  
52 eighty-five, relating to the commissioner of motor  
53 vehicles (the administration and enforcement of motor  
54 vehicle inspections) are authorized.

55 (i) The legislative rules filed in the state register on  
56 the twenty-fifth day of July, one thousand nine hundred  
57 eighty-six, modified by the commissioner of motor  
58 vehicles to meet the objections of the legislative rule-  
59 making review committee and refiled in the state  
60 register on the ninth day of October, one thousand nine  
61 hundred eighty-six, relating to the commissioner of

62 motor vehicles (seizure of a driver's license and issuance  
63 of a temporary driver's license), are authorized.

64 (j) The legislative rules filed in the state register on  
65 the twenty-fifth day of July, one thousand nine hundred  
66 eighty-six, modified by the commissioner of motor  
67 vehicles to meet the objections of the legislative rule-  
68 making review committee and refiled in the state  
69 register on the ninth day of October, one thousand nine  
70 hundred eighty-six, relating to the commissioner of  
71 motor vehicles (federal safety standards inspection  
72 program), are authorized.

73 (k) The legislative rules filed in the state register on  
74 the seventeenth day of August, one thousand nine  
75 hundred eighty-seven, modified by the commissioner of  
76 motor vehicles to meet the objections of the legislative  
77 rule-making review committee and refiled in the state  
78 register on the twenty-second day of September, one  
79 thousand nine hundred eighty-seven, relating to the  
80 commissioner of motor vehicles (denial, suspension,  
81 revocation or renewal of driving privileges) are autho-  
82 rized with the amendment set forth below:

83 On page 7, section 7.2 after the words "75 m.p.h.," add  
84 the words "except on highways where the established  
85 speed limit is 65 m.p.h., and conviction was in excess  
86 of 80 m.p.h.",

87 And,

88 On page 14, section 8.1 by inserting the words "not  
89 to exceed fifteen hours" after the word "course" and in  
90 section 8.2 by inserting the words "not to exceed fifteen  
91 hours" after the word "course".

92 (l) The legislative rules filed in the state register on  
93 the twenty-second day of November, one thousand nine  
94 hundred eighty-eight, modified by the commissioner of  
95 motor vehicles to meet the objections of the legislative  
96 rule-making review committee and refiled in the state  
97 register on the twentieth day of January, one thousand  
98 nine hundred eighty-nine, relating to the commissioner  
99 of motor vehicles (denial, suspension, revocation or  
100 nonrenewal of driving privileges) are authorized.

**§64-2-7. Department of natural resources.**

1 (a) The legislative rules filed in the state register on  
2 the eighth day of December, one thousand nine hundred  
3 eighty-three, relating to the department of natural  
4 resources (surface mining) are authorized with the  
5 amendments set forth below:

6 Page 3-4, §3E.01 by adding after the word "engineer"  
7 the words "or licensed land surveyor."

8 Page 3-5, §3E.02, subsection (a), by adding after the  
9 word "mining" the words "or civil."

10 Page 3-5, §3E.02, subsection (b), by adding after the  
11 first sentence—"Those persons who have been approved  
12 to date need not make said demonstration."

13 (b) The legislative rules filed in the state register on  
14 the twentieth day of January, one thousand nine  
15 hundred eighty-four, relating to the department of  
16 natural resources (solid waste management) are autho-  
17 rized with the amendments set forth below:

18 Page 9, section 4.04, line five, add the following  
19 paragraph:

20 "Upon request of any applicant, the division shall  
21 meet with the applicant for pre-filing review of the  
22 application. The division, with the cooperation of the  
23 solid waste authority, shall assist the applicant in  
24 preparing a complete and proper application which  
25 would not be rejected as incomplete."

26 On page 15, section 6.03 (c) (1) in the first full  
27 sentence, after the word "cease", strike the remainder  
28 of the sentence and insert in lieu thereof the words  
29 "within fifteen (15) days of receipt of an order of  
30 suspension" and in the second sentence strike the word  
31 "recommence" and insert the words "continue beyond  
32 fifteen (15) days"; (c)(2) in the first full sentence, after  
33 the word "cease" by striking out the remainder of the  
34 sentence and insert in lieu thereof the words "imme-  
35 diately upon receipt of an order of revocation."

36 (c) The legislative rules filed in the state register on  
37 the twenty-sixth day of September, one thousand nine  
38 hundred eighty-four, relating to the department of

39 natural resources (public use of state parks, forests,  
40 hunting and fishing areas), are authorized.

41 (d) The legislative rules filed in the state register on  
42 the seventh day of November, one thousand nine  
43 hundred eighty-four, relating to the department of  
44 natural resources (surface mining reclamation) are  
45 authorized.

46 (e) The legislative rules filed in the state register on  
47 the seventh day of November, one thousand nine  
48 hundred eighty-four, relating to the department of  
49 natural resources (coal refuse disposal) are authorized.

50 (f) The legislative rules filed in the state register on  
51 the ninth day of November, one thousand nine hundred  
52 eighty-four, relating to the department of natural  
53 resources (transfer of the state national pollutant  
54 discharge elimination system program), are authorized  
55 with the amendments set forth below:

56 Page 10-5, by striking § 10B.19 and inserting in lieu  
57 thereof a new § 10B.19, to read as follows: "‘Effluent  
58 limitations guidelines’ means a regulation published by  
59 the Administrator under Section 304(b) or Section  
60 301(b)(1)(B) of the CWA to adopt or revise effluent  
61 limitations or levels of effluent quality attainable  
62 through the application of secondary or equivalent  
63 treatment. For the coal industry these regulations are  
64 published at 40 C.F.R. Parts 434 and 133. (See:  
65 Appendix G and H)"

66 (g) The legislative rules filed in the state register on  
67 the twenty-eighth day of August, one thousand nine  
68 hundred eighty-four, relating to the department of  
69 natural resources (small arms hunting) are authorized.

70 (h) The legislative rules filed in the state register on  
71 the sixth day of January, one thousand nine hundred  
72 eighty-four, relating to the department of natural  
73 resources (hazardous waste management), are  
74 authorized.

75 (i) The legislative rules filed in the state register on  
76 the third day of December, one thousand nine hundred  
77 eighty-four, modified by the department of natural

78 resources to meet the objections of the legislative rule-  
79 making review committee and refiled in the state  
80 register on the thirteenth day of February, one thousand  
81 nine hundred eighty-five, relating to the department of  
82 natural resources (hazardous waste management), are  
83 authorized.

84 (j) The legislative rules filed in the state register on  
85 the tenth day of October, one thousand nine hundred  
86 eighty-five, relating to the department of natural  
87 resources (hazardous waste management: small quantity  
88 generators and waste minimization certification), are  
89 authorized with the amendments set forth below:

90 On page 1, §3.1.4b, delete the word "or" in the  
91 reference to "paragraph (g) or (j)" and insert in lieu  
92 thereof the words "and, if applicable."

93 (k) The legislative rules filed in the state register on  
94 the ninth day of September, one thousand nine hundred  
95 eighty-five, relating to the department of natural  
96 resources (WV/NPDES regulations for the coal mining  
97 point source category and related sewage facilities), are  
98 authorized.

99 (l) The legislative rules filed in the state register on  
100 the eleventh day of December, one thousand nine  
101 hundred eighty-five, modified by the department of  
102 natural resources to meet the objections of the legislative  
103 rule-making review committee and refiled in the state  
104 register on the twentieth day of February, one thousand  
105 nine hundred eighty-six, relating to the department of  
106 natural resources (hazardous waste management), are  
107 authorized.

108 (m) The legislative rules filed in the state register on  
109 the twenty-sixth day of September, one thousand nine  
110 hundred eighty-six, modified by the department of  
111 natural resources to meet the objections of the legislative  
112 rule-making review committee and refiled in the state  
113 register on the ninth day of December, one thousand  
114 nine hundred eighty-six, relating to the department of  
115 natural resources (hazardous waste management regu-  
116 lations), are authorized.

117 (n) The legislative rules filed in the state register on  
118 the seventh day of August, one thousand nine hundred  
119 eighty-six, relating to the director of the department of  
120 natural resources (procedures for transporting and  
121 dealing in furbearing animals), are authorized.

122 (o) The legislative rules filed in the state register on  
123 the thirtieth day of December, one thousand nine  
124 hundred eighty-six, relating to the department of  
125 natural resources (WV/NPDES program for coal mines  
126 and preparation plants, and the refuse and waste  
127 therefrom), are authorized with the amendments set  
128 forth below:

129 On page four, § 1.9.1.a by inserting the words “five  
130 thousand dollars or” after the words “‘significant  
131 portion of income’ means” and

132 On page four, § 1.9.1.a by inserting the words  
133 “whichever is less,” after the words “ten percent or more  
134 of gross personal income for a calendar year”.

135 (p) The legislative rules filed in the state register on  
136 the fifth day of March, one thousand nine hundred  
137 eighty-six, relating to the department of natural  
138 resources (hazardous waste management), are  
139 authorized.

140 (q) The legislative rules filed in the state register on  
141 the twelfth day of August, one thousand nine hundred  
142 eighty-seven, relating to the department of natural  
143 resources (WV/NPDES regulations for coal mining  
144 facilities) are authorized.

145 (r) The legislative rules filed in the state register on  
146 the tenth day of June, one thousand nine hundred  
147 eighty-seven, relating to the director of the department  
148 of natural resources (outfitters and guides) are  
149 authorized.

150 (s) The legislative rules filed in the state register on  
151 the ninth day of January, one thousand nine hundred  
152 eighty-seven, relating to the department of natural  
153 resources (hazardous waste management regulations),  
154 are authorized.

155 (t) The legislative rules filed in the state register on  
156 the fifth day of March, one thousand nine hundred  
157 eighty-seven, relating to the department of natural  
158 resources (hazardous waste management regulations,  
159 series 35), are authorized.

160 (u) The legislative rules filed in the state register on  
161 the seventh day of December, one thousand nine  
162 hundred eighty-seven, relating to the department of  
163 natural resources (hazardous waste management regu-  
164 lations, series 35) are authorized.

165 (v) The legislative rules filed in the state register on  
166 the sixteenth day of December, one thousand nine  
167 hundred eighty-seven, modified by the department of  
168 natural resources to meet the objections of the legislative  
169 rule-making review committee and refiled in the state  
170 register on the fourteenth day of January, one thousand  
171 nine hundred eighty-eight, relating to the department of  
172 natural resources (solid waste management) are  
173 authorized.

174 (w) The legislative rules filed in the state register on  
175 the twenty-eighth day of July, one thousand nine  
176 hundred eighty-seven, modified by the director of the  
177 department of natural resources to meet the objections  
178 of the legislative rule-making review committee and  
179 refiled in the state register on the seventh day of  
180 August, one thousand nine hundred eighty-seven,  
181 relating to the director of the department of natural  
182 resources (boating regulations) are authorized with the  
183 amendment set forth below:

184 On page 16, section 6.2, line 3 by inserting following  
185 the period "This regulation does not apply to licensed  
186 outfitters and guides." These rules were proposed by the  
187 director of the department of natural resources pursu-  
188 ant to section seven, article one and section twenty-two,  
189 article seven, chapter twenty of this code.

190 (x) The legislative rules filed in the state register on  
191 the second day of September, one thousand nine  
192 hundred eighty-eight, modified by the department of  
193 natural resources to meet the objections of the legislative  
194 rule-making review committee and refiled in the state

195 register on the seventeenth day of October, one thousand  
196 nine hundred eighty-eight, relating to the department of  
197 natural resources (hazardous waste management) are  
198 authorized.

199 (y) The legislative rules filed in the state register on  
200 the thirty-first day of August, one thousand nine  
201 hundred eighty-eight, relating to the director of the  
202 department of natural resources (boating) are  
203 authorized.

204 (z) The legislative rules filed in the state register on  
205 the eighth day of March, one thousand nine hundred  
206 eighty-eight, modified by director of the department of  
207 natural resources to meet the objections of the legislative  
208 rule-making review committee and refiled in the state  
209 register on the thirtieth day of August, one thousand  
210 nine hundred eighty-eight, relating to the director of the  
211 department of natural resources (commercial sale of  
212 wildlife) are authorized.

213 (aa) The legislative rules filed in the state register on  
214 the twenty-seventh day of January, one thousand nine  
215 hundred eighty-eight, relating to the director of the  
216 department of natural resources (catching and selling  
217 bait fish) are authorized.

218 (bb) The legislative rules filed in the state register on  
219 the twenty-fifth day of March one thousand nine  
220 hundred eighty-eight, relating to the director of the  
221 department of natural resources (West Virginia public  
222 hunting and fishing areas) are authorized with the  
223 following amendment:

224 On page three, section 3.8.4, by inserting after the  
225 word "vehicle" the following ", all terrain vehicle  
226 (ATV)".

**§64-2-8. Department of energy.**

1 (a) The legislative rules filed in the state register on  
2 the thirty-first day of March, one thousand nine hundred  
3 eighty-two, relating to the department of mines  
4 (energy) (mine safety program), are authorized.

5 (b) The legislative rules filed in the state register on



6 the seventeenth day of August, one thousand nine  
7 hundred eighty-three, relating to the department of  
8 energy (governing the safety of those employed in and  
9 around surface mines), are authorized.

10 (c) The legislative rules filed in the state register on  
11 the seventh day of December, one thousand nine  
12 hundred eighty-three, relating to the office of oil and  
13 gas, department of mines (energy), (oil and gas and  
14 other wells) are authorized with the amendment set  
15 forth below:

16 Page viii, place an \* in front of section 32.02.

17 Page ix, after section 35.04 add the following:

18 “\*35.05 Extra Powers of the Administrator . . . . . 64.”

19 Page 1, section 1.03 in the list of additional regula-  
20 tions, add 35.05; in the list of revised regulations, add  
21 32.02, 32.03 and 33.00.

22 Page 52 section 32.04 and section 32.05 add at the end  
23 of (ii) the words “and (iii) definition of proration unit”.

24 Page 53 section 33 After the word “definitions” add  
25 the following sentence: “The following definitions are  
26 applicable to these regulations used for purposes of  
27 implementing the Natural Gas Policy Act of 1978 and  
28 are not intended to be used in any other context.”

29 Page 55, section 33.02 (b)(16) after the word “forma-  
30 tions” in the third lines of (i) and (ii), add the words “for  
31 which a well has been.”

32 Page 64, after section 35.04 add the following section:  
33 35.05 Extra powers of the Administrator.

34 “The administrator may also certify or provide a  
35 waiver for a well located within a proration unit as  
36 defined in 32.02 (b)(16) or any other well sought to be  
37 certified under these regulations after notice and  
38 hearing.”

39 (d) The legislative rules filed in the state register on  
40 the eleventh day of August, one thousand nine hundred  
41 eighty-six, modified by the director of the division of oil  
42 and gas of the department of energy to meet the

43 objections of the legislative rule-making review commit-  
44 tee and refiled in the state register on the fifteenth day  
45 of December, one thousand nine hundred eighty-six,  
46 relating to the director of the division of oil and gas of  
47 the department of energy (oil and gas wells and other  
48 wells), are authorized.

49 (e) The legislative rules filed in the state register on  
50 the eleventh day of August, one thousand nine hundred  
51 eighty-six, modified by the director of the oil and gas  
52 division of the department of energy to meet the  
53 objections of the legislative rule-making review commit-  
54 tee and refiled in the state register on the fifteenth day  
55 of December, one thousand nine hundred eighty-six,  
56 relating to the director of the division of oil and gas of  
57 the department of energy (certification of gas wells), are  
58 authorized.

59 (f) The legislative rules filed in the state register on  
60 the eleventh day of August, one thousand nine hundred  
61 eighty-six, modified by the director of the division of oil  
62 and gas of the department of energy to meet the  
63 objections of the legislative rule-making review commit-  
64 tee and refiled in the state register on the fifteenth day  
65 of December, one thousand nine hundred eighty-six,  
66 relating to the director of the division of oil and gas of  
67 the department of energy (underground injection  
68 control), are authorized.

69 (g) The legislative rules filed in the state register on  
70 the eleventh day of August, one thousand nine hundred  
71 eighty-six, modified by the director of the division of oil  
72 and gas of the department of energy to meet the  
73 objections of the legislative rule-making review commit-  
74 tee and refiled in the state register on the fifteenth day  
75 of December, one thousand nine hundred eighty-six,  
76 relating to the director of the division of oil and gas of  
77 the department of energy (state national pollutant  
78 discharge elimination system (NPDES) program), are  
79 authorized.

80 (h) The legislative rules filed in the state register on  
81 the fourteenth day of November, one thousand nine  
82 hundred eighty-six, modified by the commissioner of the

83 department of energy to meet the objections of the  
84 legislative rule-making review committee and refiled in  
85 the state register on the sixteenth day of December, one  
86 thousand nine hundred eighty-six, relating to the  
87 commissioner of the department of energy (standards  
88 for certification of coal mine electricians), are autho-  
89 rized with the following amendments:

90 "Page one, §2.1, subsection (a), following the second  
91 word, 'electrician' by striking the colon and inserting the  
92 following: 'under the supervision required by section  
93 4.1(d) of these rules' and a colon.

94 Page one, §2.1, subsection (a), by deleting all of  
95 subdivision (6) and renumbering the subsequent  
96 subdivisions.

97 Page two, §2.1, subsection (a), by deleting all of  
98 subdivision (9).

99 Page two, §2.1, subsection (b), by deleting all of  
100 subdivision (14) and inserting in lieu thereof a new  
101 subdivision (14) to read as follows: '(14) Replace blown  
102 fuses on trolley poles and nips.'

103 Page five, §4.1, subsection (d), line three, following the  
104 words 'certified electrician prior' by inserting the words  
105 'to any work being performed and again prior'."

106 (i) The legislative rules filed in the state register on  
107 the fifteenth day of December, one thousand nine  
108 hundred eighty-six, modified by the commissioner of the  
109 department of energy to meet the objections of the  
110 legislative rule-making review committee and refiled in  
111 the state register on the twenty-first day of January, one  
112 thousand nine hundred eighty-seven, relating to the  
113 commissioner of the department of energy (safety  
114 training program for prospective underground coal  
115 miners in West Virginia), are authorized.

116 (j) The legislative rules filed in the state register on  
117 the eleventh day of August, one thousand nine hundred  
118 eighty-six, modified by the commissioner of the depart-  
119 ment of energy to meet the objections of the legislative  
120 rule-making review committee and refiled in the state  
121 register on the fifteenth day of December, one thousand

122 nine hundred eighty-six, relating to the commissioner of  
123 the department of energy (miscellaneous water pollution  
124 control), are authorized.

125 (k) The legislative rules filed in the state register on  
126 the eleventh day of August, one thousand nine hundred  
127 eighty-six, modified by the commissioner of the depart-  
128 ment of energy to meet the objections of the legislative  
129 rule-making review committee and refiled in the state  
130 register on the fifteenth day of December, one thousand  
131 nine hundred eighty-six, relating to the commissioner of  
132 the department of energy (dam control), are authorized.

133 (l) The legislative rules filed in the state register on  
134 the eleventh day of August, one thousand nine hundred  
135 eighty-six, modified by the commissioner of the depart-  
136 ment of energy to meet the objections of the legislative  
137 rule-making review committee and refiled in the state  
138 register on the fifteenth day of December, one thousand  
139 nine hundred eighty-six, relating to the commissioner of  
140 the department of energy (solid waste management), are  
141 authorized.

142 (m) The legislative rules filed in the state register on  
143 the eleventh day of August, one thousand nine hundred  
144 eighty-six, modified by the commissioner of the depart-  
145 ment of energy to meet the objections of the legislative  
146 rule-making review committee and refiled in the state  
147 register on the fifteenth day of December, one thousand  
148 nine hundred eighty-six, relating to the commissioner of  
149 the department of energy (hazardous waste manage-  
150 ment), are authorized.

151 (n) The legislative rules filed in the state register on  
152 the twentieth day of April, one thousand nine hundred  
153 eighty-seven, relating to the commissioner of the  
154 department of energy (roof control) are authorized.

155 (o) The legislative rules filed in the state register on  
156 the third day of April, one thousand nine hundred  
157 eighty-seven, relating to the department of energy  
158 (standards for certification of underground belt examin-  
159 ers for underground coal mines), are authorized.

160 (p) The legislative rules filed in the state register on

161 the ninth day of April, one thousand nine hundred  
162 eighty-seven, relating to the commissioner of the  
163 department of energy (performance standards for  
164 blasting on surface mines) are authorized.

165 (q) The legislative rules filed in the state register on  
166 the twelfth day of January, one thousand nine hundred  
167 eighty-seven, modified by the commissioner of the  
168 department of energy to meet the objections of the  
169 legislative rule-making review committee and refiled in  
170 the state register on the twentieth day of February, one  
171 thousand nine hundred eighty-seven, relating to the  
172 commissioner of the department of energy (state  
173 national pollutant discharge elimination system  
174 (NPDES) for mines and minerals), are authorized.

175 (r) The Legislature hereby authorizes and directs the  
176 department of energy to promulgate the procedural  
177 rules filed in the state register on the twenty-first day  
178 of October, one thousand nine hundred eighty-seven,  
179 relating to the department of energy (requests for  
180 information) with the amendments set forth below:

181 On page two, subsection 3.1, by striking subdivision  
182 (d) and renumbering the remaining subdivisions, and

183 On page three, section 6, by striking all of subsection  
184 6.1 and inserting in lieu thereof, the following:

185 "6.1 The department shall establish fixed rate fees for  
186 reproduction of documents, records, and files on the  
187 basis of the actual cost of such reproduction and shall  
188 document such costs: *Provided*, That where total costs  
189 are less than five dollars, no fee shall be charged."

190 (s) The legislative rules filed in the state register on  
191 the twelfth day of May, one thousand nine hundred  
192 eighty-seven, modified by the commissioner of the  
193 department of energy to meet the objections of the  
194 legislative rule-making review committee and refiled in  
195 the state register on the fourteenth day of August, one  
196 thousand nine hundred eighty-seven, relating to the  
197 commissioner of the department of energy (blasters  
198 certification for surface coal mines and surface areas of  
199 coal mines) are authorized.

200 (t) The legislative rules filed in the state register on  
201 the twentieth day of January, one thousand nine  
202 hundred eighty-eight, modified by the commissioner of  
203 the department of energy to meet the objections of the  
204 legislative rule-making review committee and refiled in  
205 the state register on the twenty-eighth day of November,  
206 one thousand nine hundred eighty-eight, relating to the  
207 commissioner of the department of energy (abandoned  
208 mine reclamation) are authorized.

**§64-2-9. Department of labor.**

1 (a) The legislative rules filed in the state register on  
2 the tenth day of May, one thousand nine hundred eighty-  
3 two, relating to the commissioner of labor (steam boiler  
4 rules) as modified by the legislative rule-making review  
5 committee are authorized.

6 (b) The legislative rules filed in the state register on  
7 the seventh day of December, one thousand nine  
8 hundred eighty-three, relating to the department of  
9 labor (hazardous chemical substances) are authorized.

10 (c) The legislative rules filed in the state register on  
11 the second day of February, one thousand nine hundred  
12 eighty-four, relating to the department of labor (poly-  
13 graph examinations) are authorized

14 (d) The legislative rules filed in the state register on  
15 the twenty-second day of December, one thousand nine  
16 hundred eighty-seven, relating to the commissioner of  
17 labor (West Virginia occupational safety and health act)  
18 are authorized.

19 (e) The legislative rules filed in the state register on  
20 the twenty-second day of December, one thousand nine  
21 hundred eighty-seven, modified by the commissioner of  
22 labor to meet the objections of the legislative rule-  
23 making review committee and refiled in the state  
24 register on the twentieth day of January, one thousand  
25 nine hundred eighty-eight, relating to the commissioner  
26 of labor (wage payment and collection act) are  
27 authorized.

28 (f) The legislative rules filed in the state register on  
29 the sixteenth day of November, one thousand nine

30 hundred eighty-seven, relating to the commissioner of  
31 the department of labor (standards for weights and  
32 measures inspectors—adoption of NBS Handbook 130,  
33 1987) are authorized.

34 (g) The legislative rules filed in the state register on  
35 the twelfth day of January, one thousand nine hundred  
36 eighty-eight, relating to the commissioner of labor  
37 (steam boiler inspection fee schedule) are authorized.

38 (h) The legislative rules filed in the state register on  
39 the thirteenth day of September, one thousand nine  
40 hundred eighty-eight, modified by the department of  
41 labor to meet the objections of the legislative rule-  
42 making review committee and refiled in the state  
43 register on the seventh day of December, one thousand  
44 nine hundred eighty-eight, relating to the department of  
45 labor (amusement rides and amusement attractions  
46 safety act) are authorized.

#### §64-2-10. Insurance commissioner.

1 (a) The legislative rules filed in the state register on  
2 the eighteenth day of October, one thousand nine  
3 hundred eighty-three, relating to the insurance commis-  
4 sioner (excess line brokers), are authorized.

5 (b) The legislative rules filed in the state register on  
6 the eighteenth day of August, one thousand nine  
7 hundred eighty-six, modified by the insurance commis-  
8 sioner to meet the objection of the legislative rule-  
9 making review committee and refiled in the state  
10 register on the twelfth day of December, one thousand  
11 nine hundred eighty-six, relating to the insurance  
12 commissioner (examiners' compensation, qualification  
13 and classification), are authorized.

14 (c) The legislative rules filed in the state register on  
15 the twentieth day of February, one thousand nine  
16 hundred eighty-seven, relating to the insurance commis-  
17 sioner (West Virginia essential property insurance  
18 association) are authorized.

19 (d) The legislative rules filed in the state register on  
20 the twenty-ninth day of May, one thousand nine hundred  
21 eighty-seven, relating to the insurance commissioner

22 (medical malpractice annual reporting requirements)  
23 are authorized.

24 (e) The legislative rules filed in the state register on  
25 the thirty-first day of July, one thousand nine hundred  
26 eighty-seven, modified by the insurance commissioner to  
27 meet the objections of the legislative rule-making review  
28 committee and refiled in the state register on the  
29 seventh day of November, one thousand nine-hundred  
30 eighty-seven, relating to the insurance commissioner  
31 (medical malpractice loss experience and loss expense  
32 reporting requirements) are authorized.

33 (f) The legislative rules filed in the state register on  
34 the thirtieth day of November, one thousand nine  
35 hundred eighty-eight, modified by the insurance com-  
36 missioner to meet the objections of the legislative rule-  
37 making review committee and refiled in the state  
38 register on the twenty-first day of February, one  
39 thousand nine hundred eighty-nine, relating to the  
40 insurance commissioner (transitional requirements for  
41 the conversion of medicare supplement insurance  
42 benefits and premiums to conform to medicare program  
43 revisions) are authorized.

**§64-2-11. Attorney general.**

1 (a) The legislative rules filed in the state register on  
2 the sixth day of December, one thousand nine hundred  
3 eighty-four, relating to the attorney general (third party  
4 dispute mechanisms) are authorized.

5 (b) The legislative rules filed in the state register on  
6 the ninth day of January, one thousand nine hundred  
7 eighty-five, relating to the attorney general (fair  
8 treatment of crime victims and witnesses) are  
9 authorized.

10 (c) The legislative rules filed in the state register on  
11 the nineteenth day of September, one thousand nine  
12 hundred eighty-six, modified by the attorney general to  
13 meet the objections of the legislative rule-making review  
14 committee and refiled in the state register on the first  
15 day of December, one thousand nine hundred eighty-six,  
16 relating to the attorney general (prevention of unfair or



17 deceptive acts or practices in home improvement and  
18 home construction transactions), are authorized. These  
19 rules were proposed by the attorney general pursuant  
20 to section one hundred three, article six and section one  
21 hundred two, article seven of chapter forty-six-a of this  
22 code with the following amendments:

23 "Amending the title to the proposed legislative rule  
24 wherever said title may appear, on lines three and four  
25 thereof, by striking the words 'and home construction'.

26 On the index page following '3.' by striking the words  
27 'and home construction'.

28 On page 1, §1.2, line three, after the first word  
29 'transactions' on line three, by striking the comma and  
30 the words 'and home construction transactions' and on  
31 line five, by striking the period and inserting the words  
32 'but shall not cover new construction of single-family  
33 dwellings or rebuilding all or substantially all of an  
34 existing or preexisting single-family dwelling.'

35 Page 2, section 2.2 by striking all of lines seven and  
36 eight and inserting in lieu thereof the following:

37 'unless: (a) it appears in printed or typed face larger  
38 than the largest type used in the written contract,  
39 apart'.

40 On page 2, section 2.4, by striking all of section 2.4  
41 and inserting in lieu thereof a new section 2.4, to read  
42 as follows:

43 '2.4 "Home Construction" means, for the purpose of  
44 this Rule, the repair, remodeling or the building of  
45 additions to existing single-family dwelling units,  
46 including single-family homes, condominium units or  
47 any other dwelling unit to be used by any person  
48 primarily for personal or family use, but shall not  
49 include new single-family home construction or the  
50 rebuilding of all or substantially all of an existing or  
51 preexisting single-family dwelling.'

52 Page 3, section 2.6, on line two thereof, after the  
53 second comma by inserting the word 'replacement'.

54 Page 3, section 3., by striking the words 'and home  
55 construction' from the section heading.

56 Page 3, section 3.1, lines one and two, by striking the  
57 words 'or home construction'.

58 Page 4, section 3.1.4, on lines one and two thereof, by  
59 striking the words 'or home construction'.

60 Page 4, section 3.1.8, on line two thereof, by striking  
61 the words 'or home construction'.

62 Page 4, section 3.1.9, on lines two and three thereof,  
63 by striking the words 'or home construction'.

64 Page 5, section 3.1.12, on lines one and two thereof,  
65 by striking the words 'or home construction'.

66 Page 6, section 3.1.26, by striking all of section 3.1.26  
67 and renumbering the subsequent subsections.

68 Page 7, section 3.1.29, on lines one and two thereof,  
69 by striking the words 'or home construction'.

70 Page 7, section 3.1.29, on line six thereof, following the  
71 word 'contract' by inserting a period and striking the  
72 remainder of the section.

73 Page 7, following section 3.1.29 by adding a new  
74 section to be designated section 3.1.29, to read as follows:

75 'failed to file a certificate in the office of the Clerk of  
76 the County Commission in the county in which the  
77 principal place of business of the seller is located, setting  
78 forth the assumed name in or by which the business is  
79 being conducted in conformity with the provisions of  
80 Chapter 47, Article 8, Section 2 of the Code of West  
81 Virginia, 1931, as amended.'

82 Page 7, section 3.2, on lines two and three thereof, by  
83 striking the words, 'or home solicitation sale of home  
84 construction' and the comma on line three.

85 Page 9, section 4.1, on line eight thereof, by deleting  
86 the period and inserting the following:

87 'to the extent permitted by statute' and a period."

88 Page 10, section 4.2, on line 9 thereof, by striking the  
89 period and inserting the following:

90 "to the extent permitted by statute" and a period.

91 (d) The legislative rules filed in the state register on  
92 the twenty-third day of September, one thousand nine  
93 hundred eighty-six, modified by the attorney general to  
94 meet the objections of the legislative rule-making review  
95 committee and refiled in the state register on the first  
96 day of December, one thousand nine hundred eighty-six,  
97 relating to the attorney general (prevention of unfair or  
98 deceptive acts or practices in the sale of damaged goods  
99 or products), are authorized.

100 (e) The legislative rules filed in the state register on  
101 the twenty-third day of September, one thousand nine  
102 hundred eighty-seven, modified by the attorney general  
103 to meet the objections of the legislative rule-making  
104 review committee and refiled in the state register on the  
105 twenty-fifth day of November, one thousand nine  
106 hundred eighty-seven, relating to the attorney general  
107 (administration of preneed burial contracts) are autho-  
108 rized with the following amendments set forth below:

109 On page 9, section 8.2 by striking the words "within  
110 thirty days after the death of a contract beneficiary,"  
111 and inserting in lieu thereof the following: "On or before  
112 the first day of January and the first day of July of each  
113 year," and after the word "provided" by striking the  
114 comma and inserting in lieu thereof "after the death of  
115 any contract beneficiary during the previous six-month  
116 period,"

117 And,

118 On page 12, section 9.7 by striking all of 9.7,

119 And,

120 Beginning on page 15, by striking the entirety of  
121 section 15,

122 And,

123 Beginning on page 18, by striking the entirety of  
124 section 16, and by renumbering the remaining sections.

**§64-2-12. West Virginia library commission.**

1 The legislative rules filed in the state register on the  
2 twenty-second day of October, one thousand nine

3 hundred eighty-five, modified by the West Virginia  
4 library commission to meet the objections of the  
5 legislative rule-making review committee and refiled in  
6 the state register on the twelfth day of November, one  
7 thousand nine hundred eighty-five, relating to the West  
8 Virginia library commission (designating a grace period  
9 for the return of library materials) are authorized.

**§64-2-13. State treasurer.**

1 The legislative rules filed in the state register on the  
2 third day of January, one thousand nine hundred eighty-  
3 four, relating to the state treasurer (establishment of  
4 imprest funds) are authorized.

**§64-2-14. Department of public safety.**

1 (a) The legislative rules filed in the state register on  
2 the twenty-third day of September, one thousand nine  
3 hundred eighty-three, relating to the department of  
4 public safety (general orders) are authorized with the  
5 amendment set forth below:

6 Page 23, §9.10 remove the period at the end of the  
7 sentence and add the words "or municipalities."

8 (b) The legislative rules filed in the state register on  
9 the twenty-second day of June, one thousand nine  
10 hundred eighty-four, modified by the department of  
11 public safety to meet the objections of the legislative  
12 rule-making review committee and refiled in the state  
13 register on the fifth day of December, one thousand nine  
14 hundred eighty-four, relating to the department of  
15 public safety (commission on drunk driving) are  
16 authorized.

**§64-2-15. Air pollution control commission.**

1 (a) The legislative rules filed in the state register on  
2 the thirteenth day of August, one thousand nine hundred  
3 eighty-two, relating to the air pollution control commis-  
4 sion (series VII), are authorized.

5 (b) The legislative rules filed in the state register on  
6 the thirteenth day of August, one thousand nine hundred  
7 eighty-two, relating to air pollution control commission  
8 (series XIX), are authorized.

9 (c) The legislative rules filed in the state register on  
10 the sixteenth day of November, one thousand nine  
11 hundred eighty-three, relating to the air pollution  
12 control commission (emission standards for hazardous  
13 air pollutants) (series XV) are authorized.

14 (d) The legislative rules filed in the state register on  
15 the sixteenth day of November, one thousand nine  
16 hundred eighty-three, relating to the air pollution  
17 control commission (standards of performance for new  
18 stationary sources) (series XVI) are authorized.

19 (e) The legislative rules filed in the state register on  
20 the sixth day of January, one thousand nine hundred  
21 eighty-four, relating to the air pollution control commis-  
22 sion (to prevent and control air pollution from hazardous  
23 waste treatment, storage or disposal facilities) (series  
24 XXV), are authorized with the amendments set forth  
25 below:

26 Page 3, §1.06, change the § title from "Enforcement"  
27 to "Procedure"; place an "(a)" in front of the existing  
28 paragraph and add the following:

29 "(b) Permit applications filed pursuant to this regu-  
30 lation shall be processed in accordance with the  
31 permitting procedures as set forth in code §20-5E of this  
32 regulation. Permit procedures set forth in code §16-20  
33 and any other regulation of this commission are not  
34 applicable to any permit application filed pursuant to  
35 this regulation."

36 Such rules shall also include a section which shall  
37 read as follows:

38 "The commission shall report to the legislative rule-  
39 making review committee as required by that commit-  
40 tee, but in no event later than the first day of the regular  
41 session of the Legislature in the year one thousand nine  
42 hundred eighty-five. Such report shall include informa-  
43 tion regarding the commission's data gathering efforts,  
44 the development of compliance programs, the progress  
45 in implementation, and such other matters as the  
46 committee may require, pertaining to the regulations  
47 hereby authorized."

48 (f) The legislative rules filed in the state register on  
49 the ninth day of January, one thousand nine hundred  
50 eighty-four, relating to the air pollution control commis-  
51 sion (permits for construction and modification of  
52 stationary sources of air pollution for the prevention of  
53 significant deterioration) (series XIV) are authorized.

54 (g) The legislative rules filed in the state register on  
55 the thirtieth day of December, one thousand nine  
56 hundred eighty-eight, modified by the air pollution  
57 control commission to meet the objections of the  
58 legislative rule-making review committee and refiled in  
59 the state register on the twenty-third day of February,  
60 one thousand nine hundred eighty-nine, relating to the  
61 air pollution control commission (prevention and control  
62 of air pollution from hazardous waste treatment, storage  
63 or disposal facilities) are authorized.

64 (h) The legislative rules filed in the state register on  
65 the thirtieth day of December, one thousand nine  
66 hundred eighty-eight, modified by the air pollution  
67 control commission to meet the objections of the  
68 legislative rule-making review committee and refiled in  
69 the state register on the twenty-third day of February,  
70 one thousand nine hundred eighty-nine, relating to the  
71 air pollution control commission (good engineering  
72 practice as applicable to stack heights) are authorized.

73 (i) The legislative rules filed in the state register on  
74 the thirtieth day of December, one thousand nine  
75 hundred eighty-eight, modified by the air pollution  
76 control commission to meet the objections of the  
77 legislative rule-making review committee and refiled in  
78 the state register on the twenty-third day of February,  
79 one thousand nine hundred eighty-nine, relating to the  
80 air pollution control commission (TP-2, compliance test  
81 procedures for regulation 2—to prevent and control  
82 particulate air pollution from combustion of fuel in  
83 indirect heat exchangers) are authorized.

**§64-2-16. West Virginia hospital finance authority.**

1 The legislative rules filed in the state register on the

2 tenth day of June, one thousand nine hundred eighty-  
3 six, modified by the West Virginia hospital finance  
4 authority to meet the objections of the legislative rule-  
5 making review committee and refiled in the state  
6 register on the ninth day of January, one thousand nine  
7 hundred eighty-seven, relating to the West Virginia  
8 hospital finance authority (establishment of fee schedule  
9 and cost allocation applicable to issuance of bonds), are  
10 authorized.

**§64-2-17. Teachers retirement board.**

1 The legislative rules filed in the state register on the  
2 eleventh day of August, one thousand nine hundred  
3 eighty-two, relating to the teachers retirement board,  
4 are authorized with the following amendments:

5 Section VI, subsection 6, D, (a)(ii) of the rules is to be  
6 amended on line two by striking out the words "(3) thru  
7 (7)" and inserting in lieu thereof the words "(3) thru  
8 (13)"; Section VII, subsection 7, B, (c) of the rules is to  
9 be amended on line three after the word "100" by  
10 striking out the word "consecutive," and by redesignat-  
11 ing the subsection as subsection "(a)"; and Section X,  
12 subsection 10, A, (c), of the rules is to be amended on  
13 line one after the word "physicians," by striking out the  
14 words "of member's choice," and inserting in lieu thereof  
15 the words "one selected by the Board and one selected  
16 by the member."

**§64-2-18. Commissioner of agriculture.**

1 (a) The legislative rules filed in the state register on  
2 the sixth day of April, one thousand nine hundred  
3 eighty-three, relating to the commissioner of agriculture  
4 (schedule of charges for inspection services: fruit) are  
5 authorized.

6 (b) The legislative rules filed in the state register on  
7 the third day of August, one thousand nine hundred  
8 eighty-three, relating to the commissioner of agriculture  
9 (licensing of auctioneers) are authorized.

10 (c) The legislative rules filed in the state register on  
11 the eighth day of February, one thousand nine hundred  
12 eighty-four, relating to the commissioner of agriculture

13 (conduct of beef industry self-improvement assessment  
14 program referendum) are authorized.

15 (d) The legislative rules filed in the state register on  
16 the fourth day of June, one thousand nine hundred  
17 eighty-four, relating to the commissioner of agriculture  
18 (feeding untreated garbage to swine) are authorized.

19 (e) The legislative rules filed in the state register on  
20 the fourth day of June, one thousand nine hundred  
21 eighty-four, relating to the commissioner of agriculture  
22 (registration, taxation and control of dogs) are  
23 authorized.

24 (f) The legislative rules filed in the state register on  
25 the first day of November, one thousand nine hundred  
26 eighty-four, relating to the commissioner of agriculture  
27 (public markets) are authorized.

28 (g) The legislative rules filed in the state register on  
29 the tenth day of September, one thousand nine hundred  
30 eighty-four, relating to the commissioner of agriculture  
31 (noxious weed rules) are authorized.

32 (h) The legislative rules filed in the state register on  
33 the fourth day of June, one thousand nine hundred  
34 eighty-four, relating to the commissioner of agriculture  
35 (animal disease control) are authorized.

36 (i) The legislative rules filed in the state register on  
37 the fifth day of January, one thousand nine hundred  
38 eighty-four, relating to the commissioner of agriculture  
39 (use of certain picloram products), are authorized.

40 (j) The legislative rules filed in the state register on  
41 the eighth day of March, one thousand nine hundred  
42 eighty-five, relating to the commissioner of agriculture  
43 (increasing certain fees by rules and regulations) are  
44 authorized.

45 (k) The legislative rules filed in the state register on  
46 the thirteenth day of January, one thousand nine  
47 hundred eighty-six, modified by the commissioner of  
48 agriculture to meet the objections of the legislative rule-  
49 making review committee and refiled in the state  
50 register on the thirty-first day of January, one thousand



51 nine hundred eighty-six, relating to the commissioner of  
52 agriculture (licensing of livestock dealers) are  
53 authorized.

54 (l) The legislative rules filed in the state register on  
55 the eighteenth day of June, one thousand nine hundred  
56 eighty-six, modified by the commissioner of agriculture  
57 to meet the objections of the legislative rule-making  
58 review committee and refiled in the state register on the  
59 fifth day of January, one thousand nine hundred eighty-  
60 seven, relating to the commissioner of agriculture (West  
61 Virginia pesticide use and application act), are  
62 authorized.

63 (m) The legislative rules filed in the state register on  
64 the eighteenth day of August, one thousand nine  
65 hundred eighty-six, modified by the director of the  
66 division of forestry of the department of agriculture to  
67 meet the objections of the legislative rule-making review  
68 committee and refiled in the state register on the fifth  
69 day of January, one thousand nine hundred eighty-  
70 seven, relating to the director of the division of forestry  
71 of the department of agriculture (ginseng), are autho-  
72 rized.

73 (n) The legislative rules filed in the state register on  
74 the tenth day of April, one thousand nine hundred  
75 eighty-seven, relating to the commissioner of agriculture  
76 (schedule of charges for inspection services: fruit) are  
77 authorized.

78 (o) The legislative rules filed in the state register on  
79 the thirteenth day of August, one thousand nine hundred  
80 eighty-seven, modified by the commissioner of agricul-  
81 ture to meet the objections of the legislative rule-making  
82 review committee and refiled in the state register on the  
83 eighth day of September, one thousand nine hundred  
84 eighty-seven, relating to the commissioner of agriculture  
85 (animal disease control) are authorized.

86 (p) The legislative rules filed in the state register on  
87 the fifteenth day of September, one thousand nine  
88 hundred eighty-eight, relating to the commissioner of  
89 agriculture (sale and distribution of commercial fertil-  
90 izer) are authorized.

91 (q) The legislative rules filed in the state register on  
92 the fifteenth day of September, one thousand nine  
93 hundred eighty-eight, modified by the commissioner of  
94 agriculture to meet the objections of the legislative rule-  
95 making review committee and refiled in the state  
96 register on the twenty-sixth day of October, one  
97 thousand nine hundred eighty-eight, relating to the  
98 commissioner of agriculture (animal disease control) are  
99 authorized.

**§64-2-19. West Virginia racing commission.**

1 (a) The legislative rules filed in the state register on  
2 the twenty-third day of April, one thousand nine  
3 hundred eighty-two, relating to the West Virginia  
4 racing commission (Rule 795), are authorized.

5 (b) The legislative rules filed in the state register on  
6 the twenty-third day of April, one thousand nine  
7 hundred eighty-two, relating to the West Virginia  
8 racing commission (Rule 819), are authorized.

9 (c) The legislative rules filed in the state register on  
10 the twenty-third day of April, one thousand nine  
11 hundred eighty-two, relating to the West Virginia  
12 racing commission (Rule 107), are authorized.

13 (d) The legislative rules filed with the legislative rule-  
14 making review committee on the tenth day of January,  
15 one thousand nine hundred eighty-three, relating to the  
16 West Virginia racing commission (Rule 471), are  
17 authorized.

18 (e) The legislative rules filed in the state register on  
19 the tenth day of January, one thousand nine hundred  
20 eighty-three, relating to the West Virginia racing  
21 commission (Rule 526), are authorized.

22 (f) The legislative rules filed in the state register on  
23 the twentieth day of September, one thousand nine  
24 hundred eighty-three, relating to the West Virginia  
25 racing commission (Rule 107) greyhound racing, are  
26 authorized.

27 (g) The legislative rules filed in the state register on  
28 the twentieth day of September, one thousand nine

29 hundred eighty-three, relating to the West Virginia  
30 racing commission (Rule 108) greyhound racing are  
31 authorized with the amendment set forth below:

32 Following the word "Association" insert a period and  
33 strike the remainder of the sentence.

34 (h) The legislative rules filed in the state register on  
35 the twentieth day of September, one thousand nine  
36 hundred eighty-three, relating to the West Virginia  
37 racing commission (Rule 108) thoroughbred racing are  
38 authorized with the amendment set forth below:

39 Following the word "Association" insert a period and  
40 strike the remainder of the sentence.

41 (i) The legislative rules filed in the state register on  
42 the twentieth day of September, one thousand nine  
43 hundred eighty-three, relating to the West Virginia  
44 racing commission (Rule 392) greyhound racing, are  
45 authorized.

46 (j) The legislative rules filed in the state register on  
47 the twentieth day of September, one thousand nine  
48 hundred eighty-three, relating to the West Virginia  
49 racing commission (Rule 455) greyhound racing are  
50 authorized.

51 (k) The legislative rules filed in the state register on  
52 the twentieth day of September, one thousand nine  
53 hundred eighty-three, relating to the West Virginia  
54 racing commission (Rule 609A) greyhound racing are  
55 authorized.

56 (l) The legislative rules filed in the state register on  
57 the twentieth day of September, one thousand nine  
58 hundred eighty-three, relating to the West Virginia  
59 racing commission (Rule 627) greyhound racing are  
60 authorized.

61 (m) The legislative rules filed in the state register on  
62 the twentieth day of September, one thousand nine  
63 hundred eighty-three, relating to the West Virginia  
64 racing commission (Rule 845) thoroughbred racing are  
65 authorized.

66 (n) The legislative rules filed in the state register on

67 the ninth day of November, one thousand nine hundred  
68 eighty-four, relating to the West Virginia racing  
69 commission (greyhound racing — Rule 628), are  
70 authorized.

71 (o) The legislative rules filed in the state register on  
72 the twenty-fifth day of September, one thousand nine  
73 hundred eighty-four, relating to the West Virginia  
74 racing commission (greyhound racing — Rule 672) are  
75 authorized.

76 (p) The legislative rules filed in the state register on  
77 the ninth day of November, one thousand nine hundred  
78 eighty-four, relating to the West Virginia racing  
79 commission (thoroughbred racing — Rule 808), are  
80 authorized.

81 (q) The legislative rules filed in the state register on  
82 the twenty-fifth day of September, one thousand nine  
83 hundred eighty-four, relating to the West Virginia  
84 racing commission (thoroughbred racing — Rule 843),  
85 are authorized.

86 (r) The legislative rules filed in the state register on  
87 the sixth day of August, one thousand nine hundred  
88 eighty-four, relating to the West Virginia racing  
89 commission (greyhound racing — Rule 845-I) are  
90 authorized.

91 (s) The legislative rules filed in the state register on  
92 the third day of September, one thousand nine hundred  
93 eighty-seven, modified by the West Virginia racing  
94 commission to meet the objections of the legislative rule-  
95 making review committee and refiled in the state  
96 register on the twenty-first day of December, one  
97 thousand nine hundred eighty-seven, relating to the  
98 West Virginia racing commission (greyhound racing)  
99 are authorized.

100 (t) The legislative rules filed in the state register on  
101 the thirty-first day of July, one thousand nine hundred  
102 eighty-seven, modified by the West Virginia racing  
103 commission to meet the objections of the legislative rule-  
104 making review committee and refiled in the state  
105 register on the eighteenth day of December, one

106 thousand nine hundred eighty-seven, relating to the  
107 West Virginia racing commission (thoroughbred racing)  
108 are authorized with the amendments set forth below:

109 On page fifty-five, Section 61.3(f), by striking all of  
110 subsection (f) and inserting in lieu thereof the existing  
111 provisions of subsection (f) as contained in 178 CSR 1,  
112 which reads as follows:

113 All moneys held by any licensee for the payment of  
114 outstanding and unredeemed pari-mutuel tickets, if not  
115 claimed within ninety (90) days after the close of the  
116 horse race meeting in connection with which the tickets  
117 were issued, shall be turned over by the licensee to the  
118 Racing Commission within fifteen (15) days after the  
119 expiration of such ninety (90) day period and the  
120 licensee shall give such information as the Racing  
121 Commission may require concerning such outstanding  
122 and unredeemed tickets; viz. The outs ledger enumer-  
123 ating all outstanding tickets at the close of each meeting,  
124 to contain a record of all tickets redeemed in the ninety  
125 (90) day following period, together with all redeemed  
126 tickets which shall bear the stamp of the cashier(s)  
127 making redemption: A stamp indicating "Outs Ticket."  
128 In addition, a statement to accompany said ledger and  
129 tickets, setting forth the quantity and amount of each  
130 denomination redeemed in the ninety (90) day period,  
131 with a grand total indicating the sum paid in "Outs."  
132 This sum subtracted from the outs on the closing day  
133 to equal the remittance of the Association in settlement  
134 of the "Out" account for the meeting.

135 (u) The legislative rules filed in the state register on  
136 the ninth day of September, one thousand nine hundred  
137 eighty-eight, relating to the West Virginia racing  
138 commission (thoroughbred racing) are authorized.

139 (v) The legislative rules filed in the state register on  
140 the eighteenth day of January, one thousand nine  
141 hundred eighty-nine, modified by the West Virginia  
142 racing commission to meet the objections of the legis-  
143 lative rule-making review committee and refiled in the  
144 state register on the twentieth day of February, one  
145 thousand nine hundred eighty-nine, relating to the West

146 Virginia racing commission (greyhound racing) are  
147 authorized.

**§64-2-20. Water resources board.**

1 (a) The legislative rules filed in the state register on  
2 the sixth day of January, one thousand nine hundred  
3 eighty-three, relating to the state water resources board  
4 (underground injection control program), are  
5 authorized.

6 (b) The legislative rules filed in the state register on  
7 the fifteenth day of November, one thousand nine  
8 hundred eighty-three, relating to the state water  
9 resources board (special regulations), are authorized.

10 (c) The legislative rules filed in the state register on  
11 the third day of August, one thousand nine hundred  
12 eighty-three, relating to the state water resources board  
13 (groundwater protection standards), are authorized.

14 (d) The legislative rules filed in the state register on  
15 the fifteenth day of November, one thousand nine  
16 hundred eighty-three, relating to the state water  
17 resources board (state national pollutant discharge  
18 elimination system (NPDES) program), are authorized.

19 (e) The Legislature hereby authorizes and directs the  
20 state water resources board to promulgate rules relating  
21 to water quality standards in exact conformity with the  
22 rules relating to water quality standards tendered to the  
23 secretary of state on the seventh day of March, one  
24 thousand nine hundred eighty-four, by the executive  
25 secretary of the state water resources board, to be  
26 received and filed for inclusion in the state register by  
27 the secretary of state.

28 (f) The legislative rules filed in the state register on  
29 the seventeenth day of October, one thousand nine  
30 hundred eighty-five, and modified by the state water  
31 resources board to meet the objections of the legislative  
32 rule-making review committee and refiled in the state  
33 register on the twenty-fourth day of February, one  
34 thousand nine hundred eighty-seven, relating to the  
35 state water resources board (special regulations), are  
36 authorized.

37 (g) The legislative rules filed in the state register on  
38 the seventh day of January, one thousand nine hundred  
39 eighty-five, modified by the water resources board to  
40 meet the objections of the legislative rule-making review  
41 committee and refiled in the state register on the  
42 thirteenth day of February, one thousand nine hundred  
43 eighty-five, relating to the water resources board (water  
44 quality standards), are authorized.

45 (h) The legislative rules filed in the state register on  
46 the seventeenth day of October, one thousand nine  
47 hundred eighty-five, modified by the state water  
48 resources board to meet the objections of the legislative  
49 rule-making review committee and refiled in the state  
50 register on the eighth day of January, one thousand nine  
51 hundred eighty-seven, and further modified by the state  
52 water resources board to meet the objections of the  
53 legislative rule-making review committee and refiled in  
54 the state register on the twenty-fourth day of February,  
55 one thousand nine hundred eighty-seven, relating to the  
56 state water resources board (water quality standards),  
57 are authorized.

58 (i) The legislative rules filed in the state register on  
59 the seventeenth day of October, one thousand nine  
60 hundred eighty-five, modified by the state water  
61 resources board to meet the objections of the legislative  
62 rule-making review committee and refiled in the state  
63 register on the eighth day of January, one thousand nine  
64 hundred eighty-seven, and further modified by the state  
65 water resources board to meet the objections of the  
66 legislative rule-making review committee and refiled in  
67 the state register on the twenty-fourth day of February,  
68 one thousand nine hundred eighty-seven, relating to the  
69 state water resources board (state national pollutant  
70 discharge elimination system (NPDES) program), are  
71 authorized.

72 (j) The legislative rules filed in the state register on  
73 the seventeenth day of October, one thousand nine  
74 hundred eighty-five, and modified by the state water  
75 resources board to meet the objections of the legislative  
76 rule-making review committee and refiled in the state  
77 register on the twenty-fourth day of February, one

78 thousand nine hundred eighty-seven, relating to the  
79 state water resources board (underground injection  
80 control program), are authorized.

81 (k) The legislative rules filed in the state register on  
82 the seventeenth day of October, one thousand nine  
83 hundred eighty-five, and modified by the state water  
84 resources board to meet the objections of the legislative  
85 rule-making review committee and refiled in the state  
86 register on the twenty-fourth day of February, one  
87 thousand nine hundred eighty-seven, relating to the  
88 state water resources board (special regulations), are  
89 authorized.

90 (l) The legislative rules filed in the state register on  
91 the thirtieth day of June, one thousand nine hundred  
92 eighty-seven, relating to the water resources board  
93 (water quality standards) are authorized.

94 (m) The legislative rules filed in the state register on  
95 the fourteenth day of October, one thousand nine  
96 hundred eighty-eight, relating to the water resources  
97 board (water quality standards) are authorized.

**§64-2-21. Workers' compensation commissioner.**

1 (a) The legislative rule filed in the state register on  
2 the fourteenth day of November, one thousand nine  
3 hundred eighty-three, relating to the workers' compen-  
4 sation commissioner (employers' excess liability fund)  
5 are authorized.

6 (b) The legislative rules filed in the state register on  
7 the twenty-fifth day of October, one thousand nine  
8 hundred eighty-four, relating to the workers' compensa-  
9 tion commissioner (time limits for the administrative  
10 proceedings of adjudications and awards) are  
11 authorized.

12 (c) The legislative rules filed in the state register on  
13 the twenty-fifth day of October, one thousand nine  
14 hundred eighty-four, modified by the workers' compen-  
15 sation commissioner to meet the objections of the  
16 legislative rule-making review committee and refiled in  
17 the state register on the ninth day of January, one  
18 thousand nine hundred eighty-five, relating to the



19 workers' compensation commissioner (self-insured  
20 employers) are authorized.

21 (d) The legislative rules filed in the state register on  
22 the twenty-fifth day of October, one thousand nine  
23 hundred eighty-four, modified by the workers' compen-  
24 sation commissioner to meet the objections of the  
25 legislative rule-making review committee and refiled in  
26 the state register on the fifth day of December, one  
27 thousand nine hundred eighty-four, relating to the  
28 workers' compensation commissioner (payment of  
29 attorney's fees) are authorized.

30 (e) The legislative rules filed in the state register on  
31 the sixth day of August, one thousand nine hundred  
32 eighty-five, relating to the workers' compensation  
33 commissioner (standards for medical examination in  
34 occupational pneumoconiosis claims) are authorized  
35 with the amendments set forth below:

36 On page 1, the second and third unnumbered para-  
37 graphs on page one are amended to read as follows:

38 When two or more ventilatory function tests per-  
39 formed in reasonably close proximity in time produce  
40 differing but acceptable results, the Commissioner, at  
41 the request of the O. P. Board, may direct the parties  
42 to furnish additional evidence and/or order additional  
43 testing at the laboratory utilized by the O. P. Board or  
44 other laboratories, all for the purpose of determining  
45 whether any of the results are unreliable or incorrect  
46 or are clearly attributable to some identifiable disease  
47 or illness other than occupational pneumoconiosis.

48 When blood gas studies are performed and abnormal  
49 values are obtained and thereafter new blood gas studies  
50 are performed and normal or significantly higher values  
51 are further obtained, the Commissioner, at the request  
52 of the O. P. Board, may direct the parties to furnish  
53 additional evidence and/or order additional studies at  
54 the laboratory utilized by the O. P. Board or other  
55 laboratories, all for the purpose of determining whether  
56 any of the values are unreliable or incorrect or are  
57 clearly attributable to some identifiable disease or  
58 illness other than occupational pneumoconiosis.

59 And on page 7, paragraph (11) is amended to read as  
60 follows:

61 (11) It is recognized that arterial blood gas studies  
62 done in laboratories throughout this state are obtained  
63 at different altitudes. Only by "standardizing" for  
64 altitude can an equitable assessment be made of  
65 impairment when values of arterial oxygen are being  
66 measured at remarkably different altitudes. Therefore,  
67 the results reported from laboratories should include the  
68 name of the laboratory and the date and time of the  
69 testing, altitude of the laboratory and barometric  
70 pressure at the laboratory on the day the samples were  
71 collected. The O. P. Board will evaluate the arterial  
72 blood gas values by converting those values to the  
73 average altitude of Charleston, West Virginia. For this  
74 purpose, it shall be sufficient to add 1 mmHg to each  
75 arterial oxygen tension for each 300 feet or fraction  
76 thereof that the testing laboratory is located above the  
77 average altitude of Charleston, because the relationship  
78 of barometric pressure (altitude) and alveolar oxygen is  
79 approximately linear up to 4,000 feet as long as the  
80 subject breathes room air.

81 As an example, Bluefield is located approximately  
82 2,600 feet above sea level. Charleston is approximately  
83 600 feet above sea level. Thus, arterial oxygen values  
84 obtained in Bluefield should have 6.67 mmHg added to  
85 them before applying the table to them to obtain  
86 "percent impairment." The calculations are as follows:

87 "Bluefield (2,600') minus Charleston (600') equals  
88 2,000' differential 2,000' divided by 300' altitude equals  
89 6.67

90 6.67 multiplied by 1 mmHg per 300' altitude equals  
91 6.67 mmHg."

92 (f) The legislative rules filed in the state register on  
93 the ninth day of August, one thousand nine hundred  
94 eighty-five, modified by the workers' compensation  
95 commissioner to meet the objections of the legislative  
96 rule-making review committee and refiled in the state  
97 register on the fifteenth day of January, one thousand  
98 nine hundred eighty-six, relating to the workers'

99 compensation commissioner (administration of the coal-  
100 workers' pneumoconiosis fund) are authorized.

**§64-2-22. State lottery commission.**

1 The legislative rules filed in the state register on the  
2 twenty-first day of April, one thousand nine hundred  
3 eighty-seven, modified by the state lottery commission  
4 to meet the objections of the legislative rule-making  
5 review committee and refiled in the state register on the  
6 fourteenth day of August, one thousand nine hundred  
7 eighty-seven, relating to the state lottery commission  
8 (state lottery) are authorized.

**§64-2-23. State fire commission.**

1 (a) The legislative rules filed in the state register on  
2 the third day of January, one thousand nine hundred  
3 eighty-four, relating to the state fire commission (state  
4 fire code) are authorized with the amendments set forth  
5 below:

6 Page 1, section 106, line 1, after the word "to" add the  
7 words "personal care homes caring for five or less  
8 patients or"; and

9 Page 26, section 11.06 (3) A. (3). Strike the period at  
10 the end of the sentence and add the words "except for  
11 existing sleeping rooms owned by the state and located  
12 in dormitories or state parks."

13 (b) The legislative rules filed in the state register on  
14 the first day of August, one thousand nine hundred  
15 eighty-six, modified by the state fire commission to meet  
16 the objection of the legislative rule-making review  
17 committee and refiled in the state register on the  
18 twenty-eighth day of October, one thousand nine  
19 hundred eighty-six, relating to the state fire commission  
20 (hazardous substance emergency response training  
21 program), are authorized.

22 (c) The legislative rules filed in the state register on  
23 the sixth day of September, one thousand nine hundred  
24 eighty-eight, modified by the state fire commission to  
25 meet the objections of the legislative rule-making review  
26 committee and refiled in the state register on the eighth

27 day of December, one thousand nine hundred eighty-  
28 eight, relating to the state fire commission (state  
29 building code) are authorized.

**§64-2-24. Civil service commission.**

1 (a) The legislative rules filed in the state register on  
2 the nineteenth day of November, one thousand nine  
3 hundred eighty-six, modified by the civil service  
4 commission to meet the objection of the legislative rule-  
5 making review committee and refiled in the state  
6 register on the fifteenth day of December, one thousand  
7 nine hundred eighty-six, relating to the civil service  
8 commission (civil service system), are authorized.

9 (b) The legislative rules filed in the state register on  
10 the first day of November, one thousand nine hundred  
11 eighty-eight, modified by the civil service commission to  
12 meet the objections of the legislative rule-making review  
13 committee and refiled in the state register on the  
14 twenty-third day of February, one thousand nine  
15 hundred eighty-nine, relating to the civil service  
16 commission (civil service system) are authorized with  
17 the amendments set forth below:

18 On page fifteen, section 5.05(d), after the words  
19 "established in" by striking out the remainder of the  
20 sentence and inserting in lieu thereof the words  
21 "Chapter 29-6A of the Code of West Virginia, as  
22 amended."

23 On page fifteen, section 5.06, after the words "estab-  
24 lished in" by striking out the remainder of the sentence  
25 and inserting in lieu thereof the words "Chapter 29-6A  
26 of the Code of West Virginia, as amended."

27 And

28 On pages sixteen and seventeen by deleting all of  
29 section 5.07.

30 And,

31 On page 46, section 13(f) line 2 by striking the words  
32 "previously held".

**§64-2-25. Secretary of state.**

1 (a) The legislative rules filed in the state register on  
2 the fifteenth day of April, one thousand nine hundred  
3 eighty-five, modified by the secretary of state to meet  
4 the objections of the legislative rule-making review  
5 committee and refiled in the state register on the eighth  
6 day of October, one thousand nine hundred eighty-five,  
7 relating to the secretary of state (standard size and  
8 format for rules and related documents filed in the  
9 secretary of state's office) are authorized.

10 (b) The legislative rules filed in the state register on  
11 the seventeenth day of August, one thousand nine  
12 hundred eighty-seven, modified by the secretary of state  
13 to meet the objections of the legislative rule-making  
14 review committee and refiled in the state register on the  
15 twenty-third day of September, one thousand nine  
16 hundred eighty-seven, relating to the secretary of state  
17 (standard size and format for rules and procedures for  
18 publication of the state register or parts of the state  
19 register) are authorized.

**§64-2-26. West Virginia state board of registration for  
professional engineers.**

1 (a) The legislative rules filed in the state register on  
2 the twenty-ninth day of November, one thousand nine  
3 hundred eighty-five, modified by the West Virginia  
4 state board of registration for professional engineers to  
5 meet the objections of the legislative rule-making review  
6 committee and refiled in the state register on the  
7 twenty-eighth day of January, one thousand nine  
8 hundred eighty-six, relating to the West Virginia state  
9 board of registration for professional engineers (legisla-  
10 tive rules governing the West Virginia state board of  
11 registration for professional engineers) are authorized.

12 (b) The legislative rules filed in the state register on  
13 the twenty-third day of December, one thousand nine  
14 hundred eighty-seven, modified by the West Virginia  
15 state board of registration for professional engineers to  
16 meet the objections of the legislative rule-making review  
17 committee and refiled in the state register on the  
18 twenty-ninth day of January, one thousand nine hundred  
19 eighty-eight, relating to the West Virginia state board

20 of registration for professional engineers (rules of the  
21 West Virginia state board of registration for profes-  
22 sional engineers) are authorized.

**§64-2-27. State board of examiners of land surveyors.**

1 The legislative rules filed in the state register on the  
2 thirty-first day of July, one thousand nine hundred  
3 eighty-seven, modified by the state board of examiners  
4 of land surveyors to meet the objections of the legislative  
5 rule-making review committee and refiled in the state  
6 register on the twenty-eighth day of January, one  
7 thousand nine hundred eighty-eight, relating to the state  
8 board of examiners of land surveyors (practice of land  
9 surveying in West Virginia) are authorized.

**§64-2-28. State boards of examination or registration;  
West Virginia board of chiropractic  
examiners.**

1 The legislative rules filed in the state register on the  
2 twenty-sixth day of October, one thousand nine hundred  
3 eighty-seven, modified by the West Virginia board of  
4 chiropractic examiners to meet the objections of the  
5 legislative rule-making review committee and refiled in  
6 the state register on the twenty-seventh day of January,  
7 one thousand nine hundred eighty-eight, relating to the  
8 West Virginia board of chiropractic examiners (West  
9 Virginia board of chiropractic examiners) are autho-  
10 rized.

**§64-2-29. Radiologic technology board of examiners.**

1 The legislative rules filed in the state register on the  
2 twenty-fourth day of January, one thousand nine  
3 hundred eighty-four, relating to the radiologic technol-  
4 ogy board of examiners are authorized.

**§64-2-30. Board of medicine.**

1 (a) The legislative rules filed in the state register on  
2 the twelfth day of May, one thousand nine hundred  
3 eighty-three, relating to the board of medicine (licens-  
4 ing, disciplinary and complaint procedures; podiatry;  
5 physicians assistants) are authorized with the modifica-  
6 tions set forth below:

7       “§24.12.

8       (b) It shall be the responsibility of the supervising  
9       physician to obtain consent in writing from the patient  
10       before Type A physician assistants employed in a  
11       satellite clinic may render general medical or surgical  
12       services, except in emergencies.

13       §24.16.

14       (c) No physician assistant shall render nonemergency  
15       outpatient medical services until the patient has been  
16       informed that the individual providing care is a  
17       physician assistant.”

18       (b) The legislative rules filed in the state register on  
19       the twenty-sixth day of November, one thousand nine  
20       hundred eighty-five, modified by the board of medicine  
21       to meet the objections of the legislative rule-making  
22       review committee and refiled in the state register on the  
23       seventeenth day of January, one thousand nine hundred  
24       eighty-six, relating to the board of medicine (licensing,  
25       disciplinary and complaint procedures; podiatry; physi-  
26       cians assistants) are authorized.

27       (c) The legislative rules filed in the state register on  
28       the eighth day of March, one thousand nine hundred  
29       eighty-five, modified by the West Virginia board of  
30       medicine to meet the objections of the legislative rule-  
31       making review committee and refiled in the state  
32       register on the eighteenth day of December, one  
33       thousand nine hundred eighty-five, relating to the West  
34       Virginia board of medicine (rules governing the  
35       approval of medical schools not accredited by the liaison  
36       committee on medical education) are authorized.

37       (d) The legislative rules filed in the state register on  
38       the third day of June, one thousand nine hundred eighty-  
39       seven, relating to the board of medicine (fees for services  
40       rendered by the board of medicine) are authorized.

41       (e) The legislative rules filed in the state register on  
42       the sixteenth day of September, one thousand nine  
43       hundred eighty-eight, modified by the board of medicine  
44       to meet the objections of the legislative rule-making  
45       review committee and refiled in the state register on the

46 twenty-fourth day of February, one thousand nine  
47 hundred eighty-nine, relating to the board of medicine  
48 (dispensing of legend drugs by physicians and podia-  
49 trists) are authorized with the following amendments:

50 Section 2.6 to read as follows: Dispense means to  
51 deliver a legend drug to an ultimate user or research  
52 subject by or pursuant to the lawful order of a physician  
53 or podiatrist, including the prescribing, packaging,  
54 labeling, administering or compounding necessary to  
55 prepare the drug for that delivery.

56 Section 3.3 to read as follows: Physicians or podiatrists  
57 who are not registered with the Board as dispensing  
58 physicians may not dispense legend drugs. However, the  
59 following activities by a physician or podiatrist shall be  
60 exempt from the requirements of section 3 through 8  
61 applicable to dispensing physicians:

62 a. Legend drugs administered to the patient, which  
63 are not controlled substance when an appropriate record  
64 is made in the patient's chart.

65 b. Professional samples distributed free of charge by  
66 a physician or podiatrist or certified physician assistant  
67 under his or her supervision to the patient when an  
68 appropriate record is made in the patient's chart; or

69 c. Legend drugs which are not controlled substances  
70 provided by free clinics or under West Virginia state  
71 authorized programs, including the medicaid, family  
72 planning, maternal and child health, and early and  
73 periodic screening and diagnosis and treatment pro-  
74 grams: *Provided*, That all labeling provisions of section  
75 8 shall be applicable except the requirements of section  
76 8.3 (a).

#### §64-2-31. Board of embalmers and funeral directors.

1 (a) The legislative rules filed in the state register on  
2 the twenty-seventh day of July, one thousand nine  
3 hundred eighty-four, modified by the board of em-  
4 balmers and funeral directors to meet the objections of  
5 the legislative rule-making review committee and  
6 refiled in the state register on the ninth day of January,  
7 one thousand nine hundred eighty-five, relating to the



8 board of embalmers and funeral directors (apprentice-  
9 ship), are authorized.

10 (b) The legislative rules filed in the state register on  
11 the sixteenth day of October, one thousand nine hundred  
12 eighty-five, modified by the board of embalmers and  
13 funeral directors to meet the objections of the legislative  
14 rule-making review committee and refiled in the state  
15 register on the eighteenth day of July, one thousand nine  
16 hundred eighty-six, relating to the board of embalmers  
17 and funeral directors (governing the board of em-  
18 balmers and funeral directors), are authorized.

**§64-2-32. Board of examiners for registered professional nurses.**

1 The legislative rules filed in the state register on the  
2 thirteenth day of September, one thousand nine hundred  
3 eighty-three, relating to the board of examiners for  
4 registered professional nurses (qualifications of gradu-  
5 ates of foreign nursing schools for admission to the  
6 professional nurse licensing examination) are autho-  
7 rized.

**§64-2-33. West Virginia board of examiners for licensed practical nurses.**

1 (a) The legislative rules filed in the state register on  
2 the thirtieth day of July, one thousand nine hundred  
3 eighty-six, modified by the West Virginia board of  
4 examiners for licensed practical nurses to meet the  
5 objections of the legislative rule-making review commit-  
6 tee and refiled in the state register on the thirtieth day  
7 of September, one thousand nine hundred eighty-six,  
8 relating to the West Virginia board of examiners for  
9 licensed practical nurses (policies relating to licensure  
10 of the licensed practical nurse), are authorized.

11 (b) The legislative rules filed in the state register on  
12 the thirtieth day of July, one thousand nine hundred  
13 eighty-six, relating to the West Virginia board of  
14 examiners for licensed practical nurses (legal standards  
15 of nursing practice for the licensed practical nurse), are  
16 authorized.

17 (c) The legislative rules filed in the state register on

18 the thirtieth day of July, one thousand nine hundred  
19 eighty-six, relating to the West Virginia board of  
20 examiners for licensed practical nurses (fees for services  
21 rendered by the board), are authorized.

**§64-2-34. West Virginia housing development fund.**

1 The legislative rules filed in the state register on the  
2 twenty-seventh day of December, one thousand nine  
3 hundred eighty-two, relating to the West Virginia  
4 housing development fund (single-family mortgage  
5 loans), are authorized.

**§64-2-35. Jail and prison standards commission.**

1 (a) The legislative rules filed in the state register on  
2 the fifth day of November, one thousand nine hundred  
3 eighty-seven, relating to the jail and prison standards  
4 commission (West Virginia minimum standards for  
5 construction, operation, and maintenance of jails) are  
6 authorized.

7 (b) The legislative rules filed in the state register on  
8 the ninth day of May, one thousand nine hundred eighty-  
9 eight, modified by the jail and prison standards  
10 commission to meet the objections of the legislative rule-  
11 making review committee and refiled in the state  
12 register on the twenty-seventh day of February, one  
13 thousand nine hundred eighty-nine, relating to the jail  
14 and prison standards commission (West Virginia  
15 minimum standards for construction, operation and  
16 maintenance of holding facilities) are authorized.

17 (c) The legislative rules filed in the state register on  
18 the eighteenth day of March, one thousand nine hundred  
19 eighty-eight, modified by the jail and prison standards  
20 commission to meet the objections of the legislative rule-  
21 making review committee and refiled in the state  
22 register on the twenty-seventh day of February, one  
23 thousand nine hundred eighty-nine, relating to the jail  
24 and prison standards commission (West Virginia  
25 minimum standards for construction, operation and  
26 maintenance of prisons) are authorized.

27 (d) The Legislature hereby authorizes and directs the  
28 jail and prison standards commission to amend its rules

29 relating to West Virginia minimum standards for  
30 construction, operation, and maintenance of jails which  
31 were filed in the code of state regulations (95 CSR 1)  
32 on the fifth day of April, one thousand nine hundred  
33 eighty-eight, with the following amendments set forth  
34 below:

35 On page 7, §8.10 by striking out in the first sentence,  
36 after the word "house", the following words: "no less  
37 than four (4) and

38 On page 30 by adding a new section 17.21 to read as  
39 follows:

40 17.21 Visitation to Home County. To the extent that  
41 the previous subsections provide requirements for  
42 visitation with inmates housed in regional jail facilities,  
43 it is the intent that such requirements apply only to  
44 visitation provided in a regional jail facility. When  
45 visitation with family and friends is required to be  
46 provided to a person incarcerated in a regional jail  
47 facility in a location other than the regional jail, the  
48 following provisions shall apply:

49 17.21.1 The regional jail need not assume the respon-  
50 sibility for transportation to the home county seat of a  
51 person incarcerated in the regional jail facility for  
52 visitation with their family and friends unless that  
53 person has had no visits from family and friends in the  
54 previous three months.

55 17.21.2 In providing any transportation under subsec-  
56 tion 17.21.1 the regional jail has the right to schedule  
57 such transportation for visits with family and friends of  
58 the person incarcerated in a manner which would utilize  
59 to the utmost the regional jail's regularly scheduled  
60 trips to each of the respective counties it serves,  
61 including the scheduling of round-trips, so long as a  
62 minimum of 30 minutes is available for visitation.

63 17.21.3 The regional jail need not assume any respon-  
64 sibility for transportation under subsection 17.21.1 when  
65 the distance from the regional jail to the respective  
66 county seat is less than two hour's driving time.

**§64-2-36. Commissioner of banking.**

1 (a) The legislative rules filed in the state register on  
2 the eleventh day of June, one thousand nine hundred  
3 eighty-two, relating to commissioner of banking (com-  
4 munication terminals and interchange systems), are  
5 authorized.

6 (b) The legislative rules filed in the state register on  
7 the fifteenth day of December, one thousand nine  
8 hundred eighty-three, relating to the commissioner of  
9 banking (consumer credit sales), are authorized.

10 (c) The legislative rules filed in the state register on  
11 the nineteenth day of August, one thousand nine  
12 hundred eighty-three, relating to the commissioner of  
13 banking (legal lending limit) are authorized.

14 (d) The legislative rules filed in the state register on  
15 the seventh day of November, one thousand nine  
16 hundred eighty-six, modified by the commissioner of  
17 banking to meet the objections of the legislative rule-  
18 making review committee and refiled in the state  
19 register on the eleventh day of December, one thousand  
20 nine hundred eighty-six, relating to the commissioner of  
21 banking (implementing the West Virginia community  
22 reinvestment act), are authorized.

23 (e) The legislative rules filed in the state register on  
24 the twenty-fifth day of October, one thousand nine  
25 hundred eighty-eight, modified by the commissioner of  
26 banking to meet the objections of the legislative rule-  
27 making review committee and refiled in the state  
28 register on the seventh day of December, one thousand  
29 nine hundred eighty-eight, relating to the commissioner  
30 of banking (subsidiary bank holding the stock of its  
31 parent company as collateral) are authorized.

#### §64-2-37. State auditor.

1 (a) The legislative rules filed in the state register on  
2 the twenty-first day of December, one thousand nine  
3 hundred eighty-three, relating to the state auditor,  
4 securities commissioner (broker-dealers, agents and  
5 investment and advisors) are authorized with the  
6 amendments set forth below:

7 Section 14.06 Delete the words "as subsequently

8 amended" and reinsert the words "as amended March  
9 30, 1982."

10 Section 14.07 Place a period after "1976" and delete  
11 the words "as subsequently amended."

12 (b) The legislative rules filed in the state register on  
13 the eighteenth day of January, one thousand nine  
14 hundred eighty-five, relating to the state auditor,  
15 securities commissioner (filing fee) are authorized.

**§64-2-38. Board of risk and insurance management.**

1 (a) The legislative rules filed in the state register on  
2 the twenty-first day of October, one thousand nine  
3 hundred eighty-three, relating to the board of risk and  
4 insurance management (mine subsidence) are  
5 authorized.

6 (b) The legislative rules filed in the state register on  
7 the twenty-sixth day of November, one thousand nine  
8 hundred eighty-five, modified by the state board of risk  
9 and insurance management to meet the objections of the  
10 legislative rule-making review committee and refiled in  
11 the state register on the eighth day of December, one  
12 thousand nine hundred eighty-six, relating to the state  
13 board of risk and insurance management (mine subsi-  
14 dence insurance program), are authorized.

**§64-2-39. Department of human services; director of the  
child advocate office.**

1 (a) The Legislature hereby authorizes and directs the  
2 director of the child advocate office of the department  
3 of human services to promulgate rules relating to  
4 guidelines for child support awards in exact conformity  
5 with the rules relating to guidelines for child support  
6 awards tendered to the secretary of state by the Senate  
7 committee on the judiciary on the twelfth day of March,  
8 one thousand nine hundred eighty-eight.

9 (b) The legislative rules filed in the state register on  
10 the twenty-seventh day of May, one thousand nine  
11 hundred eighty-eight, modified by the director of the  
12 child advocate office of the department of human  
13 services to meet the objections of the legislative rule-

14 making review committee and refiled in the state  
15 register on the twenty-third day of September, one  
16 thousand nine hundred eighty-eight, relating to the  
17 director of the child advocate office of the department  
18 of human services (interstate income withholding) are  
19 authorized.

20 (c) The legislative rules filed in the state register on  
21 the twenty-seventh day of May, one thousand nine  
22 hundred eighty-eight, modified by the director of the  
23 child advocate office of the department of human  
24 services to meet the objections of the legislative rule-  
25 making review committee and refiled in the state  
26 register on the twenty-third day of September, one  
27 thousand nine hundred eighty-eight, relating to the  
28 director of the child advocate office of the department  
29 of human services (obtaining support from federal and  
30 state income tax refunds) are authorized.

31 (d) The legislative rules filed in the state register on  
32 the twenty-seventh day of May, one thousand nine  
33 hundred eighty-eight, modified by the director of the  
34 child advocate office of the department of human  
35 services to meet the objections of the legislative rule-  
36 making review committee and refiled in the state  
37 register on the twenty-third day of September, one  
38 thousand nine hundred eighty-eight, relating to the  
39 director of the child advocate office of the department  
40 of human services (termination of income withholding)  
41 are authorized.

42 (e) The legislative rules filed in the state register on  
43 the twenty-seventh day of May, one thousand nine  
44 hundred eighty-eight, modified by the director of the  
45 child advocate office of the department of human  
46 services to meet the objections of the legislative rule-  
47 making review committee and refiled in the state  
48 register on the twenty-third day of September, one  
49 thousand nine hundred eighty-eight, relating to the  
50 director of the child advocate office of the department  
51 of human services (providing information to credit  
52 reporting agencies) are authorized.

**§64-2-40. Public employees insurance board.**

1 (a) The legislative rules filed in the state register on  
2 the sixteenth day of May, one thousand nine hundred  
3 eighty-three, relating to the public employees insurance  
4 board (public employees insurance plan) are authorized  
5 with the amendments set forth below:

6 §6.03. — In the second sentence delete the words  
7 “Executive Secretary” and insert the word “Board.”

8 (b) The legislative rules filed in the state register on  
9 the twenty-seventh day of September, one thousand nine  
10 hundred eighty-four, modified by the public employees  
11 insurance board to meet the objections of the legislative  
12 rule-making review committee and refiled in the state  
13 register on the fourth day of March, one thousand nine  
14 hundred eighty-five, relating to the public employees  
15 insurance board (credit for accrued sick/annual leave  
16 and optional life insurance) are authorized.

17 (c) The legislative rules filed in the state register on  
18 the twelfth day of September, one thousand nine  
19 hundred eighty-four, relating to the public employees  
20 insurance board (late enrollment in the public em-  
21 ployees insurance program) are authorized with the  
22 amendments set forth below:

23 §2.01(b) shall read as follows:

24 “(b) ‘children’ shall mean unmarried children be-  
25 tween birth and age nineteen and shall include: (1) The  
26 employee’s natural children, (2) legally adopted child-  
27 ren, including children living with the employee during  
28 the period of probation, (3) stepchildren residing in the  
29 employee’s household and (4) other children fully  
30 dependent upon the employee for support and mainte-  
31 nance and residing in the household of which the  
32 employee is head and actually being supported by the  
33 employee. Children may be included after the attain-  
34 ment of age nineteen, but not beyond the attainment of  
35 age twenty-five, if they are enrolled as full-time  
36 students, are unmarried, and are dependent upon the  
37 employee for support. Children may also be included  
38 after the attainment of age nineteen while incapable of  
39 self-support because of mental illness, mental retarda-  
40 tion or a permanent physical disability, if the child was

41 dependent upon the employee for support and mainte-  
42 nance at the onset of the mental illness, mental  
43 retardation or permanent physical disability. For the  
44 purpose of this section, mental illness includes addiction  
45 as defined in Code 27-1-11 as is defined as a manifes-  
46 tation in a person of significantly impaired capacity to  
47 maintain acceptable levels of functioning in the areas of  
48 intellect, emotion and physical well-being, only if such  
49 impairment renders the person dangerous to himself or  
50 others or such person is substantially unable to protect  
51 himself from significant hazard: *Provided*, That child-  
52 ren included because of addiction as hereinbefore  
53 defined shall not be included beyond the attainment of  
54 age twenty-five.”

55 On page six, at 4.01(g)(2) shall read as follows:

56 The end of any 12 month period after enrollment  
57 during which no diagnosis or treatment is received, and  
58 no expenses are incurred for care of the injury, illness  
59 or related conditions.

60 Also, insert a new section, designated section 5.07, to  
61 read as follows:

62 “5.07. — Coverage for dependents shall terminate at  
63 the end of the month in which they no longer meet the  
64 definition of ‘dependent’ as set forth in section 2.01 of  
65 these rules.”

**§64-2-41. Employee suggestion award board.**

1 The legislative rules filed in the state register on the  
2 twenty-third day of July, one thousand nine hundred  
3 eighty-two, relating to the employee suggestion award  
4 board (public employee suggestion program), are  
5 authorized.

**§64-2-42. Commissioner of commerce.**

1 The legislative rules filed in the state register on the  
2 eighteenth day of February, one thousand nine hundred  
3 eighty-seven, modified by the commissioner of com-  
4 merce to meet the objections of the legislative rule-  
5 making review committee and refiled in the state  
6 register on the ninth day of October, one thousand nine



7 hundred eighty-seven, relating to the commissioner of  
8 commerce (public use of West Virginia state parks,  
9 forests, and hunting and fishing areas) are authorized  
10 with the amendments as set forth below:

11 On page 1, section 2.1 after the words "fishing area."  
12 add "This rule does not apply to the erection of  
13 temporary blinds or tree stands in public hunting  
14 areas."

15 And, on page 3, section 2.12 after the word "guests"  
16 by adding "licensed hunters and fishermen while  
17 hunting or fishing".

18 And, on page 5, section 2.22 by adding at the end of  
19 the section the following sentence: "Any person may  
20 apply to the Superintendent of the park for a special  
21 event permit and pay an application fee for use of  
22 firearms during historical reenactments, or the use of  
23 hay, straw, boughs, pine needles or similar materials for  
24 special events. The Park Superintendent may issue a  
25 permit to limit areas of use of any of these exceptions  
26 and require damage assessments, if necessary."

27 On page 8, section 4.5 by deleting the word "water"  
28 and inserting in lieu thereof the word "swimming pool"  
29 and on page 9 section 4.5 after the word "water." add  
30 the following "These restrictions do not apply to  
31 swimming areas which are natural bodies of water."

**§64-2-43. West Virginia industrial and trade jobs development corporation.**

1 The legislative rules filed in the state register on the  
2 fifteenth day of October, one thousand nine hundred  
3 eighty-six, modified by the West Virginia industrial and  
4 trade jobs development corporation to meet the objec-  
5 tions of the legislative rule-making review committee  
6 and refiled in the state register on the twelfth day of  
7 January, one thousand nine hundred eighty-seven,  
8 relating to the West Virginia industrial and trade jobs  
9 development corporation (general administration of the  
10 West Virginia capital company act and establishment of  
11 application procedures to implement the act), are  
12 authorized.

**§64-2-44. Alcohol beverage control commission.**

1 (a) The legislative rules filed in the state register on  
2 the thirtieth day of December, one thousand nine  
3 hundred eighty-two, relating to the alcohol beverage  
4 control commission (transportation of alcoholic bever-  
5 ages), are authorized.

6 (b) The legislative rules filed in the state register on  
7 the thirteenth day of August, one thousand nine hundred  
8 eighty-two, relating to the alcohol beverage control  
9 commissioner (lighting of licensed premises), are  
10 authorized.

11 (c) The legislative rules filed in the state register on  
12 the thirteenth day of August, one thousand nine hundred  
13 eighty-two, relating to the alcohol beverage control  
14 commissioner (kitchen and dining facilities), are  
15 authorized.

16 (d) The legislative rules filed in the state register on  
17 the twenty-fourth day of August, one thousand nine  
18 hundred eighty-two, relating to the alcohol beverage  
19 control commissioner (refusal to license private clubs),  
20 are authorized with the exception of subsection (a) of the  
21 rules which shall be promulgated as set forth below in  
22 this section as follows:

23 (a) For purposes of this regulation, the commissioner  
24 may refuse to grant any license if he has reasonable  
25 cause to believe, as indicated by documented evidence,  
26 that the applicant, or any officer, director or manager  
27 thereof, or shareholder owning twenty percent or more  
28 of its capital stock, beneficial or otherwise, or other  
29 person conducting or managing the affairs of the  
30 applicant or of the proposed licensed premises, in whole  
31 or part:

32 (1) Is not a person of good moral character or repute;

33 (2) Has maintained a noisy, loud, disorderly or  
34 unsanitary establishment;

35 (3) Has demonstrated, either by his police record or  
36 by his record as former licensee under chapter sixty or  
37 chapter eleven, article sixteen of the West Virginia code,

38 a lack of respect for law and order, generally, or for the  
39 laws and rules governing the sale and distribution of  
40 alcoholic beverages or nonintoxicating beer;

41 (4) Has the general reputation of drinking alcoholic  
42 beverages to excess, or is addicted to the use of  
43 narcotics;

44 (5) Has misrepresented a material fact in applying to  
45 the commissioner for a license.

46 For purposes of this regulation, the commissioner  
47 shall refuse to grant any license if he has reasonable  
48 cause to believe, as indicated by documented evidence  
49 that the applicant, or any officer, director or manager  
50 thereof, or shareholder owning twenty percent or more  
51 of its capital stock, beneficial or otherwise, or other  
52 person conducting or managing the affairs of the  
53 applicant or of the proposed licensed premises, in whole  
54 or part:

55 (1) Is not eighteen years of age or older;

56 (2) Has been convicted of a felony or other crime  
57 involving moral turpitude, and, upon such conviction,  
58 the applicant shall not be eligible for licensure within  
59 five years next preceding successful completion of all  
60 conditions of probation, discharge from parole supervi-  
61 sion or expiration of sentence;

62 (3) Has been convicted of violating the liquor laws of  
63 any state or the United States, and, upon such convic-  
64 tion, the applicant shall not be eligible for licensure  
65 within five years next preceding successful completion  
66 of all conditions of probation, discharge from parole  
67 supervision or expiration of sentence;

68 (4) Has had any license revoked under the liquor laws  
69 of any state or the United States within five years next  
70 preceding the filing date of the application;

71 (5) Is not the legitimate owner of the business  
72 proposed to be licensed, or other persons have ownership  
73 interests in the business which have not been disclosed;

74 (6) Is a person to whom alcoholic beverages may not  
75 be sold under the provisions of chapter sixty of the West  
76 Virginia code;

77 (7) Has been adjudicated an incompetent;

78 (8) Is an officer or employee of the alcohol beverage  
79 control commissioner of West Virginia; or

80 (9) Is violating or allowing the violation of any  
81 provision of chapter sixty, chapter sixty-one or chapter  
82 eleven, article sixteen of the code in its establishment  
83 at the time its application for a license is pending.

**§64-2-45. West Virginia board of hearing aid dealers.**

1 The legislative rules filed in the state register on the  
2 twenty-sixth day of November, one thousand nine  
3 hundred eighty-five, modified by the West Virginia  
4 board of hearing aid dealers to meet the objections of  
5 the legislative rule-making review committee and  
6 refiled in the state register on the twenty-eighth day of  
7 January, one thousand nine hundred eighty-six, relating  
8 to the West Virginia board of hearing aid dealers (rules  
9 governing the West Virginia board of hearing aid  
10 dealers) are authorized.

**§64-2-46. Nursing home administrators licensing board.**

1 The legislative rules filed in the state register on the  
2 eighteenth day of October, one thousand nine hundred  
3 eighty-five, modified by the nursing home administra-  
4 tors licensing board to meet the objections of the  
5 legislative rule-making review committee and refiled in  
6 the state register on the twenty-eighth day of January,  
7 one thousand nine hundred eighty-six, relating to the  
8 nursing home administrators licensing board (governing  
9 nursing home administrators) are authorized.

**§64-2-47. Board of examiners of psychologist.**

1 (a) The legislative rules filed in the state register on  
2 the twentieth day of December, one thousand nine  
3 hundred eighty-four, relating to the board of examiners  
4 of psychologist (examination fee) are authorized.

5 (b) The legislative rules filed in the state register on  
6 the sixteenth day of September, one thousand nine  
7 hundred eighty-eight, modified by the board of examin-

8 ers of psychologists to meet the objections of the  
9 legislative rule-making review committee and refiled in  
10 the state register on the twenty-third day of November,  
11 one thousand nine hundred eighty-eight, relating to the  
12 board of examiners of psychologists (penalties and fees)  
13 are authorized.

**§64-2-48. Board of pharmacy.**

1 The legislative rules filed in the state register on the  
2 second day of October, one thousand nine hundred  
3 eighty-four, modified by the board of pharmacy to meet  
4 the objections of the legislative rule-making review  
5 committee and refiled in the state register on the ninth  
6 day of January, one thousand nine hundred eighty-five,  
7 relating to the board of pharmacy (parenteral/enteral  
8 compounding) are authorized.

**§64-2-49. State athletic commission.**

1 The legislative rules filed in the state register on the  
2 twentieth day of February, one thousand nine hundred  
3 eighty-five, relating to the state athletic commission  
4 (professional and amateur boxing) are authorized.

**§64-2-50. Archives and history commission.**

1 (a) The legislative rules filed in the state register on  
2 the fourteenth day of September, one thousand nine  
3 hundred eighty-four, relating to the archives and history  
4 commission (certified local government program) are  
5 authorized with the following amendments:

6 §4.02, subsections a,b,c,d,e,g and i are amended in  
7 their entirety to read as follows:

8 "a. The local government shall have created a historic  
9 landmark commission or commission, consisting of five  
10 (5) members, to carry out the provisions of the ordinance  
11 or order."

12 "b. HLC or commission membership shall be drawn  
13 from among persons with demonstrated interest,  
14 competence, or knowledge in historic preservation and  
15 local history. To the extent available in the community,  
16 members of the HLC shall be preservation-related  
17 professionals (including the professions of history,

18 architecture, architectural history, planning, real estate,  
19 American studies, geography, landscape architecture,  
20 law, engineering, or archaeology). When a discipline is  
21 not represented in the Commission membership, com-  
22 missioners shall seek expertise in this area when  
23 reporting on National Register nominations and other  
24 actions that will impact properties which are normally  
25 evaluated by a professional in such discipline. This may  
26 be accomplished through consultation with universities  
27 or colleges. Prior to the consultation process, the  
28 Commission must notify the State Historic Preservation  
29 Officer in writing that the appropriate professional  
30 assistance has been obtained and identified.”

31 “c. The local government, be certified without the  
32 minimum number or types of professional disciplines,  
33 must report to the SHPO’s satisfaction that it has made  
34 a reasonable effort to fill those positions. The require-  
35 ments for professional representation on the Commission  
36 shall not exceed those of the State Review Board.”

37 “d. Commission meetings shall be held at regular  
38 intervals at least four times each year, advertised in  
39 advance, and open to the public. The Commission shall  
40 establish rules of procedure or bylaws including a code  
41 of conduct.”

42 “e. The Commission shall transmit an annual report  
43 of its activities to the State Historic Preservation  
44 Officer. Such reports shall include, at a minimum, new  
45 designations made, progress on survey activities, and  
46 attendance records. Reports shall be submitted within  
47 sixty days after the end of the fiscal year for the local  
48 government or portion of the fiscal year in the first year  
49 of the establishment of the commission. These reports  
50 will be reviewed and evaluated by the SHPO to ensure  
51 that the Commission’s activities are consistent with the  
52 State Historic Preservation Plan.”

53 “g. Records of proceedings shall be transmitted to the  
54 State Historic Preservation Officer at the same time  
55 they are transmitted to members of the Commission.”

56 “i. Commission responsibilities must be complemen-  
57 tary to and carried out in coordination with those of the

58 State Historic Preservation Office as outlined in 36 CFR  
59 61.4(b). The State Historic Preservation Office shall  
60 cooperate with the HLC or Commission by making  
61 available materials and training to provide a working  
62 knowledge of the roles and operations of federal, state  
63 and local preservation programs.”

64 §5.01, subsections a and d are amended to read in  
65 their entirety as follows:

66 “a. A written assurance by the chief elected official  
67 that the local government does fulfill all the standards  
68 for certification outlined above.”

69 “d. Resumes of each of the members of the historic  
70 landmark commission including credentials of member  
71 expertise in fields related to historic preservation.  
72 Where no professional members have been appointed an  
73 explanation and information demonstrating good faith  
74 efforts to obtain such members shall be included.”

75 §5.03 is amended in its entirety to read as follows:

76 “5.03 — **Determination that Local Government**  
77 **Fulfills Requirements for Certification**—if the State  
78 Historic Preservation Officer determines that the local  
79 government fulfills the requirements for certification,  
80 the State Historic Preservation Officer will prepare a  
81 written certification agreement with the local govern-  
82 ment that lists the specific responsibilities of the local  
83 government where certified. These responsibilities will  
84 include those powers and duties as stated in 4.02. The  
85 SHPO will notify the United States Secretary of the  
86 Interior, or designee and furnish a copy of the approved  
87 request and the certification agreement and shall  
88 respond to the local government within fifteen days of  
89 the Secretary’s response.”

90 The fourth line of §5.04 is amended to read as follows:  
91 “Secretary of the Interior within 15 working days. The  
92 certification”

93 The last line of §6 is amended to read as follows:  
94 “(National Historic Preservation Act, Section 101(c)(2)”

95 The section heading to §6.01 is amended in its entirety

96 to read as follows: "6.01 Notification of Commission by  
97 SHPO of National Register Nomination of Property  
98 Within Local Government Jurisdiction—"

99 The last three lines of §6.01 are amended in their  
100 entirety to read as follows: "101(a) of the National  
101 Historic Preservation Act, as amended. The State may  
102 expedite such process with the concurrence of the  
103 certified local government."

104 The first line after the section heading of §6.02 is  
105 amended to read as follows: "(National Historic Preser-  
106 vation Act, Sec. 101(c)(2)(b). If" and the third sentence  
107 of said §6.02 is amended in its entirety to read as follows:  
108 "If such an appeal is filed, the State shall follow the  
109 procedures for making a nomination pursuant to  
110 established procedures (section 101(a) of the Act)."

111 The second sentence of §6.03 is amended in its entirety  
112 to read as follows: "If an HLC or commission does not  
113 have a professional member with the necessary federal  
114 qualifications in the area, the HLC can obtain the  
115 opinion of a qualified professional in the area and  
116 consider their opinion in their recommendation."

117 §6.04 is amended in its entirety to read as follows:

118 **"6.04—Commission Qualifications for Federal Pass**  
119 **Through Funds—**Federal regulations also require that  
120 commissions possess certain qualifications in order to  
121 receive federal pass through funds. These are explained  
122 in Section 4.02."

123 §7.01 is amended in its entirety to read as follows:

124 **"7.01—Performance Review of Certified Local**  
125 **Government by SHPO—**The SHPO will review the  
126 commission's annual report to ensure that the perfor-  
127 mance of the local government is consistent with the  
128 State Historic Preservation Plan. If the SHPO deter-  
129 mines that the performance of a certified local govern-  
130 ment is not in conformance with the certification  
131 agreement and the State Historic Preservation Plan the  
132 State Historic Preservation Officer shall document that  
133 determination and recommend to the certified local  
134 government steps which may be taken to improve their



135 performance. The Historic Preservation Officer shall  
136 also review the administration of funds allocated from  
137 the Historic Preservation Fund and other documents as  
138 necessary. The SHPO shall maintain written records for  
139 all SHPO evaluation of CLG's so that they may be  
140 available to the Secretary at any time."

141 The last sentence of §7.03 is amended in its entirety  
142 to read as follows: "This closeout will follow procedures  
143 specified in National Register Programs Guidelines."

144 The first sentence of §8.01 is amended in its entirety  
145 to read as follows: "A minimum of 10% of the state's  
146 annual apportionment from the Historic Preservation  
147 Fund of the Department of the Interior will be set aside  
148 for transfer to qualified CLG's in accordance with the  
149 National Historic Preservation Act as amended. In any  
150 year in which the total Historic Preservation Fund  
151 appropriation exceeds sixty-five (65) million dollars,  
152 one-half (1/2) of the amount over sixty-five (65) million  
153 dollars will also be transferred to CLG according to  
154 procedures to be provided by the Secretary."

155 The third line of the first sentence of §8.04 is amended  
156 in its entirety to read as follows: "consistent with  
157 35(FR61.7(f)(1) which states that the amount awarded  
158 to."

159 §8.05 is amended in its entirety to read as follows:

160 "8.05—**Application and Selection Criteria**—Project  
161 application forms and selection criteria will be made  
162 available through individual notification and public  
163 advertisement from the SHPO of the West Virginia  
164 Department of Culture and History in June of each year.  
165 The criteria will be coordinated with those used to select  
166 survey and planning grants during the fiscal year.  
167 Funds must be applied for by August 30 of each year.  
168 Funding in any prior year does not guarantee continued  
169 funding. The project schedule and deadlines may vary  
170 from year to year and is dependent upon the time frame  
171 in which the Secretary of the Interior notifies the state  
172 of its apportionment from the annual Historic Preser-  
173 vation Fund."

174 The third sentence of §8.06 is amended in its entirety  
175 to read as follows: "The SHPO is responsible for proper  
176 accounting of Historic Preservation Fund grants to  
177 CLG's in accordance with Office Management and  
178 Budget Circular A-102, Attachment P Audit Require-  
179 ment."

180 (b) The legislative rules filed in the state register on  
181 the nineteenth day of September, one thousand nine  
182 hundred eighty-eight, modified by the director of the  
183 division of archives and history of the department of  
184 culture and history to meet the objections of the  
185 legislative rule-making review committee and refiled in  
186 the state register on the fourteenth day of December,  
187 one thousand nine hundred eighty-eight, relating to the  
188 director of the division of archives and history of the  
189 department of culture and history (standards and  
190 procedures for administering state historic preservation  
191 programs) are authorized with the amendment set forth:

192 Section 3.2.b.A after the word "days" by inserting the  
193 words "after receipt of actual notice."

**§64-2-51. Water development authority.**

1 (a) The legislative rules filed in the state register on  
2 the thirtieth day of August, one thousand nine hundred  
3 eighty-four, relating to the water development authority  
4 (hardship grant funds), are authorized.

5 (b) The legislative rules filed in the state register on  
6 the fourteenth day of August, one thousand nine  
7 hundred eighty-six, relating to the water development  
8 authority (requirements governing disbursements of  
9 loans and grants to governmental agencies for the  
10 acquisition or construction of water development  
11 projects), are authorized.

**§64-2-52. Beef industry self-improvement assessment board.**

1 The legislative rules filed in the state register on the  
2 nineteenth day of April, one thousand nine hundred  
3 eighty-five, relating to the beef industry self-improve-  
4 ment assessment board (beef industry self-improvement  
5 assessment program) are authorized.

**§64-2-53. Commercial whitewater advisory board.**

1 The legislative rules filed in the state register on the  
2 twentieth day of December, one thousand nine hundred  
3 eighty-six, modified by the commercial whitewater  
4 advisory board to meet the objections of the legislative  
5 rule-making review committee and refiled in the state  
6 register on the sixteenth day of January, one thousand  
7 nine hundred eighty-seven, relating to the commercial  
8 whitewater advisory board (commercial whitewater  
9 outfitters), are authorized with the following  
10 amendments:

11 "On page 1, §2.1, by striking all of §2.1 and inserting  
12 in lieu thereof the following: '2.1 Commercial white-  
13 water outfitter means any person, partnership, corpora-  
14 tion or other organization, or any combination thereof,  
15 duly authorized and operating from within or from  
16 without the state, which for monetary profit or gain,  
17 provides whitewater expeditions or rents whitewater  
18 craft or equipment for use in whitewater expeditions on  
19 any river, portions of rivers or waters of the state.'"

**§64-2-54. Commissioner of the department of corrections.**

1 (a) The legislative rules filed in the state register on  
2 the twentieth day of September, one thousand nine  
3 hundred eighty-eight, modified by the commissioner of  
4 the department of corrections to meet the objections of  
5 the legislative rule-making review committee and  
6 refiled in the state register on the thirteenth day of  
7 January, one thousand nine hundred eighty-nine,  
8 relating to the commissioner of the department of  
9 corrections (parole supervision) are authorized.

10 (b) The legislative rules filed in the state register on  
11 the twentieth day of September, one thousand nine  
12 hundred eighty-eight, modified by the commissioner of  
13 the department of corrections to meet the objections of  
14 the legislative rule-making review committee and  
15 refiled in the state register on the thirteenth day of  
16 January, one thousand nine hundred eighty-nine,  
17 relating to the commissioner of the department of  
18 corrections (furlough programs for inmates under the  
19 custody and control of the commissioner of the depart-  
20 ment of corrections) are authorized.

**§64-2-55. Governor's committee on crime, delinquency and corrections.**

1 The legislative rules filed in the state register on the  
2 twenty-fifth day of July, one thousand nine hundred  
3 eighty-eight, modified by the governor's committee on  
4 crime, delinquency and corrections to meet the objec-  
5 tions of the legislative rule-making review committee  
6 and refiled in the state register on the twentieth day of  
7 September, one thousand nine hundred eighty-eight,  
8 relating to the governor's committee on crime, delin-  
9 quency and corrections (basic training academy, annual  
10 in-service and biennial in-service training standards)  
11 are authorized.

**§64-2-56. Structural barriers compliance board.**

1 The legislative rules filed in the state register on the  
2 twenty-fourth day of August, one thousand nine hundred  
3 eighty-eight, modified by the structural barriers  
4 compliance board to meet the objections of the legisla-  
5 tive rule-making review committee and refiled in the  
6 state register on the thirteenth day of January, one  
7 thousand nine hundred eighty-nine, relating to the  
8 structural barriers compliance board (elimination of  
9 structural barriers in public buildings) are authorized.

**§64-2-57. Department of finance and administration.**

1 The legislative rules filed in the state register on the  
2 eighteenth day of November, one thousand nine hundred  
3 eighty-eight, modified by the director of the purchasing  
4 division of the department of finance and administration  
5 to meet the objections of the legislative rule-making  
6 review committee and refiled in the state register on the  
7 nineteenth day of January, one thousand nine hundred  
8 eighty-nine, relating to the director of the purchasing  
9 division of the department of finance and administration  
10 (purchasing division) are authorized.

**§64-2-58. Enterprise zone authority.**

1 The legislative rules filed in the state register on the  
2 twenty-sixth day of October, one thousand nine hundred  
3 eighty-eight, modified by the enterprise zone authority  
4 to meet the objections of the legislative rule-making  
5 review committee and refiled in the state register on the

6 twenty-third day of February, one thousand nine  
7 hundred eighty-nine, relating to the enterprise zone  
8 authority (creation of enterprise zone authority to  
9 designate certain enterprise zones and provide for tax  
10 benefits within those zones) are authorized.

**§64-2-59. Board of barbers and beauticians.**

1 (a) The legislative rules filed in the state register on  
2 the tenth day of June, one thousand nine hundred  
3 eighty-eight, modified by the board of barbers and  
4 beauticians to meet the objections of the legislative rule-  
5 making review committee and refiled in the state  
6 register on the eighth day of December, one thousand  
7 nine hundred eighty-eight, relating to the board of  
8 barbers and beauticians (minimum curriculum for  
9 schools of barbering) are authorized with the amend-  
10 ment set forth below:

11 On page 9, by inserting a new section, designated  
12 section 3-6-14, to read as follows:

13 “§3-6-14. **Repeal of rule**—This rule will automati-  
14 cally be repealed on July 1, 1991, unless extended prior  
15 to that date by an act of the Legislature.”

16 (b) The legislative rules filed in the state register on  
17 the tenth day of June, one thousand nine hundred  
18 eighty-eight, modified by the board of barbers and  
19 beauticians to meet the objections of the legislative rule-  
20 making review committee and refiled in the state  
21 register on the eighth day of December, one thousand  
22 nine hundred eighty-eight, relating to the board of  
23 barbers and beauticians (qualifications, training,  
24 examination and registration of instructors in barbering  
25 and beauty culture) are authorized with the amendment  
26 set forth below:

27 On page 6, by inserting a new section, designated  
28 section 3-2-9, to read as follows:

29 “§3-2-9. **Repeal of rule**—This rule will automati-  
30 cally be repealed on July 1, 1991, unless extended prior  
31 to that date by an act of the Legislature.”

32 (c) The legislative rules filed in the state register on  
33 the tenth day of June, one thousand nine hundred  
34 eighty-eight, modified by the board of barbers and

35 beauticians to meet the objections of the legislative rule-  
36 making review committee and refiled in the state  
37 register on the eighth day of December, one thousand  
38 nine hundred eighty-eight, relating to the board of  
39 barbers and beauticians (operation of barber shops and  
40 schools of barbering) are authorized with the amend-  
41 ment set forth below:

42 On page 5, by inserting a new section, designated  
43 section 3-3-6, to read as follows:

44 “§3-3-6. **Repeal of rule**—This rule will automati-  
45 cally be repealed on July 1, 1991, unless extended prior  
46 to that date by an act of the Legislature.”

47 (d) The legislative rules filed in the state register on  
48 the tenth day of June, one thousand nine hundred  
49 eighty-eight, modified by the board of barbers and  
50 beauticians to meet the objections of the legislative rule-  
51 making review committee and refiled in the state  
52 register on the eighth day of December, one thousand  
53 nine hundred eighty-eight, relating to the board of  
54 barbers and beauticians (curriculum and minimum  
55 requirements, subjects and hour schedule, rules and  
56 regulations for schools of beauty culture operation in  
57 West Virginia: joint barbers and beauticians license) are  
58 authorized with the amendments set forth below:

59 On page 7, by inserting a new section, designated  
60 section 3-1-11, to read as follows:

61 “§3-1-11. **Repeal of rule**—This rule will automati-  
62 cally be repealed on July 1, 1991, unless extended prior  
63 to that date by an act of the Legislature.”

64 (e) The legislative rules filed in the state register on  
65 the tenth day of June, one thousand nine hundred  
66 eighty-eight, modified by the board of barbers and  
67 beauticians to meet the objections of the legislative rule-  
68 making review committee and refiled in the state  
69 register on the eighth day of December, one thousand  
70 nine hundred eighty-eight, relating to the board of  
71 barbers and beauticians (operation of beauty shops and  
72 schools of beauty culture) are authorized with the  
73 amendments set forth below:

74 On page 4, by inserting a new section, designated  
75 section 3-4-6, to read as follows:

76 “§3-4-6. **Repeal of rule**—This rule will automati-  
77 cally be repealed on July 1, 1991, unless extended prior  
78 to that date by an act of the Legislature.”

79 And,

80 On page 4, by inserting a new subsection, designated  
81 section 3.25, to read as follows:

82 “3.25 Notwithstanding any law to the contrary or  
83 interpretation of law to the contrary, any licensed  
84 beautician may trim beards or mustaches.”

85 (f) The legislative rules filed in the state register on  
86 the tenth day of June, one thousand nine hundred  
87 eighty-eight, modified by the board of barbers and  
88 beauticians to meet the objections of the legislative rule-  
89 making review committee and refiled in the state  
90 register on the eighth day of December, one thousand  
91 nine hundred eighty-eight, relating to the board of  
92 barbers and beauticians (licensing schools of barbering  
93 or beauty culture) are authorized with the amendments  
94 set forth below:

95 On page 2, subsection 4.1, by deleting subdivision (b)  
96 and relettering the remaining subdivisions.

97 On page 6, by inserting a new section, designated  
98 section 3-5-8, to read as follows:

99 “§3-5-8. **Repeal of rule**—This rule will automati-  
100 cally be repealed on July 1, 1991, unless extended prior  
101 to that date by an act of the Legislature.”

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## CHAPTER 111

(Com. Sub. for S. B. 341—By Senator Loehr)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section eight, article two,  
chapter sixty-four of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to authorizing the commissioner of the department of energy to promulgate legislative rules relating to West Virginia surface mining reclamation regulations (repealer).

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

That section eight, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.**

**§64-2-8. Department of energy.**

1 (a) The legislative rules filed in the state register on  
2 the thirty-first day of March, one thousand nine hundred  
3 eighty-two, relating to the department of mines (energy)  
4 (mine safety program), are authorized.

5 (b) The legislative rules filed in the state register on  
6 the seventeenth day of August, one thousand nine  
7 hundred eighty-three, relating to the department of  
8 energy (governing the safety of those employed in and  
9 around surface mines), are authorized.

10 (c) The legislative rules filed in the state register on  
11 the seventh day of December, one thousand nine  
12 hundred eighty-three, relating to the office of oil and  
13 gas, department of mines (energy), (oil and gas and  
14 other wells) are authorized with the amendment set  
15 forth below:

16 Page viii, place an \* in front of section 32.02.

17 Page ix, after section 35.04 add the following:

18 “\*35.05 Extra Powers of the Administrator . . . . . 64.”

19 Page 1, section 1.03 in the list of additional regula-  
20 tions, add 35.05; in the list of revised regulations, add  
21 32.02, 32.03 and 33.00.

22 Page 52 section 32.04 and section 32.05 add at the end  
23 of (ii) the words “and (iii) definition of proration unit”.



24 Page 53 section 33 after the word "definitions" add the  
25 following sentence: "The following definitions are  
26 applicable to these regulations used for purposes of  
27 implementing the Natural Gas Policy Act of 1978 and  
28 are not intended to be used in any other context."

29 Page 55, section 33.02 (b)(16) after the word "forma-  
30 tions" in the third lines of (i) and (ii), add the words "for  
31 which a well has been."

32 Page 64, after section 35.04 add the following section:  
33 35.05 Extra powers of the Administrator.

34 "The administrator may also certify or provide a  
35 waiver for a well located within a proration unit as  
36 defined in 32.02 (b)(16) or any other well sought to be  
37 certified under these regulations after notice and  
38 hearing."

39 (d) The legislative rules filed in the state register on  
40 the eleventh day of August, one thousand nine hundred  
41 eighty-six, modified by the director of the division of oil  
42 and gas of the department of energy to meet the  
43 objections of the legislative rule-making review commit-  
44 tee and refiled in the state register on the fifteenth day  
45 of December, one thousand nine hundred eighty-six,  
46 relating to the director of the division of oil and gas of  
47 the department of energy (oil and gas wells and other  
48 wells), are authorized.

49 (e) The legislative rules filed in the state register on  
50 the eleventh day of August, one thousand nine hundred  
51 eighty-six, modified by the director of the oil and gas  
52 division of the department of energy to meet the  
53 objections of the legislative rule-making review commit-  
54 tee and refiled in the state register on the fifteenth day  
55 of December, one thousand nine hundred eighty-six,  
56 relating to the director of the division of oil and gas of  
57 the department of energy (certification of gas wells), are  
58 authorized.

59 (f) The legislative rules filed in the state register on  
60 the eleventh day of August, one thousand nine hundred  
61 eighty-six, modified by the director of the division of oil

62 and gas of the department of energy to meet the  
63 objections of the legislative rule-making review commit-  
64 tee and refiled in the state register on the fifteenth day  
65 of December, one thousand nine hundred eighty-six,  
66 relating to the director of the division of oil and gas of  
67 the department of energy (underground injection  
68 control), are authorized.

69 (g) The legislative rules filed in the state register on  
70 the eleventh day of August, one thousand nine hundred  
71 eighty-six, modified by the director of the division of oil  
72 and gas of the department of energy to meet the  
73 objections of the legislative rule-making review commit-  
74 tee and refiled in the state register on the fifteenth day  
75 of December, one thousand nine hundred eighty-six,  
76 relating to the director of the division of oil and gas of  
77 the department of energy (state national pollutant  
78 discharge elimination system (NPDES) program), are  
79 authorized.

80 (h) The legislative rules filed in the state register on  
81 the fourteenth day of November, one thousand nine  
82 hundred eighty-six, modified by the commissioner of the  
83 department of energy to meet the objections of the  
84 legislative rule-making review committee and refiled in  
85 the state register on the sixteenth day of December, one  
86 thousand nine hundred eighty-six, relating to the  
87 commissioner of the department of energy (standards  
88 for certification of coal mine electricians), are autho-  
89 rized with the following amendments:

90 "Page one, §2.1, subsection (a), following the second  
91 word, 'electrician' by striking the colon and inserting the  
92 following: 'under the supervision required by section  
93 4.1(d) of these rules' and a colon.

94 Page one, §2.1, subsection (a), by deleting all of  
95 subdivision (6) and renumbering the subsequent  
96 subdivisions.

97 Page two, §2.1, subsection (a), by deleting all of  
98 subdivision (9).

99 Page two, §2.1, subsection (b), by deleting all of

100 subdivision (14) and inserting in lieu thereof a new  
101 subdivision (14) to read as follows: '(14) Replace blown  
102 fuses on trolley poles and nips.'

103 Page five, §4.1, subsection (d), line three, following the  
104 words 'certified electrician prior' by inserting the words  
105 'to any work being performed and again prior'."

106 (i) The legislative rules filed in the state register on  
107 the fifteenth day of December, one thousand nine  
108 hundred eighty-six, modified by the commissioner of the  
109 department of energy to meet the objections of the  
110 legislative rule-making review committee and refiled in  
111 the state register on the twenty-first day of January, one  
112 thousand nine hundred eighty-seven, relating to the  
113 commissioner of the department of energy (safety  
114 training program for prospective underground coal  
115 miners in West Virginia), are authorized.

116 (j) The legislative rules filed in the state register on  
117 the eleventh day of August, one thousand nine hundred  
118 eighty-six, modified by the commissioner of the depart-  
119 ment of energy to meet the objections of the legislative  
120 rule-making review committee and refiled in the state  
121 register on the fifteenth day of December, one thousand  
122 nine hundred eighty-six, relating to the commissioner of  
123 the department of energy (miscellaneous water pollution  
124 control), are authorized.

125 (k) The legislative rules filed in the state register on  
126 the eleventh day of August, one thousand nine hundred  
127 eighty-six, modified by the commissioner of the depart-  
128 ment of energy to meet the objections of the legislative  
129 rule-making review committee and refiled in the state  
130 register on the fifteenth day of December, one thousand  
131 nine hundred eighty-six, relating to the commissioner of  
132 the department of energy (dam control), are authorized.

133 (l) The legislative rules filed in the state register on  
134 the eleventh day of August, one thousand nine hundred  
135 eighty-six, modified by the commissioner of the depart-  
136 ment of energy to meet the objections of the legislative  
137 rule-making review committee and refiled in the state  
138 register on the fifteenth day of December, one thousand

139 nine hundred eighty-six, relating to the commissioner of  
140 the department of energy (solid waste management), are  
141 authorized.

142 (m) The legislative rules filed in the state register on  
143 the eleventh day of August, one thousand nine hundred  
144 eighty-six, modified by the commissioner of the depart-  
145 ment of energy to meet the objections of the legislative  
146 rule-making review committee and refiled in the state  
147 register on the fifteenth day of December, one thousand  
148 nine hundred eighty-six, relating to the commissioner of  
149 the department of energy (hazardous waste manage-  
150 ment), are authorized.

151 (n) The legislative rules filed in the state register on  
152 the twentieth day of April, one thousand nine hundred  
153 eighty-seven, relating to the commissioner of the  
154 department of energy (roof control) are authorized.

155 (o) The legislative rules filed in the state register on  
156 the third day of April, one thousand nine hundred  
157 eighty-seven, relating to the department of energy  
158 (standards for certification of underground belt examin-  
159 ers for underground coal mines), are authorized.

160 (p) The legislative rules filed in the state register on  
161 the ninth day of April, one thousand nine hundred  
162 eighty-seven, relating to the commissioner of the  
163 department of energy (performance standards for  
164 blasting on surface mines) are authorized.

165 (q) The legislative rules filed in the state register on  
166 the twelfth day of January, one thousand nine hundred  
167 eighty-seven, modified by the commissioner of the  
168 department of energy to meet the objections of the  
169 legislative rule-making review committee and refiled in  
170 the state register on the twentieth day of February, one  
171 thousand nine hundred eighty-seven, relating to the  
172 commissioner of the department of energy (state  
173 national pollutant discharge elimination system  
174 (NPDES) for mines and minerals), are authorized.

175 (r) The Legislature hereby authorizes and directs the  
176 department of energy to promulgate the procedural

177 rules filed in the state register on the twenty-first day  
178 of October, one thousand nine hundred eighty-seven,  
179 relating to the department of energy (requests for  
180 information) with the amendments set forth below:

181 On page two, subsection 3.1, by striking subdivision  
182 (d) and renumbering the remaining subdivisions, and

183 On page three, section 6, by striking all of subsection  
184 6.1 and inserting in lieu thereof, the following:

185 "6.1 The department shall establish fixed rate fees for  
186 reproduction of documents, records, and files on the  
187 basis of the actual cost of such reproduction and shall  
188 document such costs: *Provided*, That where total costs  
189 are less than five dollars, no fee shall be charged."

190 (s) The legislative rules filed in the state register on  
191 the twelfth day of May, one thousand nine hundred  
192 eighty-seven, modified by the commissioner of the  
193 department of energy to meet the objections of the  
194 legislative rule-making review committee and refiled in  
195 the state register on the fourteenth day of August, one  
196 thousand nine hundred eighty-seven, relating to the  
197 commissioner of the department of energy (blasters  
198 certification for surface coal mines and surface areas of  
199 coal mines) are authorized.

200 (t) The legislative rules filed in the state register on  
201 the twentieth day of January, one thousand nine  
202 hundred eighty-eight, modified by the commissioner of  
203 the department of energy to meet the objections of the  
204 legislative rule-making review committee and refiled in  
205 the state register on the twenty-eighth day of November,  
206 one thousand nine hundred eighty-eight, relating to the  
207 commissioner of the department of energy (abandoned  
208 mine reclamation) are authorized.

209 (u) The legislative rules filed in the state register on  
210 the nineteenth day of September, one thousand nine  
211 hundred eighty-eight, and modified to meet the objec-  
212 tions of the West Virginia Legislature and refiled in the

213 state register on the sixth day of April, one thousand  
214 nine hundred eighty-nine, relating to the commissioner  
215 of the department of energy (West Virginia surface  
216 mining reclamation regulations (repealer)) are autho-  
217 rized.

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## CHAPTER 112

(S. B. 236—By Senator Tucker, Mr. President)

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[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fifteen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reimbursement to the clerks of either legislative house of actual costs for copying or recording.

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

That section fifteen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, 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.**

**§4-1-15. Fees of clerks for copying or recording.**

1 For any copying or recording (other than that  
2 mentioned in section twelve of this article and such as  
3 he is required to do for the Legislature, or either house,  
4 or a committee thereof, in the discharge of his official  
5 duty) the clerk of either house may demand and receive  
6 of and from the person, at whose request it is done, a  
7 fee reasonably calculated to reimburse the clerk for the  
8 cost of such copying or recording.

## CHAPTER 113

(H. B. 2860—By Delegate Sattes)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article five of said chapter; to amend and reenact section four, article nine of said chapter; to amend and reenact section seven, article ten of said chapter; to amend and reenact section three, article one, chapter five-a of said code; to amend and reenact section four, article twenty-nine-c, chapter sixteen of said code; to amend and reenact section ten, article three, chapter twenty-nine-a of said code; to amend and reenact section eleven, article three-a of said chapter twenty-nine-a; to amend and reenact section three, article five-c, chapter forty-nine of said code, all relating to revising membership of several statutory legislative committees and method by which membership is to be determined; membership of the commission on special investigations; prorotation of membership of the legislative commission on pensions and retirement; membership of the joint committee on government operations; membership of the council of finance and administration; composition of the legislative task force on uncompensated health care and medicaid expenditure; meeting dates, approval of joint committee on government and finance; reports to joint committee on government and finance and Legislature; compensation of members; membership of the legislative rule-making review committee; membership of the legislative oversight commission on education accountability; termination; composition of the legislative commission on juvenile law; terms of members.

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

That section one, article three; section one, article five; section four, article nine; and section seven, article ten, all of chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted;

that section three, article one, chapter five-a of said code be amended and reenacted; that section four, article twenty-nine-c, chapter sixteen of said code be amended and reenacted; that section ten, article three, chapter twenty-nine-a of said code be amended and reenacted; that section eleven, article three-a of said chapter twenty-nine-a be amended and reenacted; and that section three, article five-c, chapter forty-nine of said code be amended and reenacted, all to read as follows:

#### Chapter

- 4. The Legislature.
- 5A. Department of Finance and Administration.
- 16. Public Health.
- 29A. State Administrative Procedures.
- 49. Child Welfare.

### CHAPTER 4. THE LEGISLATURE.

#### Article

- 3. Joint Committee on Government and Finance.
- 5. Commission on Special Investigations.
- 9. Legislative Commission on Pensions and Retirement.
- 10. West Virginia Sunset Law.

### ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

#### §4-3-1. Continued as statutory body; composition; appointment and terms of members.

1 The joint committee on government and finance,  
 2 heretofore existing under a joint rule of the Senate and  
 3 House of Delegates, is hereby continued as a statutory  
 4 body. This committee shall be composed of seven  
 5 members of the Senate, six of whom shall be appointed  
 6 by the president of the Senate, and seven members of  
 7 the House of Delegates, six of whom shall be appointed  
 8 by the speaker of the House of Delegates. The six  
 9 members appointed by the president of the Senate shall  
 10 include the majority leader of the Senate, the minority  
 11 leader of the Senate, the chairman of the Senate  
 12 committee on the judiciary and the chairman of the  
 13 Senate committee on finance. The six members ap-  
 14 pointed by the speaker of the House of Delegates shall  
 15 include the majority leader of the House of Delegates,  
 16 the minority leader of the House of Delegates, the  
 17 chairman of the house committee on the judiciary and  
 18 the chairman of the house committee on finance. The  
 19 president of the Senate and the speaker of the House of



20 Delegates shall be members of the committee and  
21 cochairmen thereof. Not more than five members of the  
22 committee from each house shall be members of the  
23 same political party: *Provided*, That in the event the  
24 membership of a political party is less than fifteen  
25 percent in the House of Delegates or Senate, then the  
26 membership of that political party from the legislative  
27 house with less than fifteen percent membership may be  
28 one from that house. The members shall serve until their  
29 successors shall have been appointed as heretofore  
30 provided.

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-1. Commission continued as "commission on special investigations"; composition; appointment and terms of members.

1 The purchasing practices and procedures commission,  
2 heretofore created, shall continue in existence but on  
3 and after the effective date of this section shall be  
4 named and designated the "commission on special  
5 investigations." The commission shall continue to be  
6 composed of five members of the Senate, to be appointed  
7 by the president thereof, no more than three of whom  
8 shall be from the same political party; and five members  
9 of the House of Delegates, to be appointed by the  
10 speaker thereof, no more than three of whom shall be  
11 appointed from the same political party: *Provided*, That  
12 in the event the membership of a political party is less  
13 than fifteen percent in the House of Delegates or Senate,  
14 then the membership of that political party from the  
15 legislative house with less than fifteen percent member-  
16 ship may be one from that house. The commission shall  
17 be headed by two cochairmen, one to be selected by and  
18 from the members appointed from the Senate, and one  
19 to be selected by and from the members appointed from  
20 the House of Delegates. All members of the commission  
21 shall serve until their successors shall have been  
22 appointed as heretofore provided.

ARTICLE 9. LEGISLATIVE COMMISSION ON PENSIONS AND RETIREMENT.

§4-9-4. Appointment of members; terms.

1       The commission shall consist of three members of the  
2 Senate to be appointed by the president of the Senate  
3 and three members of the House of Delegates to be  
4 appointed by the speaker of the House, and the governor  
5 shall appoint three members, one from labor, one from  
6 the business community and one from the general  
7 public. No more than two of the three members  
8 appointed by the president of the Senate and the speaker  
9 of the House, respectively, may be members of the same  
10 political party. The first appointed members of the  
11 commission shall serve for a term expiring on the  
12 thirtieth day of June in the year of the next succeeding  
13 regular session of the Legislature. At the commence-  
14 ment of such next succeeding regular session and at the  
15 commencement of regular sessions every two years  
16 thereafter, members of the commission shall be ap-  
17 pointed for two-year terms beginning the first day of  
18 July in the year of each such regular session. Vacancies  
19 on the commission shall be filled for unexpired terms  
20 in the same manner as appointments to the commission.

**ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.**

**§4-10-7. Joint committee on government operations  
created; membership; compensation and ex-  
penses; meetings.**

1       There is hereby created a statutory body to be known  
2 as the joint committee on government operations. Said  
3 committee shall be composed of five members of the  
4 Senate, to be appointed by the president thereof, no  
5 more than three of whom shall be appointed from the  
6 same political party; five members of the House of  
7 Delegates, to be appointed by the speaker thereof, no  
8 more than three of whom shall be appointed from the  
9 same political party: *Provided*, That in the event the  
10 membership of a political party is less than fifteen  
11 percent in the House of Delegates or Senate, that the  
12 membership of that political party from the legislative  
13 house with less than fifteen percent membership may be  
14 one from that house; and five citizens of this state who  
15 are not legislators, public officials or public employees,  
16 to be appointed by the governor to serve at his will and  
17 pleasure, not more than three of whom shall be

18 appointed from the same political party, and at least one  
19 of whom shall reside in each congressional district of  
20 this state. All citizen members shall sign a conflict of  
21 interest statement. The committee shall be headed by  
22 two cochairmen, one to be selected by the president of  
23 the Senate from the members appointed from the  
24 Senate, and one to be selected by the speaker of the  
25 House of Delegates from the members appointed from  
26 the House of Delegates. All members of the committee  
27 shall serve until their successors shall have been  
28 appointed as heretofore provided. Members of the  
29 committee shall receive such compensation and reim-  
30 bursement for expenses in connection with performance  
31 of interim duties between regular sessions of the  
32 Legislature as may be authorized by the citizens  
33 legislative compensation commission established by  
34 section thirty-three, article six of the constitution of  
35 West Virginia. Each citizen member of the committee  
36 shall receive thirty-five dollars per diem for each day  
37 or substantial portion thereof that he is engaged in the  
38 work of the committee, in addition to reimbursement for  
39 his necessary expenses incurred in the performance of  
40 his duties under this article, such reimbursement to be  
41 subject to the same limitations as govern the expenses  
42 of the legislative members of the committee.  
43 Compensation and expenses shall be paid from an  
44 appropriation to be made expressly for the committee,  
45 but if no such appropriation be made or the total amount  
46 appropriated has been expended, such expenses shall be  
47 paid from the appropriation under "Account No. 103 for  
48 Joint Expenses," but no expense of any kind whatever  
49 payable under said Account No. 103 for joint expenses  
50 shall be incurred unless first approved by the joint  
51 committee on government and finance. The committee  
52 shall meet upon call of the cochairmen or either of them  
53 and may meet at any time, both during sessions of the  
54 Legislature and in the interim.

#### CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

#### ARTICLE 1. DEPARTMENT OF FINANCE AND AD- MINISTRATION.

**\*§5A-1-3. Council of finance and administration.**

1 The council of finance and administration is hereby  
2 created and shall be composed of ten members, four of  
3 whom shall serve ex officio and six of whom shall be  
4 appointed as herein provided. The ex officio members  
5 shall be the commissioner of the department of finance  
6 and administration, the attorney general or his designee,  
7 the state treasurer or his designee and the state auditor  
8 or his designee; such designees being authorized voting  
9 ones. From the membership of the Legislature, the  
10 president of the Senate shall appoint three senators as  
11 members of the council, not more than two of whom  
12 shall be members of the same political party, and the  
13 speaker of the House shall appoint three delegates as  
14 members of the council, not more than two of whom  
15 shall be members of the same political party. Members  
16 of the council appointed by the president of the Senate  
17 and the speaker of the House shall serve at the will and  
18 pleasure of the officer making their appointment. The  
19 commissioner of finance and administration shall serve  
20 as chairman of the council. Meetings of the council shall  
21 be upon call of the chairman or a majority of the  
22 members thereof. It shall be the duty of the chairman  
23 to call no less than four meetings in each fiscal year, one  
24 in each quarter, or more often as necessary, and all  
25 meetings shall be open to the public. All meetings of the  
26 council shall be held at the capitol building in a suitable  
27 committee room which shall be made available by the  
28 Legislature for such purpose: *Provided*, That the second  
29 quarterly meeting in each fiscal year shall be held in  
30 November and shall be a joint meeting with the joint  
31 committee on government and finance of the Legislature  
32 called jointly by the president of the Senate, speaker of  
33 the House and commissioner of finance and  
34 administration.

35 The council shall serve the department of finance and  
36 administration in an advisory capacity for purposes of  
37 reviewing the performance of the administrative and  
38 fiscal procedures of the state, including the oversight of

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\* Clerk's Note: This section was also amended by H. B. 2037, which passed prior to this act.

39 all federal funds, and shall have the following duties:

40 (1) To advise with the commissioner in respect to  
41 matters of budgetary intent and efficiency, including  
42 budget bill and budget document detail and format;

43 (2) To advise with the commissioner concerning such  
44 studies of government and administration concerning  
45 fiscal policy as it may consider appropriate;

46 (3) To advise with the commissioner in the prepara-  
47 tion of studies designed to provide long-term capital  
48 planning and finance for state institutions and agencies;  
49 and

50 (4) To advise with the commissioner in respect to the  
51 application for, and receipt and expenditure of, antic-  
52 ipated or unanticipated federal funds.

53 The appointed, non-ex officio members of the council  
54 shall be entitled to receive such compensation and  
55 reimbursement for expenses in connection with perfor-  
56 mance of their duties, during interim periods, if not  
57 otherwise receiving the same for such identical periods,  
58 as is authorized by the applicable sections of article two-  
59 a, chapter four of the code in respect to performance of  
60 duties either within the state or, if deemed necessary,  
61 out of state. Such compensation and expenses shall be  
62 incurred and paid only after approval by the joint  
63 committee on government and finance.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 29C. INDIGENT CARE.

#### §16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

1 Not later than the first day of June, one thousand nine  
2 hundred eighty-five, the president of the Senate and  
3 speaker of the House of Delegates of the West Virginia  
4 Legislature shall appoint a legislative task force on  
5 uncompensated health care and medicaid expenditures  
6 which shall meet, study and make recommendations as  
7 herein provided.

8       The task force shall be composed of three members  
9 of the Senate appointed by the president from the  
10 membership of the Senate standing committee on health  
11 and human resources, three members of the House of  
12 Delegates appointed by the speaker from the member-  
13 ship of the House of Delegates standing committee on  
14 health and human resources, and a number of citizens  
15 appointed jointly by the president and speaker which,  
16 in their discretion, adequately provides for the approp-  
17 riate representation of the interests of the providers of  
18 health care services, the providers of health care  
19 insurance, state departments involved in the administra-  
20 tion of health care and health care related programs and  
21 the citizens of this state. Of the members of the Senate  
22 appointed by the president, not more than two shall be  
23 from the same political party. Of the members of the  
24 House of Delegates appointed by the speaker, not more  
25 than two shall be from the same political party.

26       Members originally appointed to the task force shall  
27 serve for terms beginning on the date of appointment  
28 and ending on the thirtieth day of June, one thousand  
29 nine hundred ninety, unless sooner replaced by the  
30 president or the speaker as applicable, or, in the  
31 discretion of the president and the speaker, unless the  
32 work of the task force is completed or the need for the  
33 task force no longer exists prior to that date. The task  
34 force shall cease to exist on the thirtieth day of June,  
35 one thousand nine hundred ninety.

36       The task force shall meet on such dates as may be  
37 approved by the joint committee on government and  
38 finance for the regular meetings of its subcommittees  
39 unless approval is first obtained from the joint commit-  
40 tee on government and finance for additional meetings.  
41 The task force shall conduct studies on the amount of  
42 funds expended by hospitals and other health care  
43 providers of this state for services to persons who are  
44 unable to pay for those services and for which they  
45 receive no other form of reimbursement, the extent to  
46 which persons in this state forego needed medical  
47 services because of insufficient income and assets to pay

48 for those services, the extent to which the state is  
49 maximizing available federal programs and moneys in  
50 providing health care services to the citizens of this  
51 state, the operation of the programs and funds created  
52 by this article and the roles of the public, private and  
53 private nonprofit sectors in providing health care  
54 services to the citizens of this state. The task force shall  
55 also study the state medicaid program in order to  
56 determine if the state medicaid agency, as the payor of  
57 last resort, is expending maximum effort to identify  
58 alternate private insurance resources for medicaid  
59 beneficiaries and shall study the feasibility and financial  
60 impact upon the state of assuring increased access to  
61 medicaid beneficiaries to primary health care in the  
62 nonhospital setting by requiring enrollment in a  
63 primary care clinic program, if available, and of the  
64 establishment of different and lesser schedules of  
65 payment for primary health services delivered by a  
66 hospital emergency room as compared to the schedule  
67 of payments for emergency room services of a true  
68 medical emergency nature. The task force shall make  
69 such recommendations as it deems appropriate to  
70 address the needs identified in the studies.

71 The task force shall file an interim report with the  
72 joint committee on government and finance and the  
73 Legislature on the date of the last meeting of the joint  
74 committee on government and finance prior to com-  
75 mencement of the regular session of the Legislature in  
76 each year before the final report of the task force is filed  
77 with the joint committee on government and finance and  
78 the Legislature on or before the thirtieth day of June,  
79 one thousand nine hundred ninety.

80 The members of the task force shall be entitled to  
81 compensation at the rate authorized for members of the  
82 Legislature participating in legislative interim meetings  
83 and to reimbursement for reasonable and necessary  
84 expenses actually incurred in attending meetings of the  
85 task force, except that any employee of the state  
86 appointed to the task force is not entitled to such  
87 compensation. Funds necessary for the work of the task  
88 force shall be paid from joint appropriations to the

89 Senate and House of Delegates but no such funds shall  
90 be spent or obligations incurred in the conduct of such  
91 work without prior approval of the joint committee on  
92 government and finance.

## CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

### Article

3. Rule Making.

3A. Education Rule Making.

### ARTICLE 3. RULE MAKING.

#### §29A-3-10. Creation of a legislative rule-making review committee.

1 (a) There is hereby created a joint committee of the  
2 Legislature, known as the legislative rule-making  
3 review committee, to review all legislative rules of the  
4 several agencies and such other rules as the committee  
5 deems appropriate. The committee shall be composed of  
6 six members of the Senate, appointed by the president  
7 of the Senate, and six members of the House of  
8 Delegates, appointed by the speaker of the House of  
9 Delegates. In addition, the president of the Senate and  
10 the speaker of the House of Delegates shall be ex officio  
11 nonvoting members of the committee and shall design-  
12 ate the cochairmen. Not more than four of the voting  
13 members of the committee from each house shall be  
14 members of the same political party: *Provided*, That in  
15 the event the membership of a political party is less than  
16 fifteen percent in the House of Delegates or Senate, then  
17 the membership of that political party from the  
18 legislative house with less than fifteen percent member-  
19 ship may be one from that house. The members shall  
20 serve until their successors shall have been appointed as  
21 heretofore provided. Members of the committee shall  
22 receive such compensation and expenses as provided in  
23 article two-a, chapter four of this code. Such expenses  
24 and all other expenses, including those incurred in the  
25 employment of legal, technical, investigative, clerical,  
26 stenographic, advisory and other personnel, shall be  
27 paid from an appropriation to be made expressly for the  
28 legislative rule-making review committee, but if no such



29 appropriation be made, such expenses shall be paid  
30 from the appropriation under "Account No. 103 for Joint  
31 Expenses," but no expense of any kind whatever payable  
32 under said Account No. 103 for joint expenses shall be  
33 incurred unless first approved by the joint committee on  
34 government and finance. The committee shall meet at  
35 any time, both during sessions of the Legislature and in  
36 the interim.

37 (b) The committee may adopt such rules of procedure  
38 as it considers necessary for the submission, presenta-  
39 tion and consideration of rules.

#### ARTICLE 3A. EDUCATION RULE MAKING.

##### **§29A-3A-11. Creation of a legislative oversight commis- sion on education accountability; termination.**

1 (a) There is hereby created a joint commission of the  
2 Legislature, known as the legislative oversight commis-  
3 sion on education accountability, to review all legislative  
4 rules of the board and such other rules as the commis-  
5 sion deems appropriate. The commission shall be  
6 composed of three members of the Senate, appointed by  
7 the president of the Senate, and three members of the  
8 House of Delegates, appointed by the speaker of the  
9 House of Delegates. No more than two of the three  
10 members appointed by the president of the Senate and  
11 the speaker of the House, respectively, may be members  
12 of the same political party. In addition, the president of  
13 the Senate and the speaker of the House of Delegates  
14 shall be ex officio nonvoting members of the commission  
15 and shall designate the cochairmen. At least one of the  
16 Senate members and one of the House members shall  
17 be members of the committee on education of the Senate  
18 and House, respectively, and at least one of the Senate  
19 members and at least one of the House members shall  
20 be a member of the committee on finance of the Senate  
21 and House, respectively. The members shall serve until  
22 their successors shall have been appointed as heretofore  
23 provided. Members of the commission shall receive such  
24 compensation and expenses as provided in article two-  
25 a, chapter four of this code. Such expenses and all other

26 expenses, including those incurred in the employment of  
27 legal, technical, investigative, clerical, stenographic,  
28 advisory and other personnel shall be paid from an  
29 appropriation to be made expressly for the legislative  
30 oversight commission on education accountability, but if  
31 no such appropriation be made, such expenses shall be  
32 paid from the appropriation under "Account No. 103 for  
33 Joint Expenses," but no expense of any kind whatever  
34 payable under said Account No. 103 for joint expenses  
35 shall be incurred unless first approved by the joint  
36 committee on government and finance. The commission  
37 shall meet at any time, both during sessions of the  
38 Legislature and in the interim.

39 (b) The commission may adopt such rules of procedure  
40 as it considers necessary for the submission,  
41 presentation and consideration of rules.

42 (c) The legislative oversight commission on education  
43 accountability shall be terminated on the first day of  
44 July, one thousand nine hundred ninety-two, unless  
45 review of its functions shall be undertaken pursuant to  
46 the provisions of sections nine, ten and eleven, article  
47 ten, chapter four of this code. If such commission is  
48 terminated pursuant to this subsection, any report  
49 required to be submitted to them shall instead be  
50 submitted to the joint committee on education of the  
51 Legislature.

## CHAPTER 49. CHILD WELFARE.

### ARTICLE 5C. LEGISLATIVE COMMISSION ON JUVENILE LAW.

#### §49-5C-3. Appointment of members; terms.

1 The commission shall consist of:

2 (1) Three members of the Senate to be appointed by  
3 the president of the Senate and three members of the  
4 House of Delegates to be appointed by the speaker of the  
5 House. No more than two of the three members  
6 appointed by the president of the Senate and the speaker  
7 of the House, respectively, shall be members of the same  
8 political party.

9 (2) The commissioner of the department of human

10 services, the commissioner of corrections and the state  
11 director of health who shall serve as ex officio members.

12 (3) Two persons trained and employed as school  
13 guidance counselors, one to be appointed by the presi-  
14 dent of the Senate and one to be appointed by the  
15 speaker of the House.

16 The first appointed members of the commission shall  
17 serve for a term expiring on the thirtieth day of June  
18 in the year of the next succeeding regular session of the  
19 Legislature. At the commencement of such next suc-  
20 ceeding regular session and at the commencement of  
21 regular sessions every two years thereafter, members of  
22 the commission shall be appointed for two-year terms  
23 beginning the first day of July in the year of each such  
24 regular session. Vacancies on the commission shall be  
25 filled for unexpired terms in the same manner as  
26 appointments to the commission.

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## CHAPTER 114

(Com. Sub. for H. B. 2005—By Delegates Love and Roop)

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[Passed March 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter thirty-eight by adding thereto a new article, designated article ten-a, relating to the filing and recordation of federal tax liens and other federal liens generally; providing for an increase in the fees for the recordation by the county clerk of any notice of federal tax lien, refiled notice of federal tax lien, certificate of discharge or subordination, or other notices including a certificate of release, partial release or nonattachment of a federal tax lien, and providing a quarterly schedule for the payment of such fees by the Internal Revenue Service; providing for the filing of notices of liens, certificates, and other notices affecting federal liens for which the filing thereof is not otherwise provided; identifying the place of filing for federal liens upon real and personal property; providing for the certification of notices of liens, certificates, or other

notices affecting federal liens; prescribing the duties of the clerk of the county commission; and establishing fees for indexing and filing.

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

That section one, article ten, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter thirty-eight be further amended by adding thereto a new article, designated article ten-a, all to read as follows:

### CHAPTER 38. LIENS.

#### Article

#### 10. Federal Tax Liens; Orders and Decrees in Bankruptcy.

##### 10A. Federal Lien Registration.

#### ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.

##### §38-10-1. Recordation of federal tax lien; release; fee.

1 Notices of federal tax liens and certificates discharg-  
2 ing such liens may be filed in the office of the clerk of  
3 the county commission of one or more of the counties of  
4 this state. The clerk of the county commission of every  
5 county of this state shall keep in his or her office in a  
6 bound book a federal tax lien docket, in which he or she  
7 shall, upon the filing in the office of any notice of a lien  
8 upon the property of any person in favor of the United  
9 States for the amount of any tax, including any interest,  
10 penalty, additional amount, or additions to such tax,  
11 together with any costs that may accrue in addition  
12 thereto, record such notice without delay. The clerk  
13 shall index such notice in the name of the person against  
14 whom the lien is claimed. No such tax shall be a valid  
15 lien as against any mortgagee, purchaser or judgment  
16 creditor, until such notice shall be filed in the office of  
17 the clerk of the county commission of the county or  
18 counties in which the property subject to such lien is  
19 situated.

20 The clerk of such county commission shall, upon the  
21 filing in his or her office of any release or partial release  
22 of such lien issued by the Internal Revenue Service,  
23 record the same and make proper marginal notation  
24 thereof in the federal tax lien docket.

25 The fee for filing and indexing each notice of federal  
26 tax lien, refiled notice of federal tax lien, certificate of  
27 discharge or subordination, or other notice, including a  
28 certificate of release, partial release or nonattachment  
29 of a federal tax lien, shall be two dollars. If a release  
30 contains more than one reference to a lien released, the  
31 fee shall be two dollars for each lien released thereby.  
32 Such fees may, at the discretion of the Internal Revenue  
33 Service, be remitted quarterly on the thirty-first day of  
34 March, the thirtieth day of June, the thirtieth day of  
35 September and the thirty-first day of December and  
36 shall include all fees due for the preceding three months  
37 of the quarter for which the remittance is made.

#### ARTICLE 10A. FEDERAL LIEN REGISTRATION.

§38-10A-1. Scope.

§38-10A-2. Place of filing.

§38-10A-3. Execution of notices and certificates.

§38-10A-4. Duties of the clerk of the county commission.

§38-10A-5. Fees.

##### §38-10A-1. Scope.

1 This article applies only to federal lien notices which  
2 under any Act of Congress or any regulation adopted  
3 pursuant thereto are required or permitted to be filed  
4 in the same manner as notices of federal tax liens.

##### §38-10A-2. Place of filing.

1 (a) Notices of liens, certificates, and other notices  
2 affecting federal liens, for which filing thereof is not  
3 otherwise provided for under the provisions of this code,  
4 must be filed in accordance with this article.

5 (b) Notices of liens upon real property for obligations  
6 payable to the United States and certificates and notices  
7 affecting the liens shall be filed in the office of the clerk  
8 of the county commission of the county in which the real  
9 property subject to the liens is situated.

10 (c) Notices of federal liens upon personal property,  
11 whether tangible or intangible, for obligations payable  
12 to the United States and certificates and notices  
13 affecting the liens shall be filed in the office of the clerk  
14 of the county commission of the county wherein the  
15 person against whose interest the lien applies resides at  
16 the time of filing of the notice of lien. For purposes of

17 this subsection, the residence of a corporation or a  
18 partnership shall be deemed to be the place at which  
19 the principal executive office is located.

**§38-10A-3. Execution of notices and certificates.**

1 Certification of notices of liens, certificates, or other  
2 notices affecting federal liens by the secretary of the  
3 treasury of the United States or his or her delegate, or  
4 by any official or entity of the United States responsible  
5 for filing or certifying of notice of any other lien, entitles  
6 them to be filed and no other attestation, certification,  
7 or acknowledgement is necessary.

**§38-10A-4. Duties of the clerk of the county commission.**

1 (a) If a notice of federal lien, a refiling of a notice of  
2 federal lien, or a notice of revocation of any certificate  
3 described in subsection (b) is presented to the clerk of  
4 the county commission, the clerk shall endorse thereon  
5 his or her identification and the date and time of receipt,  
6 file the same, and forthwith enter and record the fact  
7 of such filing in the index maintained for the public  
8 indexing of federal liens in such a manner that a  
9 reasonable inspection of the index will reveal the  
10 existence of the instrument.

11 (b) If a refiled notice of federal lien referred to in  
12 subsection (a) or a certificate of release, nonattachment,  
13 discharge, or subordination of any lien is presented to  
14 the clerk of the county commission for filing, the clerk  
15 shall endorse thereon his or her identification and the  
16 date and time of receipt, file the same, enter and record  
17 the fact of such filing in the index maintained for the  
18 public indexing of federal liens, and enter and record  
19 the fact of such filing in the public index on the line  
20 where the original notice of lien is entered.

21 (c) Upon request of any person, the clerk of the county  
22 commission shall issue his or her certificate showing  
23 whether there is on file, on the date and hour stated  
24 therein, any notice of lien or certificate or notice  
25 affecting any lien filed under this article or previous  
26 federal tax lien registration act, naming a particular  
27 person, and if a notice or certificate is on file, giving the  
28 date and hour of filing of each notice or certificate. The

29 fee for a certificate is \$2.00. Upon request, the clerk  
30 shall furnish a copy of any notice of federal lien, or  
31 notice or certificate affecting a federal lien, for a fee of  
32 \$1.00 per page.

**§38-10A-5. Fees.**

1 The fee for filing and indexing each notice of lien or  
2 certificate or notice affecting the lien is:

3 (1) For a lien on real estate, \$2.00;

4 (2) For a lien on tangible and intangible personal  
5 property, \$2.00;

6 (3) For a certificate of discharge or subordination,  
7 \$2.00; and

8 (4) For all other notices, including a certificate of  
9 release or nonattachment, \$2.00.

10 The clerk of the county commission shall bill the  
11 appropriate federal officials on a quarterly basis for fees  
12 for documents filed by them.

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## CHAPTER 115

(H. B. 2673—By Delegates Woolton and Rutledge)

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[Passed April 5, 1989; in effect June 1, 1989. Approved by the Governor.]

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AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-d, relating to the filing and recordation of federal superfund liens.

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

That chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-d, to read as follows:

**ARTICLE 10D. SUPERFUND LIEN RECORDATION ACT.****§38-10D-1. Recordation of federal superfund liens; release; fee.**

1 (a) Pursuant to the authority of section 107(d) of the  
2 Comprehensive Environmental Response, Compensation  
3 and Liability Act of 1980, as amended, 42 U.S.C.  
4 §9607(1), notices of liens for costs and damages under  
5 said act (superfund liens) may be filed in an office  
6 designated by state law. Pursuant to said act, the office  
7 of the clerk of the county commission for the county in  
8 which the real property is located is hereby designated  
9 as the appropriate office for the filing of such notices  
10 of superfund liens.

11 (b) The clerk of the county commission of every  
12 county of this state shall, upon the filing in his/her office  
13 of any such notice of superfund lien upon the property  
14 of any person in favor of the United States, record such  
15 notice of lien without delay in the federal tax lien  
16 docket. He shall index such lien in the name of the  
17 person against whom the lien is claimed.

18 (c) Every such superfund lien shall be void as to any  
19 creditor, secured parties under a deed of trust, mortga-  
20 gee, purchaser, holder of a security interest or judgment  
21 lien creditor, until and except from the time such lien  
22 is filed in the office of the clerk of the county commission  
23 of the county in which the real property subject to such  
24 lien is situated. In case the real property lies in more  
25 than one county, then such notice shall be filed in all  
26 counties in which the real property subject to such lien  
27 is situated.

28 (d) The clerk of such county commission shall, upon  
29 the filing in his/her office of any release of such lien  
30 issued by the regional counsel for the United States  
31 Environmental Protection Agency, record the same and  
32 make proper marginal notation thereof in the federal  
33 tax lien docket. No fee shall be charged by such clerk  
34 for recording of the notice of superfund lien, but he/she  
35 shall charge a fee of two dollars for recording such  
36 release or partial release.



**CHAPTER 116****(Com. Sub. for S. B. 566—By Senator Tucker, Mr. President)****[Passed April 7, 1989; in effect from passage. Approved by the Governor.]**

AN ACT to amend and reenact section twelve, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five and seven, article six, chapter twenty-four of said code; and to further amend article six of said chapter by adding thereto a new section, designated section six-a, all relating to local emergency telephone systems; sharing of certain authority with public service commission by department of public safety; and allowing department of public safety to participate in developing a comprehensive plan, preparing a proposal and for causing a public meeting therein.

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

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

**Chapter****15. Public Safety.****24. Public Service Commission.****CHAPTER 15. PUBLIC SAFETY.****ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.**

**§15-2-12. Mission of the department; powers of superintendent, officers and members; patrol of turnpike.**

1 (a) The West Virginia department of public safety  
 2 shall have the mission of statewide enforcement of  
 3 criminal and traffic laws with emphasis on providing  
 4 basic enforcement and citizen protection from criminal  
 5 depredation throughout the state and maintaining the  
 6 safety of the state's public streets, roads and highways.

7 (b) The superintendent and each of the officers and

8 members of the department are hereby empowered:

9 (1) To make arrests anywhere within the state of any  
10 persons charged with the violation of any law of this  
11 state, or of the United States, and when a witness to the  
12 perpetration of any offense or crime, or to the violation  
13 of any law of this state, or of the United States, may  
14 arrest without warrant; to arrest and detain any persons  
15 suspected of the commission of any felony or misdemea-  
16 nor whenever complaint is made and warrant is issued  
17 thereon for such arrest, and any person so arrested shall  
18 be forthwith brought before the proper tribunal for  
19 examination and trial in the county where the offense  
20 for which any such arrest has been made was  
21 committed;

22 (2) To serve criminal process issued by any court or  
23 magistrate anywhere within this state (they shall not  
24 serve civil process); and

25 (3) To cooperate with local authorities in detecting  
26 crime and in apprehending any person or persons  
27 engaged in or suspected of the commission of any crime,  
28 misdemeanor or offense against the law of this state, or  
29 of the United States, or of any ordinance of any  
30 municipality in this state; and to take affidavits in  
31 connection with any application to the department of  
32 highways, department of motor vehicles and department  
33 of public safety of West Virginia for any license, permit  
34 or certificate that may be lawfully issued by these  
35 departments of state government.

36 (c) Members of the department of public safety are  
37 hereby created forest patrolmen and game and fish  
38 wardens throughout the state to do and perform any  
39 duties and exercise any powers of such officers, and may  
40 apprehend and bring before any court or magistrate  
41 having jurisdiction of such matters, anyone violating  
42 any of the provisions of chapters twenty, sixty and sixty-  
43 one of this code, and the department of public safety  
44 shall at any time be subject to the call of the West  
45 Virginia alcohol beverage control commissioner to aid  
46 in apprehending any person violating any of the  
47 provisions of said chapter sixty of this code. They shall  
48 serve and execute warrants for the arrest of any person  
49 and warrants for the search of any premises issued by  
50 any properly constituted authority, and shall exercise all

51 of the powers conferred by law upon a sheriff. They  
52 shall not serve any civil process or exercise any of the  
53 powers of such officer in civil matters.

54 (d) Any member of the department of public safety  
55 knowing or having reason to believe that anyone has  
56 violated the law may make complaint in writing before  
57 any court or officer having jurisdiction and procure a  
58 warrant for such offender, execute the same and bring  
59 such person before the proper tribunal having jurisdic-  
60 tion. He shall make return on all such warrants to such  
61 tribunals and his official title shall be "member of the  
62 department of public safety." Members of the depart-  
63 ment of public safety may execute any summons or  
64 process issued by any tribunal having jurisdiction  
65 requiring the attendance of any person as a witness  
66 before such tribunal and make return thereon as  
67 provided by law, and any return by a member of the  
68 department of public safety showing the manner of  
69 executing such warrant or process shall have the same  
70 force and effect as if made by a sheriff.

71 (e) Each member of the department of public safety,  
72 when called by the sheriff of any county, or when the  
73 governor by proclamation so directs, shall have full  
74 power and authority within such county, or within the  
75 territory defined by the governor, to direct and com-  
76 mand absolutely the assistance of any sheriff, deputy  
77 sheriff, chief of police, policeman, game and fish  
78 warden, and peace officer of the state, or of any county  
79 or municipality therein, or of any able-bodied citizen of  
80 the United States, to assist and aid in accomplishing the  
81 purposes expressed in this article. When so called, any  
82 officer or person shall, during the time his assistance is  
83 required, be for all purposes, a member of the depart-  
84 ment of public safety and subject to all the provisions  
85 of this article.

86 (f) The superintendent may also assign members of  
87 the department to perform police duties on any turnpike  
88 or toll road, or any section thereof, operated by the West  
89 Virginia turnpike commission: *Provided*, That such  
90 turnpike commission shall reimburse the department of  
91 public safety for salaries paid to such members, and  
92 shall either pay directly or reimburse the department  
93 for all other expenses of such group of members in

94 accordance with actual or estimated costs determined by  
95 the superintendent.

96 (g) The department of public safety may develop  
97 proposals for a comprehensive county or multi-county  
98 plan on the implementation of an enhanced emergency  
99 service telephone system and for causing a public  
100 meeting on such proposals, all as set forth in section six-  
101 a, article six, chapter twenty-four of this code.

## CHAPTER 24. PUBLIC SERVICE COMMISSION.

### ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-3. Adoption of emergency telephone system plan; department of public safety to adopt alternate plan.

§24-6-4. Creation of emergency telephone systems.

§24-6-5. Enhanced emergency telephone system requirements.

§24-6-6a. Alternate procedure for proposal by the department of public safety.

§24-6-7. Resolution of conflicts.

**§24-6-3. Adoption of emergency telephone system plan; department of public safety to adopt alternate plan.**

1 (a) The public service commission shall develop, adopt  
2 and periodically review a comprehensive plan establish-  
3 ing the technical and operational standards to be  
4 followed in establishing and maintaining emergency  
5 telephone systems.

6 (b) In developing the comprehensive plan, the public  
7 service commission shall consult with telephone compan-  
8 ies, and with the various public agencies and public  
9 safety units, including, but not limited to, emergency  
10 services organizations.

11 (c) The public service commission shall annually  
12 review with each operating telephone company their  
13 construction and switching replacements projections.  
14 During this review, the public service commission shall  
15 ensure that all new switching facilities will accommo-  
16 date the emergency telephone system.

17 (d) The department of public safety shall participate  
18 in proceedings conducted under subsection (a) of this  
19 section. Additionally, the department of public safety

20 may actively participate in the annual review required  
21 by subsection (c) of this section.

**§24-6-4. Creation of emergency telephone systems.**

1 (a) Upon the adoption by the public service commis-  
2 sion of a comprehensive plan, the public agency may  
3 establish, consistent with the comprehensive plan, an  
4 emergency telephone system within its respective  
5 jurisdiction. Nothing herein contained, however, shall be  
6 construed to prohibit or discourage in any way the  
7 establishment of multijurisdiction or regional systems,  
8 and any emergency telephone system established  
9 pursuant to this article may include the territory of  
10 more than one public agency, or may include only a  
11 portion of the territory of a public agency. To the extent  
12 feasible, emergency telephone systems shall be  
13 centralized.

14 (b) Every emergency telephone system shall provide  
15 access to emergency services organizations, police, fire  
16 fighting, and emergency medical and ambulance  
17 services and may provide access to other emergency  
18 services. Such system may also provide access to private  
19 ambulance services. The emergency telephone system  
20 shall provide the necessary mechanical equipment at the  
21 established public agency answering point to allow deaf  
22 persons access to the system. In those areas in which a  
23 public safety unit of the state provides emergency  
24 services, the system shall provide access to the public  
25 safety unit.

26 (c) The primary emergency telephone number to the  
27 extent possible shall be uniform throughout the state.

28 (d) A telephone company in the normal course of  
29 replacing or making major modifications to its switch-  
30 ing equipment shall include the capability of providing  
31 for the emergency telephone system and shall bear all  
32 costs related thereto. All charges for other services and  
33 facilities provided by the telephone company, including  
34 the provision of distribution facilities and station  
35 equipment, shall be paid for by the public agency or  
36 public safety unit in accordance with the applicable  
37 tariff rates then in effect for such services and facilities.

38 Other costs pursuant to the emergency telephone system  
39 shall be allocated as determined by the applicable  
40 comprehensive plan of the public service commission.

41 (e) All coin-operated telephones within the state shall  
42 be of a design that will permit a caller to initiate,  
43 without first having to insert a coin (dial tone first or  
44 post-pay systems), local calls to the long distance and  
45 directory assistance operators, calls to the emergency  
46 telephone number answering point, if one has been  
47 established in his or her local calling area, and to other  
48 numbers for services as the telephone company may  
49 from time to time make available to the public.

**§24-6-5. Enhanced emergency telephone system requirements.**

1 (a) An enhanced emergency telephone system, at a  
2 minimum, shall provide that:

3 (1) All the territory in the county, including every  
4 municipal corporation in the county, which is served by  
5 telephone company central office equipment that will  
6 permit such a system to be established shall be included  
7 in the system;

8 (2) Every emergency service provider that provides  
9 emergency service within the territory of a county  
10 participate in the system;

11 (3) Each county answering point be operated  
12 constantly;

13 (4) Each emergency service provider participating in  
14 the system maintain a telephone number in addition to  
15 the one provided for in the system; and

16 (5) If the county answering point personnel reasona-  
17 bly determine that a call is not an emergency the  
18 personnel provide the caller with the number of the  
19 appropriate emergency service provider.

20 (b) To the extent possible, enhanced emergency  
21 telephone systems shall be centralized.

22 (c) In developing an enhanced emergency telephone  
23 system, the county commission or the department of

24 public safety shall seek the advice of both the telephone  
25 companies providing local exchange service within the  
26 county and the local emergency providers.

**§24-6-6a. Alternate procedure for proposal by the department of public safety.**

1 (a) In any county or counties which have areas thereof  
2 not receiving service from an enhanced emergency  
3 services telephone system, the department of public  
4 safety may prepare a proposal on the implementation of  
5 such a system and may cause a public meeting to be held  
6 on the proposal to explain the system and receive  
7 comments from the members of the county commission  
8 and from other public officials and interested persons.  
9 At least thirty, but not more than sixty days, before such  
10 a meeting, the department of public safety shall place  
11 an advertisement in a newspaper of general circulation  
12 in the county notifying the members of the county  
13 commission or county commission and the public of the  
14 date, purpose and location of the meeting and the  
15 location at which a copy of the proposal may be  
16 examined.

17 (b) The proposal prepared by the department of  
18 public safety shall conform to the requirements of  
19 subsection (b), section six of this article and shall be  
20 further modified, adopted, filed or amended by the  
21 county commission only in conformity with said section  
22 six.

**§24-6-7. Resolution of conflicts.**

1 In the event that a conflict arises between county  
2 commissions, between telephone companies, between a  
3 telephone company or companies and a county commis-  
4 sion or commissions, or between the department of  
5 public safety and any of the foregoing entities  
6 concerning an emergency telephone system or systems  
7 or an enhanced emergency telephone system or systems,  
8 the public service commission, upon application by such  
9 county commission, telephone company or department of  
10 public safety, shall resolve such conflict. The resolution  
11 of such conflict may include the modification or  
12 suspension of any final plan adopted pursuant to section

13 six or six-a of this article or the ordering of the  
14 centralization of emergency telephone systems and  
15 enhanced emergency telephone systems.

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## CHAPTER 117

(Com. Sub. for H. B. 2392—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed March 24, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact section eighteen, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the creation of a lottery education fund and lottery senior citizens fund; providing for the appropriation of all of the net profits deposited into the state lottery fund on an annual basis to the lottery education fund, the lottery senior citizens fund, and to the commerce division; and specifying the purposes for which such net profits may be used.

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

That section eighteen, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

### ARTICLE 22. STATE LOTTERY ACT.

**§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.**

- 1 (a) There is hereby created a special fund in the state
- 2 treasury which shall be designated and known as the
- 3 "state lottery fund." The fund shall consist of all
- 4 appropriations to the fund and all interest earned from



5 investment of the fund, and any gifts, grants or  
6 contributions received by the fund. All revenues  
7 received from the sale of lottery tickets, materials and  
8 games shall be deposited with the state treasurer and  
9 placed into the "state lottery fund." The revenue shall  
10 be disbursed in the manner herein provided for the  
11 purposes stated herein and shall not be treated by the  
12 auditor and treasurer as part of the general revenue of  
13 the state.

14 (b) No appropriation, loan or other transfer of state  
15 funds shall be made to the commission or lottery fund  
16 after the initial appropriation. The initial appropriation  
17 shall be used solely for the establishment and operation  
18 of the commission and lottery operations during the  
19 period until the lottery becomes a revenue-producing  
20 agency but no longer than eighteen months. After such  
21 period, but in no event longer than eighteen months  
22 from the effective date of this article, the commission  
23 shall commence repayment to the state general revenue  
24 fund of the amount of the initial appropriation from the  
25 general revenue fund to be repaid in equal installments  
26 over the ensuing twelve months from the funds provided  
27 in subsection (e) below.

28 (c) A minimum annual average of forty-five percent  
29 of the gross amount received from each lottery shall be  
30 allocated and disbursed as prizes.

31 (d) A minimum annual average of forty percent of the  
32 gross amount received from each lottery shall be  
33 allocated as net profit. The director is authorized to  
34 expend the necessary percentage of the amount allo-  
35 cated as net profit, not to exceed fifteen percent thereof,  
36 for the purposes of entering into contractual arrange-  
37 ments for the acquisition, financing, lease and lease-  
38 purchase, and other financing transactions, of lottery  
39 goods and services, including tickets, equipment,  
40 machinery, electronic computer systems and terminals,  
41 and supplies and maintenance therefor, for the first  
42 thirty-six months of operation, and may apportion the  
43 costs, expenses and expenditures related thereto among  
44 the commission, vendor or vendors and licensed lottery  
45 sales agents.

46 (e) Not more than fifteen percent of the gross amount  
47 received from each lottery shall be allocated to and may  
48 be disbursed as necessary for fund operation and  
49 administration expenses: *Provided*, That in the initial  
50 year of operation not more than twenty percent may be  
51 so allocated and disbursed. In the event that the  
52 percentage allotted for operations and administration  
53 generates a surplus, the surplus will be allowed to  
54 accumulate to an amount not to exceed two hundred  
55 fifty thousand dollars. On a monthly basis the director  
56 shall report to the joint committee on government and  
57 finance of the Legislature any surplus in excess of two  
58 hundred fifty thousand dollars and remit to the state  
59 treasurer the entire amount of those surplus funds in  
60 excess of two hundred fifty thousand dollars which shall  
61 be allocated as net profit.

62 (f) Annually, the Legislature shall appropriate all of  
63 the amounts allocated as net profits above, in such  
64 proportions as it deems beneficial to the citizens of this  
65 state, to (1) the lottery education fund created in  
66 subsection (g) of this section, (2) the lottery senior  
67 citizens fund created in subsection (h) of this section,  
68 and (3) the commerce division created in article one,  
69 chapter five-b of this code, in accordance with subsec-  
70 tion (i) of this section.

71 (g) There is hereby created a special fund in the state  
72 treasury which shall be designated and known as the  
73 "lottery education fund." The fund shall consist of the  
74 amounts allocated pursuant to subsection (f) of this  
75 section, which amounts shall be deposited into the  
76 lottery education fund by the state treasurer. The lottery  
77 education fund shall also consist of all interest earned  
78 from investment of the lottery education fund, and any  
79 other appropriations, gifts, grants, contributions or  
80 moneys received by the lottery education fund from any  
81 source. The revenues received or earned by the lottery  
82 education fund shall be disbursed in the manner  
83 provided below and shall not be treated by the auditor  
84 and treasurer as part of the general revenue of the state.  
85 Annually, the Legislature shall appropriate the re-

86 venues received or earned by the lottery education fund  
87 to the state system of public and higher education for  
88 such educational programs as it considers beneficial to  
89 the citizens of this state.

90 (h) There is hereby created a special fund in the state  
91 treasury which shall be designated and known as the  
92 "lottery senior citizens fund." The fund shall consist of  
93 the amounts allocated pursuant to subsection (f) of this  
94 section, which amounts shall be deposited into the  
95 lottery senior citizens fund by the state treasurer. The  
96 lottery senior citizens fund shall also consist of all  
97 interest earned from investment of the lottery senior  
98 citizens fund, and any other appropriations, gifts,  
99 grants, contributions or moneys received by the lottery  
100 senior citizens fund from any source. The revenues  
101 received or earned by the lottery senior citizens fund  
102 shall be disbursed in the manner provided below and  
103 shall not be treated by the auditor or treasurer as part  
104 of the general revenue of the state. Annually, the  
105 Legislature shall appropriate the revenues received or  
106 earned by the lottery senior citizens fund to such senior  
107 citizens medical care and other programs as it considers  
108 beneficial to the citizens of this state.

109 (i) The commerce division may use the amounts  
110 allocated to it pursuant to subsection (f) of this section  
111 for one or more of the following purposes: (1) The  
112 payment of any or all of the costs incurred in the  
113 development, construction, reconstruction, maintenance  
114 or repair of any project or recreational facility, as such  
115 terms are defined in section thirteen-a, article one,  
116 chapter five-b of this code, pursuant to the authority  
117 granted to it under article one, chapter five-b of this  
118 code, (2) the payment, funding or refunding of the  
119 principal of, interest on, or redemption premiums on  
120 any bonds, security interests or notes issued by the parks  
121 and recreation section of the commerce division under  
122 article one, chapter five-b of this code, or (3) the  
123 payment of any advertising and marketing expenses for  
124 the promotion and development of tourism or any tourist  
125 facility or attraction in this state.

## CHAPTER 118

(S. B. 55—By Senator Tucker, Mr. President, by request)

[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the number of magistrate court deputy clerks.

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

That section nine-a, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 1. COURTS AND OFFICERS.

#### §50-1-9a. Magistrate court deputy clerks; salary; duties.

1 Whenever required by work load and upon the  
2 recommendation of the judge of the circuit court, or the  
3 chief judge thereof if there is more than one judge of  
4 the circuit court, the supreme court of appeals may by  
5 rule provide for the appointment of magistrate court  
6 deputy clerks, not to exceed fifty-two in number. Such  
7 magistrate court deputy clerks shall be appointed by the  
8 judge of the circuit court, or the chief judge thereof if  
9 there is more than one judge of the circuit court, with  
10 such appointee to serve at his will and pleasure under  
11 the immediate supervision of the magistrate court clerk.  
12 Such magistrate court deputy clerk shall have such  
13 duties, clerical or otherwise, as may be assigned by the  
14 magistrate court clerk and as may be prescribed by the  
15 rules of the supreme court of appeals or the judge of the  
16 circuit court, or the chief judge thereof if there is more  
17 than one judge of the circuit court. Such magistrate  
18 court deputy clerks shall also have authority to exercise  
19 the power and perform the duties of the magistrate  
20 court clerk as may be delegated or assigned by such  
21 magistrate court clerk.

22 Such magistrate court deputy clerk shall not be a

23 member of the immediate family of any magistrate,  
 24 magistrate court clerk, magistrate assistant or circuit  
 25 court judge within the same county, shall not have been  
 26 convicted of a felony or any misdemeanor involving  
 27 moral turpitude and shall reside in the county where  
 28 appointed. For the purpose of this section, immediate  
 29 family shall mean the relationships of mother, father,  
 30 sister, brother, child or spouse.

31 Magistrate court deputy clerks shall be paid a  
 32 monthly salary by the state. Such salary shall be paid  
 33 on the same basis and in the same applicable amounts  
 34 as for magistrate assistants in each county as provided  
 35 in section nine of this article.

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## CHAPTER 119

(H. B. 22598—By Delegates White and Murensky)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the medicaid program; health care facilities financed by bonds; extension of rules regarding reimbursement of capital costs.

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

That section fourteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

### ARTICLE 5. MISCELLANEOUS PROVISIONS.

**§9-5-14. Medicaid program; health care facilities financed by bonds; rules regarding reimbursement of capital costs.**

1 (a) The Legislature finds and declares that a number  
 2 of health care facilities have been financed by public  
 3 bonded indebtedness, and as a result of policies, rules,  
 4 regulations and standards which may be in conflict, the

5 facilities and the health and welfare of those citizens  
6 served by such facilities are in jeopardy. The provisions  
7 of subsection (b) are enacted for the purpose of address-  
8 ing this as a short term solution.

9 (b) As to any health care facility licensed under  
10 article five-c, chapter sixteen of this code, constructed  
11 after the first day of April, one thousand nine hundred  
12 eighty-one, and affected on or after that date by the  
13 reimbursement methodology implemented by the de-  
14 partment regarding standard appraised value, begin-  
15 ning on the first day of April, one thousand nine  
16 hundred eighty-eight, and for a two-year period only,  
17 ending on the thirty-first day of March, one thousand  
18 nine hundred ninety, all in compliance with federal  
19 rules and regulations, the department shall reimburse  
20 such health care facilities no less than any actual annual  
21 capital costs including, but not limited to, debt service,  
22 lease payments or costs of comparable financing  
23 arrangements incurred in connection with any capital  
24 expenditure approved pursuant to article two-d, chapter  
25 sixteen of this code, or any rule or regulation promul-  
26 gated thereunder or in conjunction with the financing  
27 of such capital expenditure pursuant to article two-c,  
28 chapter thirteen of this code, whichever is greater; and  
29 in no event, for the purpose of reimbursement of such  
30 capital costs, shall the value of any health care facility  
31 licensed pursuant to article five-c, chapter sixteen of this  
32 code, be deemed to be less than the greater of the  
33 aggregate principal amount of any public bond issue  
34 undertaken pursuant to the provisions of article two-c,  
35 chapter thirteen of this code or the maximum capital  
36 expenditure approved pursuant to article two-d, chapter  
37 sixteen of this code or any rule or regulation promul-  
38 gated thereunder, and any appraisal made by the  
39 department in connection therewith shall include costs  
40 related to the financing of the bond issue or the  
41 maximum capital expenditure approved pursuant to  
42 article two-d, chapter sixteen of this code, as applicable:  
43 *Provided*, That said values may be reduced by (a) any  
44 functional obsolescence which is determined and  
45 identified annually pursuant to any rule or regulation  
46 promulgated hereunder and (b) the pro rata share of

47 such value which is attributable to capital expenditures  
48 incurred with respect to facilities which provide services  
49 which are not eligible for reimbursement under Title  
50 XIX of the Social Security Act: *Provided, however,* That  
51 the department shall not exceed the medicare upper  
52 payment limit for medicaid in making any reimburse-  
53 ment pursuant to this section.

54 As to any health care facility constructed after the  
55 first day of April, one thousand nine hundred eighty-  
56 one, and affected on or after that date by the reimbur-  
57 sement methodology implemented by the department  
58 regarding standard appraised value, with respect to  
59 reimbursement to the state by such health care facility  
60 arising from adjustment of projected rates, the depart-  
61 ment shall provide for the adjustment of projected rates  
62 based upon values which are consistent with the  
63 provisions of this section and based upon the actual  
64 occupancy experience of the health care facility during  
65 the projected rate period, all in compliance with federal  
66 rules and regulations.

67 (c) The medicaid payments that a long-term care  
68 facility would otherwise receive shall not be reduced in  
69 any manner as a result of the operation of this section.

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## CHAPTER 120

(H. B. 2758—By Delegates Anderson and Love)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special registration plates; authorizing the commissioner of motor vehicles to determine the maximum number of letters or numbers on special registration plates; providing for a special registration plate for recipients of the purple heart medal and exempting such plates from registration fees; providing for special registration plates bearing logos or emblems of non-profit charitable and educational organizations to members of such organizations and to the general

public, and providing that such special registration plates are to comply with the fees and law regarding Class A registration plates; authorizing legislative rules; authorizing the commissioner of motor vehicles to set certain fees; setting fees; providing for a special registration plate for members of volunteer fire companies, paid fire departments, state fire marshal and assistants, state fire administrator and voluntary rescue squad members, setting the fee therefor, and establishing a special revolving fund; and providing sanctions for a check which is returned for nonsufficient funds.

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

That section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;  
ISSUANCE OF CERTIFICATES OF TITLE.**

**§17A-3-14. Registration plates generally.**

1       The department upon registering a vehicle shall issue  
2       to the owner one registration plate for a motorcycle,  
3       trailer, semitrailer or other motor vehicle.

4       Every registration plate shall be of reflectorized  
5       material and have displayed upon it the registration  
6       number assigned to the vehicle for which it is issued,  
7       also the name of this state, which may be abbreviated,  
8       and the year number for which it is issued or the date  
9       of expiration thereof.

10       Such registration plate and the required letters and  
11       numerals thereon, except the year number for which  
12       issued or the date of expiration, shall be of sufficient size  
13       to be plainly readable from a distance of one hundred  
14       feet during daylight, said registration numbering to  
15       begin with number two.

16       The department shall not issue, permit to be issued,  
17       or distribute any special numbers except as follows:

18       (a) The governor shall be issued registration plates, on  
19       one of which shall be imprinted the numeral one and  
20       on the other the word one.



21 (b) Upon appropriate application, there shall be  
22 issued to the secretary of state, state superintendent of  
23 free schools, auditor, treasurer, commissioner of agricul-  
24 ture, and the attorney general, the members of both  
25 houses of the Legislature, including the elected officials  
26 thereof, the justices of the supreme court of appeals of  
27 West Virginia, the representatives and senators of the  
28 state in the Congress of the United States, the judges  
29 of the United States district courts for the state of West  
30 Virginia and the judges of the United States court of  
31 appeals for the fourth circuit, if any of said judges shall  
32 be residents of West Virginia, a special registration  
33 plate for a motor vehicle owned by said official or  
34 spouse, but not to exceed two plates for each such  
35 official, which plate shall bear any combination of  
36 letters not to exceed an amount determined by the  
37 commissioner, and with a designation of the office and  
38 which plate shall supersede, during his term of office  
39 and while such motor vehicle is owned by said official  
40 or spouse, the regular numbered plate assigned to him.

41 (c) Upon receipt of an application on a form pres-  
42 cribed by the department and receipt of written  
43 evidence from the chief executive officer of the army  
44 national guard or air national guard, as appropriate,  
45 that the applicant is a member thereof, the department  
46 shall issue to any member of the national guard of this  
47 state a special registration plate designed by the  
48 commissioner for a motor vehicle owned by the member  
49 or the member's spouse, but not to exceed one plate for  
50 each such member.

51 (d) Upon appropriate application, any owner of a  
52 motor vehicle subject to Class A registration or the  
53 owner of a motorcycle subject to Class G registration  
54 under the provisions of this article may request that the  
55 department issue a registration plate bearing specially  
56 arranged letters or numbers with the maximum  
57 number of letters or numbers to be determined by the  
58 commissioner. The department shall attempt to comply  
59 with such request wherever possible and shall promul-  
60 gate appropriate rules and regulations for the orderly  
61 distribution of such plates: *Provided*, That for purposes  
62 of this subdivision, such registration plates so requested

63 and issued shall include all plates bearing the numbers  
64 two through two thousand and shall be subject to the  
65 provisions of subdivision (i) of this section.

66 (e) Upon appropriate application, there shall be  
67 issued to any disabled veteran, who is exempt from the  
68 payment of registration fees under the provisions of this  
69 chapter, a registration plate which bears the letters  
70 "DV" in red, and also the regular identification  
71 numerals in red.

72 (f) Upon appropriate application, there shall be issued  
73 to any armed service person holding the distinguished  
74 purple heart medal for persons wounded in combat a  
75 registration plate bearing letters or numbers. The  
76 registration plate designed by the commissioner of  
77 motor vehicles shall denote that those individuals who  
78 are granted this special registration plate are recipients  
79 of the purple heart. All letterings as herein provided  
80 shall be in purple where practical. Further, the  
81 registration plates herein provided shall be exempt from  
82 registration fees under the provisions of this chapter.

83 (g) Subject to rules promulgated by the commissioner,  
84 nonprofit charitable and educational organizations shall  
85 be authorized to design a logo or emblem for inclusion  
86 on a special registration plate and to market this special  
87 registration plate to organization members and the  
88 general public. Approved nonprofit organizations may  
89 accept applications for the special registration plate  
90 from the owner of motor vehicles subject to a Class A  
91 registration and payment of fees therefor under the  
92 provisions of this article and may request that the  
93 department issue a registration plate bearing a  
94 combination of letters or numbers with the organiza-  
95 tions' logo or emblem, with the maximum number of  
96 letters or numbers to be determined by the commis-  
97 sioner: *Provided*, That such rules, regulations and  
98 standards that are promulgated by the commissioner for  
99 purpose of this subdivision shall be promulgated in  
100 accordance with the provisions of chapter twenty-nine-  
101 a of this code. Nonprofit organizations seeking to market  
102 such plates shall be authorized to collect a fee for  
103 successfully processing a registration plate application

104 and shall deposit an appropriate fee, which shall be  
105 determined by the commissioner, with the department  
106 of motor vehicles to defray the administrative costs  
107 associated with designing and manufacturing special  
108 registration plates for the organization.

109 (h) Any owner of a motor vehicle who is a resident of  
110 the state of West Virginia, and who is a member of a  
111 volunteer fire company, a paid fire department, a  
112 member of the state fire commission, the state fire  
113 marshal, the state fire marshal's assistants, the state fire  
114 administrator and voluntary rescue squad members  
115 upon application, accompanied by an affidavit signed by  
116 the fire chief or department head of the applicant,  
117 stating that the applicant is justified in having a  
118 registration with an insignia designed by the commis-  
119 sioner of the department of motor vehicles to denote  
120 those individuals who are granted special registration  
121 plates under this article, complying with the motor  
122 vehicle laws of the state relative to registration and  
123 licensing of motor vehicles, and upon payment of the  
124 registration, license and other fees required by law, and  
125 the payment of the additional special fee herein  
126 provided, shall be issued a license plate for a private  
127 passenger car, upon which, in lieu of the registration  
128 number prescribed by law, shall be inscribed the  
129 insignia designed by the commissioner of the depart-  
130 ment of motor vehicles to denote those individuals who  
131 are granted this special registration insignia in addition  
132 to their existing registration numbers.

133 The special fee that shall be charged each applicant  
134 for the issuance of a license plate bearing the insignia  
135 designed by the commissioner of the department of  
136 motor vehicles to denote those individuals who are  
137 granted this special registration insignia in addition to  
138 their existing registration number, shall be five dollars,  
139 which special fee shall be in addition to all other fees  
140 required by law. This special fee is for the purpose of  
141 compensating the department of motor vehicles for  
142 additional costs and services required in the issuing of  
143 such special registration and shall be collected by the  
144 department and deposited in a special revolving fund to  
145 be used for the administration of this section.

146 The commissioner is authorized to prescribe proper  
147 forms to be used in making application for the special  
148 license plates authorized by this section.

149 (i) In addition to the regular registration fees set forth  
150 in section three, article ten of this chapter, a fee of  
151 fifteen dollars shall be paid to the department in each  
152 case in which an application for a special registration  
153 plate is made as provided in subdivisions (a), (b), (c) and  
154 (d): *Provided*, That nothing in this section shall be  
155 construed to require a charge for a free prisoner of war  
156 license plate authorized by other provisions of this code.

157 Notwithstanding the provisions of this section, or of  
158 any other provision of this chapter, the commissioner  
159 may, in his discretion, issue a type of registration plate  
160 of reflectorized material suitable for permanent use on  
161 motor vehicles, trailers and semitrailers, together with  
162 appropriate devices to be attached thereto to indicate  
163 the year for which such vehicles have been properly  
164 registered or the date of expiration of such registration.  
165 The design of such plates shall be determined by the  
166 commissioner.

167 Further, notwithstanding any provisions of this  
168 chapter to the contrary, any license plate issued or  
169 renewed pursuant to this chapter, which is paid for by  
170 a check that is returned for nonsufficient funds, shall  
171 be void without further notice to the applicant, and the  
172 applicant may not reinstate the registration until the  
173 returned check is paid by the applicant in cash, money  
174 order or certified check and all applicable fees assessed  
175 as a result thereof have been paid.

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## CHAPTER 121

(H. B. 2257—By Delegates Reid and Pitrolo)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections seven and eight,  
article eight, chapter seventeen-a of the code of West  
Virginia, one thousand nine hundred thirty-one, as

amended, relating to motor vehicle administration; special antitheft laws; defining certain felony offenses with regard to buying, receiving, disposing of, selling, offering for sale, concealing, transporting, causing to be transported, or possessing a motor vehicle, or a motor or engine removed from a motor vehicle, from which the manufacturer's serial number, motor or engine number or other distinguishing number or identifying mark has been removed, defaced, covered, altered or destroyed, which offenses are subject to criminal penalties; and defining certain felony offenses with regard to removing, defacing, covering, altering or destroying a manufacturer's serial number, motor or engine number or other distinguishing number or identifying mark, which offenses are subject to criminal penalties.

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

That sections seven and eight, article eight, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. SPECIAL ANTITHEFT LAWS.**

§17A-8-7. Motor vehicle or special mobile equipment without manufacturer's serial number, motor or engine number or other distinguishing number or identification mark; offenses.

§17A-8-8. Altering or changing a manufacturer's serial number, motor or engine number or other distinguishing number or identification mark; offenses.

**§17A-8-7. Motor vehicle or special mobile equipment without manufacturer's serial number, motor or engine number or other distinguishing number or identification mark; offenses.**

- 1 (a) A person who knowingly buys, receives, disposes
- 2 of, sells, offers for sale, conceals, transports, causes to
- 3 be transported, or possesses a motor vehicle, or a motor
- 4 or engine removed from a motor vehicle, from which the
- 5 manufacturer's serial number, motor or engine number
- 6 or other distinguishing number or identification mark
- 7 has been removed, defaced, covered, altered or des-
- 8 troyed for the purpose of concealing or misrepresenting

9 the identity of the motor vehicle or part thereof, is guilty  
10 of a felony.

11 (b) A person who knowingly buys, receives, disposes  
12 of, sells, offers for sale, conceals, transports, causes to  
13 be transported, or possesses special mobile equipment or  
14 special mobile equipment tires from which the manu-  
15 facturer's serial number, motor or engine number or  
16 other distinguishing number or identification mark has  
17 been removed, defaced, covered, altered or destroyed, is  
18 guilty of a felony.

**§17A-8-8. Altering or changing a manufacturer's serial  
number, motor or engine number or other  
distinguishing number or identification  
mark; offenses.**

1 (a) A person who, with fraudulent intent, removes,  
2 defaces, covers, alters or destroys the manufacturer's  
3 serial number, motor or engine number or other  
4 distinguishing number or identification mark of a motor  
5 vehicle or who places or stamps an actual or facsimile  
6 manufacturer's serial number, motor or engine number  
7 or other distinguishing number or identification mark  
8 upon a motor vehicle, except one assigned thereto by the  
9 department, is guilty of a felony.

10 This section shall not prohibit the restoration by an  
11 owner of an original manufacturer's serial number,  
12 motor or engine number or other distinguishing number  
13 or identification mark when such restoration is made  
14 under permit issued by the department, nor prevent any  
15 manufacturer from placing numbers or marks upon  
16 motor vehicles or parts thereof in the ordinary course  
17 of business.

18 (b) A person who removes, defaces, covers, alters or  
19 destroys, or causes to be removed, defaced, covered,  
20 altered or destroyed, the manufacturer's serial number,  
21 motor or engine number or other distinguishing number  
22 or identification mark on special mobile equipment or  
23 special mobile equipment tires, the property of another,  
24 for any reason, is guilty of a felony.

25 (c) The term "manufacturer's serial number, motor or

26 engine number or other distinguishing number or  
27 identification mark", as used in this section and section  
28 seven of this article, means a unique number or mark  
29 placed on a vehicle or part thereof by the manufacturer  
30 so as to identify it particularly and distinguish the  
31 vehicle or part from all other such vehicles or parts.

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## CHAPTER 122

(H. B. 2345—By Delegate Pitrolo)

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[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special registration of antique motor vehicles; providing that vehicles so registered may be operated on Saturdays and Sundays and holidays for recreational purposes.

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

That section three-a, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

#### §17A-10-3a. Special registration of antique motor vehicles.

1 The annual registration fee for any antique motor  
2 vehicle as defined in this section shall be two dollars.  
3 "Antique motor vehicle" shall mean any motor vehicle  
4 which is over twenty-five years old, and is owned solely  
5 as a collector's item and for participation in club  
6 activities, exhibitions, tours, parades and similar uses,  
7 but in no event to be used for general transportation:  
8 *Provided*, That such vehicle may also be operated for  
9 recreational purposes on Saturdays and Sundays and  
10 holidays.

## CHAPTER 123

(H. B. 2642—By Delegates Ashcraft and Prezioso)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to authority of members of official highway department weighing crews and public service commission, motor carrier employees.

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

That article eleven, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four, to read as follows:

### ARTICLE 11. PENALTIES.

#### §17A-11-4. Authority of members of official highway department weighing crews and public service commission, motor carrier employees.

- 1 Employees of the department of highways designated
- 2 by the commissioner of highways as weight enforcement
- 3 officers and employees of the public service commission
- 4 designated by the chairman as motor carrier utility
- 5 inspectors, shall, during the course of their normal
- 6 duties, have concurrent jurisdiction with police officers
- 7 in the enforcement of article nine of this chapter.

## CHAPTER 124

(S. B. 275—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article three, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to suspension or revocation of license; notice to be sent



by certified mail, return receipt requested; and opportunity for hearing.

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

That section six, article three, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.**

**§17B-3-6. Authority of department to suspend or revoke license; hearing.**

1 The department is hereby authorized to suspend the  
2 license of an operator or chauffeur without preliminary  
3 hearing upon a showing by its records or other sufficient  
4 evidence that the licensee:

5 (1) Has committed an offense for which mandatory  
6 revocation of license is required upon conviction;

7 (2) Has by reckless or unlawful operation of a motor  
8 vehicle, caused or contributed to an accident resulting  
9 in the death or personal injury of another or property  
10 damage;

11 (3) Has been convicted with such frequency of serious  
12 offenses against traffic regulations governing the  
13 movement of vehicles as to indicate a disrespect for  
14 traffic laws and a disregard for the safety of other  
15 persons on the highways;

16 (4) Is an habitually reckless or negligent driver of a  
17 motor vehicle;

18 (5) Is incompetent to drive a motor vehicle;

19 (6) Has permitted an unlawful or fraudulent use of  
20 such license;

21 (7) Has committed an offense in another state which  
22 if committed in this state would be a ground for  
23 suspension or revocation;

24 (8) Has failed to pay or has defaulted on a plan for  
25 the payment of all costs, fines, forfeitures or penalties  
26 imposed by a magistrate court or municipal court  
27 within ninety days, as required by section two-a, article  
28 ten, chapter eight of this code;

29 (9) Has failed to appear or otherwise respond before

30 a magistrate court or municipal court when charged  
31 with a motor vehicle violation as defined in section  
32 three-a, article three, chapter seventeen-b of this code;  
33 or

34 (10) Is under the age of eighteen and has withdrawn  
35 either voluntarily or involuntarily from a secondary  
36 school, as provided in section eleven, article eight,  
37 chapter eighteen of this code.

38 The operator's or chauffeur's license of any person  
39 having his or her license suspended shall be reinstated  
40 if:

41 (A) The license was suspended under the provisions of  
42 subdivision (8) of this section and the payment of costs,  
43 fines, forfeitures or penalties imposed by the applicable  
44 court has been made; or

45 (B) The license was suspended under the provisions of  
46 subdivision (9) of this section, and the person having his  
47 or her license suspended has appeared in court and has  
48 prevailed against the motor vehicle violations charged,  
49 or such person has paid any and all costs, fines,  
50 forfeitures or penalties imposed by the applicable court.

51 Any reinstatement of a license under paragraph (A)  
52 or (B) of this subdivision shall be subject to a reinstatement  
53 fee designated in section nine of this article.

54 Upon suspending the license of any person as herein-  
55 before in this section authorized, the department shall  
56 immediately notify the licensee in writing, sent by  
57 certified mail, return receipt requested, to the address  
58 given by the licensee in applying for license, and upon  
59 his request shall afford him an opportunity for a hearing  
60 as early as practical within not to exceed twenty days  
61 after receipt of such request in the county wherein the  
62 licensee resides unless the department and the licensee  
63 agree that such hearing may be held in some other  
64 county. Upon such hearing the commissioner or his duly  
65 authorized agent may administer oaths and may issue  
66 subpoenas for the attendance of witnesses and the  
67 production of relevant books and papers and may  
68 require a reexamination of the licensee. Upon such  
69 hearing the department shall either rescind its order of  
70 suspension or, good cause appearing therefor, may

72 extend the suspension of such license or revoke such  
73 license.

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## CHAPTER 125

(Com. Sub. for H. B. 2389—By Delegates Metheny and Murensky)

[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expanding the definition of law-enforcement officers for purposes of serious traffic offenses to include conservation officers of the department of natural resources; and authorizing such officers to request the testing of blood, breath or urine to be conducted by other authorized law-enforcement officers.

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

That section four, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

#### §17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

1 Any person who drives a motor vehicle in this state  
2 shall be deemed to have given his consent by the  
3 operation thereof, subject to the provisions of this  
4 article, to a preliminary breath analysis and a secondary  
5 chemical test of either his blood, breath or urine for the  
6 purposes of determining the alcoholic content of his  
7 blood. A preliminary breath analysis may be adminis-  
8 tered in accordance with the provisions of section five  
9 of this article whenever a law-enforcement officer has  
10 reasonable cause to believe a person to have committed  
11 an offense prohibited by section two of this article or by  
12 an ordinance of a municipality of this state which has  
13 the same elements as an offense described in said section  
14 two of this article. A secondary test of blood, breath or  
15 urine shall be incidental to a lawful arrest and shall be

16 administered at the direction of the arresting law-  
17 enforcement officer having reasonable grounds to  
18 believe the person to have committed an offense  
19 prohibited by section two of this article or by an  
20 ordinance of a municipality of this state which has the  
21 same elements as an offense described in said section  
22 two of this article. The law-enforcement agency by  
23 which such law-enforcement officer is employed shall  
24 designate which one of the aforesaid secondary tests  
25 shall be administered: *Provided*, That if the test so  
26 designated is a blood test and the person so arrested  
27 refuses to submit to such blood test, then the law-  
28 enforcement officer making such arrest shall designate  
29 in lieu thereof, either a breath or urine test to be  
30 administered, and notwithstanding the provisions of  
31 section seven of this article, such refusal to submit to  
32 a blood test only shall not result in the revocation of the  
33 arrested person's license to operate a motor vehicle in  
34 this state. Any person to whom a preliminary breath test  
35 is administered who is then arrested shall be given a  
36 written statement advising him that his refusal to  
37 submit to the secondary chemical test finally designated  
38 as provided in this section, will result in the revocation  
39 of his license to operate a motor vehicle in this state for  
40 a period of at least one year and up to life.

41 For the purpose of this article the term "law-  
42 enforcement officer" or "police officer" shall mean and  
43 be limited to (1) any member of the department of  
44 public safety of this state, (2) any sheriff and any deputy  
45 sheriff of any county, (3) any member of a police  
46 department in any municipality as defined in section  
47 two, article one, chapter eight of this code, and (4) any  
48 conservation officer of the department of natural  
49 resources. If any municipality or the department of  
50 natural resources does not have available to its law-  
51 enforcement officers the testing equipment or facilities  
52 necessary to conduct any secondary test which a law-  
53 enforcement officer may administer under this article,  
54 any member of the department of public safety, the  
55 sheriff of the county wherein the arrest is made or any  
56 deputy of such sheriff or any municipal law-enforcement  
57 officer of another municipality within the county  
58 wherein the arrest is made may, upon the request of

59 such arresting law-enforcement officer and in his  
60 presence, conduct such secondary test and the results of  
61 such test may be used in evidence to the same extent  
62 and in the same manner as if such test had been  
63 conducted by such arresting law-enforcement officer.  
64 Only the person actually administering or conducting  
65 such test shall be competent to testify as to the results  
66 and the veracity of such test.

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## CHAPTER 126

(Com. Sub. for H. B. 2170—By Delegates Flanigan and Basham)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, article five-b, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting postmortem blood alcohol tests as admissible evidence; disclosure of data compiled from blood alcohol test results; and disclosure of identities of decedents tested.

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

That section two, article five-b, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5B. POSTMORTEM TESTS FOR ALCOHOL IN PERSONS  
KILLED IN MOTOR VEHICLE ACCIDENTS.**

**§17C-5B-2. To whom and how county medical examiners  
report results of blood tests; such reports  
admissible as evidence; use of reports for  
statistical and highway safety purposes.**

1 Each county medical examiner shall immediately  
2 report the results of each blood test conducted under the  
3 authority of section one of this article by him, or  
4 conducted at his request, to the chief medical examiner  
5 of the office of medical examinations and to the  
6 department of public safety. Results of such blood test  
7 or any report thereof may be admissible in evidence, if

8 material, in any action or proceeding of any kind in any  
9 court or before any tribunal, board or agency.

10 The department of public safety shall compile the data  
11 from all such reports submitted to it on a monthly basis.  
12 The department shall forward such compilations to the  
13 governor's highway safety administration and the  
14 department of motor vehicles. Such compilations shall  
15 be for statistical purposes and highway safety informa-  
16 tion and be disclosed or revealed in any manner  
17 necessary. The identity of any dead person whose blood  
18 was tested under the provisions of section one of this  
19 article may be disclosed or revealed when necessary for  
20 evidence in any action or proceeding of any kind in any  
21 court or before any tribunal, board or agency.

22 The department of public safety, the governor's  
23 highway safety administration and the department of  
24 motor vehicles shall make use of such compilations in  
25 a manner to provide accurate and useful statistical  
26 information to government and the public relative to  
27 achieving a reduction in motor vehicle accidents arising  
28 in whole or in part from the imbibing of alcohol by  
29 motor vehicle drivers and adult pedestrians.

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## CHAPTER 127

(H. B. 2296—By Delegate Ryan)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seven, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale of school buses; and allowing motorists to continue movement in certain situations involving stopped school buses on controlled access highways.

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

That section seven, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

## ARTICLE 12. SPECIAL STOPS REQUIRED.

**§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; removal of warning lights, lettering, etc., upon sale of buses; highways with separate roadways.**

1 (a) The driver of a vehicle on any street or highway  
2 upon meeting or overtaking from either direction any  
3 school bus which has stopped on the highway for the  
4 purpose of receiving or discharging any school children  
5 shall stop the vehicle before reaching such school bus  
6 when there is in operation on said school bus flashing  
7 warning signal lights, as referred to in section eight of  
8 this article, and said driver shall not proceed until such  
9 school bus resumes motion, or is signaled by the school  
10 bus driver to proceed or the visual signals are no longer  
11 actuated. Any such driver acting in violation of this  
12 subsection is guilty of a misdemeanor, and, upon  
13 conviction thereof, shall be fined not less than twenty-  
14 five nor more than two hundred dollars, or imprisoned  
15 in the county jail not more than six months, or both  
16 fined and imprisoned.

17 (b) Every bus used for the transportation of school  
18 children shall bear upon the front and rear thereof a  
19 plainly visible sign containing the words "school bus" in  
20 letters not less than eight inches in height. When a  
21 contract school bus is being operated upon a highway  
22 for purposes other than the actual transportation of  
23 children either to or from school all markings thereon  
24 indicating "school bus" shall be covered or concealed.  
25 Any school bus sold or transferred to another owner by  
26 a county board of education, agency or individual, shall  
27 have all flashing warning lights disconnected; all  
28 lettering removed or permanently obscured, except  
29 when sold or transferred for the transportation of school  
30 children.

31 (c) The driver of a vehicle upon a controlled access  
32 highway need not stop upon meeting or passing a school  
33 bus which is on a different roadway and the school bus

34 is stopped in a loading zone which is a part of or  
35 adjacent to such highway and where pedestrians are not  
36 permitted to cross the roadway.

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## CHAPTER 128

(H. B. 2070—By Delegate Love)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to parking privileges for disabled persons; qualifications; applications; certificate of disability by a licensed physician; and penalties for violations.

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

That section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 13. STOPPING, STANDING AND PARKING.

#### §17C-13-6. Stopping, standing or parking privileges for disabled; qualification; application; violation.

1 (a) Any owner of a Class A motor vehicle subject to  
2 registration under the provisions of article three,  
3 chapter seventeen-a of this code, who is:

4 (1) A physically handicapped person with limited  
5 mobility;

6 (2) A relative of a person who is a physically handi-  
7 capped person with limited mobility;

8 (3) A person who regularly resides with a person who  
9 is a physically handicapped person with limited mobil-  
10 ity; or

11 (4) A person who regularly transports a person who  
12 is a physically handicapped person with limited mobil-  
13 ity, may apply for a special registration plate or a



14 mobile windshield placard by submitting to the  
15 commissioner:

16 (i) An application therefor on a form prescribed and  
17 furnished by the commissioner, specifying whether the  
18 applicant desires a special registration plate or a mobile  
19 windshield placard; and

20 (ii) A certificate issued by a person licensed to  
21 practice medicine stating that the applicant or the  
22 applicant's spouse or a member of the applicant's  
23 immediate family residing with him is a physically  
24 handicapped person with limited mobility as defined in  
25 this section.

26 Upon receipt of the application, the physician's  
27 certificate and the registration fee, if he finds that the  
28 applicant qualifies for the special registration plate or  
29 mobile windshield placard provided for in this subsection,  
30 the commissioner shall issue to such applicant an  
31 appropriately designed and appropriately designated  
32 special registration plate or mobile windshield placard.  
33 The special plate shall be used in place of a regular  
34 license plate.

35 As used in this section, a physically handicapped  
36 person with limited mobility is any person who suffers  
37 from a permanent physical condition making it unduly  
38 difficult and burdensome for such person to walk.

39 Any person who falsely or fraudulently obtains or  
40 seeks to obtain the special plate or the mobile windshield  
41 placard provided for in this subsection (a), and any  
42 person who falsely certifies that a person is physically  
43 handicapped with limited mobility in order that an  
44 applicant may be issued the special plate, is guilty of  
45 a misdemeanor, and, upon conviction thereof, in addition  
46 to any other penalty he may otherwise incur, shall be  
47 fined not less than one hundred dollars nor more than  
48 one thousand dollars, or imprisoned in the county jail  
49 not more than one year, or both fined and imprisoned.

50 (b) Any physically disabled person, any person who is  
51 a relative of a physically disabled person, any person  
52 who regularly resides with a physically disabled person,

53 or any person who regularly transports a physically  
54 disabled person, may apply for a vehicle decal for a  
55 Class A vehicle by submitting to the commissioner:

56 (1) An application therefor on a form prescribed and  
57 furnished by the commissioner;

58 (2) A certificate issued by a person licensed to  
59 practice medicine stating that the applicant or the  
60 applicant's relative is a physically disabled person, or  
61 that the person regularly residing with the applicant or  
62 regularly transported by the applicant is a physically  
63 disabled person, as defined in this section, and stating  
64 the expected duration of the disability; and

65 (3) A fee of one dollar.

66 Upon receipt of the application, the physician's  
67 certificate and the registration fee, if he finds that the  
68 applicant qualifies for the vehicle decal provided for in  
69 this subsection, the commissioner shall issue to such  
70 applicant an appropriately designed decal. The decal  
71 shall be displayed on the motor vehicle in the manner  
72 prescribed by the commissioner and shall be valid for  
73 such period of time as the certifying physician has  
74 determined that the disability will continue, which  
75 period of time, reflecting the date of expiration, shall be  
76 conspicuously shown on the face of the decal.

77 As used in this section "physically disabled person"  
78 means any person who has sustained a temporary  
79 disability rendering it unduly difficult and burdensome  
80 for him to walk.

81 Any person who falsely or fraudulently obtains or  
82 seeks to obtain the vehicle decal provided for in this  
83 subsection, and any person who falsely certifies that a  
84 person is physically disabled in order that an applicant  
85 may be issued the vehicle decal, is guilty of a  
86 misdemeanor, and, upon conviction thereof, in addition  
87 to any other penalty he may otherwise incur, shall be  
88 fined not less than fifty nor more than one hundred  
89 dollars, or imprisoned in the county jail not more than  
90 thirty days, or both fined and imprisoned.

91 (c) Free stopping, standing or parking places marked

92 "reserved for disabled persons" shall be designated in  
93 close proximity to all state, county and municipal  
94 buildings and other public facilities. Such places shall  
95 be reserved solely for physically disabled and handi-  
96 capped persons during the hours that such buildings are  
97 open for business.

98 Any person whose vehicle properly displays a valid  
99 special registration plate, mobile windshield placard or  
100 decal may park the vehicle for unlimited periods of time  
101 in parking zones unrestricted as to length of parking  
102 time permitted: *Provided*, That this privilege does not  
103 mean that the vehicle may park in any zone where  
104 stopping, standing or parking is prohibited or which  
105 creates parking zones for special types of vehicles or  
106 which prohibits parking during heavy traffic periods  
107 during specified rush hours or where parking would  
108 clearly present a traffic hazard. To the extent any  
109 provision of any ordinance of any political subdivision  
110 of this state is contrary to the provisions of this section,  
111 the provisions of this section shall take precedence and  
112 shall apply.

113 The privileges provided for in this subsection shall  
114 apply only during those times when the vehicle is being  
115 used for the transportation of a physically handicapped  
116 or disabled person. Any person who knowingly  
117 exercises, or attempts to exercise, such privileges at a  
118 time when the vehicle is not being used for the  
119 transportation of a physically handicapped or disabled  
120 person is guilty of a misdemeanor, and, upon conviction  
121 thereof, in addition to any other penalty he may  
122 otherwise incur, shall be fined not less than ten nor more  
123 than fifty dollars, or imprisoned in the county jail for  
124 not more than thirty days, or both fined and imprisoned.

125 (d) No person may stop, stand or park a motor vehicle  
126 in an area designated, zoned or marked for the  
127 handicapped or physically disabled, when such person  
128 is not physically disabled or handicapped and does not  
129 have displayed upon his vehicle a distinguishing  
130 insignia for the handicapped issued by the commis-  
131 sioner: *Provided*, That any person in the act of transport-  
132 ing a handicapped or physically disabled person, as

133 defined by this article, may stop, stand or park a motor  
134 vehicle not displaying a distinguishing insignia for the  
135 handicapped in an area designated, zoned or marked for  
136 the handicapped or physically disabled for the limited  
137 purposes of loading or unloading his handicapped or  
138 physically disabled passenger: *Provided, however,* That  
139 such vehicle shall be promptly moved after the comple-  
140 tion of such limited purposes.

141 Any person who violates the provisions of this  
142 subsection is guilty of a misdemeanor, and, upon  
143 conviction thereof, shall be fined not more than twenty-  
144 five dollars.

145 (e) The commissioner shall adopt and promulgate  
146 rules and regulations in accordance with the provisions  
147 of chapter twenty-nine-a of this code to effectuate the  
148 provisions of this section.

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## CHAPTER 129

(H. B. 2156—By Delegate Ashcraft)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special restrictions on lamps used upon motor vehicles; strobotron lights permitted on county school board vehicles.

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

That section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 15. EQUIPMENT.

#### §17C-15-26. Special restrictions on lamps.

- 1 (a) Any lighted lamp or illuminating device upon a
- 2 motor vehicle other than head lamps, spot lamps,

3 auxiliary lamps or flashing front-direction signals  
4 which projects a beam of light of an intensity greater  
5 than three hundred candlepower shall be so directed  
6 that no part of the beam will strike the level of the  
7 roadway on which the vehicle stands at a distance of  
8 more than seventy-five feet from the vehicle.

9 (b) No person shall drive or move any vehicle or  
10 equipment upon any highway with any lamp or device  
11 thereon displaying other than a white or amber light  
12 visible from directly in front of the center thereof except  
13 as authorized by subsection (d) of this section.

14 (c) Except as authorized in section nineteen, flashing  
15 lights are prohibited on motor vehicles, except on an  
16 authorized emergency vehicle, school bus, snow removal  
17 equipment or on any vehicle as a means for indicating  
18 right or left turn, or on any vehicle as a means of  
19 indicating the same is disabled or otherwise stopped for  
20 an emergency.

21 (d) Notwithstanding any other provisions of this  
22 chapter, the following colors of flashing warning lights  
23 are restricted for the use of the type of vehicle  
24 designated:

25 (1) Blue flashing warning lights are restricted to  
26 police vehicles, except as authorized by section twenty-  
27 seven of this article.

28 (2) Except as authorized by sections nineteen and  
29 twenty-seven of this article, red flashing warning lights  
30 are restricted to ambulances, fire-fighting vehicles,  
31 school buses, Class A vehicles, as defined by section one,  
32 article ten, chapter seventeen-a of this code, of those  
33 volunteer firemen who are authorized by their fire  
34 chiefs to have such lights and to Class A vehicles of  
35 members of volunteer ambulance services or duly  
36 chartered rescue squads who are authorized by their  
37 respective chiefs to have such lights: *Provided*, That red  
38 flashing warning lights attached to such Class A  
39 vehicles may be operated only when responding to or  
40 engaged in handling an emergency requiring the  
41 attention of such volunteer firemen or members of such

42 volunteer ambulance services or chartered rescue  
43 squads.

44 (3) All other emergency vehicles, including tow trucks  
45 and wreckers, authorized by this chapter and by section  
46 twenty-seven of this article shall be restricted to amber  
47 or yellow flashing warning lights.

48 (e) Notwithstanding the foregoing provisions of this  
49 section, any vehicle belonging to a county board of  
50 education may be equipped with a white flashing  
51 strobotron warning light. This strobe light may be  
52 installed on the roof of a school bus not to exceed one-  
53 third the body length forward from the rear of the roof  
54 edge. The light shall have a single clear lens emitting  
55 light three hundred sixty degrees around its vertical  
56 axis and may not extend above the roof more than six  
57 and one-half inches. A manual switch and a pilot light  
58 must be included to indicate the light is in operation.

59 It shall be unlawful for flashing warning lights of an  
60 unauthorized color to be installed or used on a vehicle  
61 other than as specified in this section, except that a  
62 police vehicle may be equipped with either or both blue  
63 or red warning lights.

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## CHAPTER 130

(S. B. 248—By Senators Pritt and Chernenko)

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[Passed April 6, 1989; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-eight, relating to altered suspension system of motor vehicles.

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

That article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section forty-eight, to read as follows:

**ARTICLE 15. EQUIPMENT.**

**§17C-15-48. Alteration of suspension system.**

1 (a) No person may operate upon a public highway any  
2 motor vehicle registered or required to be registered in  
3 this state if it has been modified by alteration of its  
4 altitude from the ground to the extent that its bumpers,  
5 measured to any point on the lower edge of the main  
6 horizontal bumper bar, exclusive of any bumper guards,  
7 are not within the range of fourteen inches to twenty-  
8 two inches above the ground. No vehicle may be  
9 modified to cause the vehicle body or chassis to come in  
10 contact with the ground, expose the fuel tank to damage  
11 from collision, or cause the wheels to come in contact  
12 with the body under normal operation. No part of the  
13 original suspension system may be disconnected to  
14 defeat the safe operation of the suspension system.  
15 However, nothing contained in this section prevents the  
16 installation of heavy duty equipment, including shock  
17 absorbers and overload springs. Nothing contained in  
18 this section prohibits the operation on a public highway  
19 of a motor vehicle with normal wear to the suspension  
20 system if such normal wear does not adversely affect the  
21 control of the vehicle.

22 (b) No person may operate upon a public highway any  
23 motor vehicle registered in this state if it has been  
24 modified by alteration of its altitude from the ground  
25 to the extent that its bumpers, measured to any point  
26 on the lower edge of the main horizontal bumper bar,  
27 exclusive of any bumper guards, do not fall within the  
28 limits specified herein for its gross vehicle weight rating  
29 category. The front bumper height of trucks whose gross  
30 vehicle weight rating is ten thousand pounds or less,  
31 may be no less than fourteen inches and no more than  
32 twenty-four inches and their rear bumper height may  
33 be no less than fourteen inches and no more than twenty-  
34 nine inches. The provisions of this subsection do not  
35 apply to trucks with a gross vehicle weight rating in  
36 excess of ten thousand pounds. For the purpose of this

37 section, the term "gross vehicle weight ratings" means  
38 manufacturer's gross vehicle weight ratings established  
39 for that vehicle.

40 (c) In the absence of bumpers, and in cases where  
41 bumper heights have been lowered or modified, height  
42 measurements under subsection (a) or (b) shall be made  
43 to the bottom of the frame rail.

44 (d) This section does not apply to specially designed  
45 or modified motor vehicles when operated off the public  
46 highways in races and similar events. Such motor  
47 vehicles may be lawfully towed on the highways of this  
48 state.

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## CHAPTER 131

(S. B. 612—By Senators Heck and Wagner)

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[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the height and length of vehicles and loads.

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

That section four, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 17. SIZE, WEIGHT AND LOAD.

#### §17C-17-4. Height and length of vehicles and loads.

1 (a) A vehicle including any load thereon shall not  
2 exceed a height of thirteen feet six inches, but the owner  
3 or owners of such vehicles shall be responsible for  
4 damage to any bridge or highway structure and to  
5 municipalities for any damage to traffic control devices  
6 or other highway structures where such bridges, devices  
7 or structures have a vehicle clearance of less than  
8 thirteen feet six inches.



9 (b) A motor vehicle including any load thereon shall  
10 not exceed a length of forty feet extreme overall  
11 dimension, inclusive of front and rear bumpers.

12 (c) Except as hereinafter provided, a combination of  
13 vehicles coupled together shall not consist of more than  
14 two units, and no such combination of vehicles including  
15 any load thereon shall have an overall length, inclusive  
16 of front and rear bumpers, in excess of fifty-five feet,  
17 except as provided in section eleven-b of this article, and  
18 except as otherwise provided in respect to the use of a  
19 pole trailer as authorized in section five of this article:  
20 *Provided*, That the limitation that a combination of  
21 vehicles coupled together shall not consist of more than  
22 two units shall not apply to a combination of vehicles  
23 coupled together by a saddle mount device used to  
24 transport motor vehicles in a drive-away service when  
25 no more than three saddle mounts are used: *Provided*,  
26 *however*, That equipment used in said combination  
27 meets the requirements of the safety regulations of the  
28 United States department of transportation and shall  
29 not exceed an overall length of more than sixty-five feet.

30 (d) The length limitations for truck tractor-semitrailer  
31 combinations and truck tractor-semitrailer-trailer  
32 combinations operating on the national system of  
33 interstate and defense highways and those classes of  
34 qualifying federal-aid primary system highways so  
35 designated by the United States secretary of transpor-  
36 tation, and those highways providing reasonable access  
37 to and from terminals, facilities for food, fuel, repairs  
38 and rest, and points of loading and unloading for  
39 household goods carriers from such highways, and  
40 further, as to other highways so designated by the West  
41 Virginia commissioner of highways, shall be as follows:  
42 The maximum length of a semitrailer unit operating in  
43 a truck tractor-semitrailer combination shall not exceed  
44 forty-eight feet in length, except where semitrailers  
45 have an axle spacing of not more than thirty-seven feet  
46 between the rear axle of the truck tractor and the front  
47 axle of the semitrailer, such semitrailer shall be allowed  
48 to be not more than fifty-three feet in length and the  
49 maximum length of any semitrailer or trailer operating

50 in a truck tractor-semitrailer-trailer combination shall  
51 not exceed twenty-eight and one-half feet in length and  
52 in no event shall any combinations exceed three units,  
53 including the truck tractor: *Provided*, That nothing  
54 herein contained shall impose an overall length limita-  
55 tion as to commercial motor vehicles operating in truck  
56 tractor-semitrailer or truck tractor-semitrailer-trailer  
57 combinations.

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## CHAPTER 132

(Com. Sub. for H. B. 2050—By Delegate Bradley)

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[Passed April 8, 1989; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact sections one, two, four and five, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal annexation; annexation by a majority of qualified voters and freeholders without an election; petition for annexation; and annexation by minor boundary adjustment.

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

That sections one, two, four and five, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 6. ANNEXATION.

- §8-6-1. Annexation of unincorporated territory.
- §8-6-2. Petition for annexation.
- §8-6-4. Annexation without an election.
- §8-6-5. Annexation by minor boundary adjustment.

#### PART I. GENERAL.

##### §8-6-1. Annexation of unincorporated territory.

- 1 Unincorporated territory may be annexed to and
- 2 become part of a municipality contiguous thereto only
- 3 in accordance with the provisions of this article.

4 Any farmlands or operations as described in article  
5 nineteen, chapter nineteen of this code which may be  
6 annexed into a municipality shall be protected in the  
7 continuation of agricultural use after being annexed.

PART II. ANNEXATION BY ELECTION.

§8-6-2. Petition for annexation.

1 Five percent or more of the freeholders of a munic-  
2 ipality desiring to have territory annexed thereto may  
3 file their petition in writing with the governing body  
4 thereof, setting forth the change proposed in the metes  
5 and bounds of the municipality, and asking that a vote  
6 be taken upon the proposed change. Such petition shall  
7 be verified and shall be accompanied by an accurate  
8 survey map showing the territory which would be  
9 annexed to the corporate limits by the proposed change.  
10 The governing body, upon bond in penalty prescribed by  
11 the governing body with good and sufficient surety  
12 being given by petitioners, and conditioned to pay the  
13 costs of such election if a majority of the legal votes cast  
14 are against the proposed change in boundary, shall  
15 thereupon order a vote of the qualified voters of such  
16 municipality to be taken upon the proposed change on  
17 a date and at a time and place therein to be named in  
18 the order, not less than twenty nor more than thirty days  
19 from the date thereof. The governing body shall, at the  
20 same time, order a vote of all of the qualified voters of  
21 the additional territory, and of all of the freeholders of  
22 such additional territory, whether they reside or have  
23 a place of business therein or not, to be taken upon the  
24 question on the same day, at some convenient place in  
25 or near such additional territory: *Provided*, That the  
26 additional territory to be included shall conform to the  
27 requirements of section one, article two of this chapter,  
28 and the determination that the additional territory does  
29 so conform shall be reviewable by the circuit court of  
30 the county in which the municipality or the major  
31 portion of the territory thereof, including the area  
32 proposed to be annexed, is located upon certiorari to the  
33 governing body, in accordance with the provisions of  
34 article three, chapter fifty-three of this code. The  
35 governing body shall cause the order to be published,

36 at the cost of the municipality, as a Class II-0 legal  
37 advertisement in compliance with the provisions of  
38 article three, chapter fifty-nine of this code, and the  
39 publication area for such publication shall be the  
40 municipality and the additional territory. The first  
41 publication must be at least fourteen days prior to the  
42 date upon which the vote is to be taken. The order so  
43 published shall contain an accurate description by metes  
44 and bounds of the additional territory proposed to be  
45 annexed to the corporate limits by the proposed change,  
46 and, if practicable, shall also contain a popular descrip-  
47 tion of such additional territory.

48 The election shall be held, superintended and con-  
49 ducted, and the results thereof ascertained, certified,  
50 returned and canvassed in the same manner and by the  
51 same individuals as elections for municipal officers. The  
52 ballots, or ballot labels where voting machines are used,  
53 shall have written or printed on them the words:

54  For Annexation

55  Against Annexation

56 Any freeholder which is a firm or corporation may  
57 vote by its manager, president, or executive officer duly  
58 designated in writing by such firm or corporation. Even  
59 though an individual who is a qualified voter of the  
60 municipality or the territory is also a freeholder of the  
61 territory, such person shall be entitled to vote only once.

62 When an election is held in any municipality in  
63 accordance with the provisions of this section, another  
64 such election relating to the same proposed change or  
65 any part thereof shall not be held for a period of one  
66 year.

67 If a majority of all of the legal votes cast both in the  
68 municipality and in the territory are in favor of the  
69 proposed annexation, then the governing body shall  
70 proceed as specified in the immediately succeeding  
71 section of this article.

### PART III. ANNEXATION WITHOUT ELECTION.

#### §8-6-4. Annexation without an election.

1       The governing body of a municipality may by ordi-  
2 nance provide for the annexation of additional territory  
3 without ordering a vote on the question if (1) a majority  
4 of the qualified voters of such additional territory file  
5 with the governing body their petition to be annexed,  
6 and (2) a majority of all freeholders of such additional  
7 territory, whether they reside or have a place of business  
8 therein or not, file with the governing body their  
9 petition to be annexed: *Provided*, That the additional  
10 territory shall conform to the requirements of section  
11 one, article two of this chapter, and the determination  
12 that the additional territory does so conform or that the  
13 requisite number of petitioners have filed the required  
14 petitions shall be reviewable by the circuit court of the  
15 county in which the municipality or the major portion  
16 of the territory thereof, including the area proposed to  
17 be annexed, is located upon certiorari to the governing  
18 body, in accordance with the provisions of article three,  
19 chapter fifty-three of this code. A qualified voter of the  
20 additional territory who is also a freeholder of the  
21 additional territory may join only in the voters' petition  
22 of such additional territory. It shall be the responsibility  
23 of the governing body to enumerate and verify the total  
24 number of eligible petitioners, in each category, from  
25 the additional territory. In determining the total  
26 number of eligible petitioners, in each category, a  
27 freeholder or any other entity that is a freeholder shall  
28 be limited to one vote or one signature on a petition as  
29 provided in this section. There shall be allowed only one  
30 signature on a petition per parcel of property and any  
31 freehold interest that is held by more than one individ-  
32 ual or entity shall be allowed to sign a petition only upon  
33 the approval by the majority of the individuals or  
34 entities that have an interest in the parcel of property.  
35 A qualified voter of the additional territory who is also  
36 a freeholder of the additional territory shall be counted  
37 only as a freeholder and if all of the eligible petitioners  
38 are qualified voters, then only a voters' petition shall be  
39 required. If satisfied that the additional territory  
40 conforms to the requirements of section one, article two  
41 of this chapter and that the petition is sufficient in every  
42 respect, the governing body shall enter such fact upon

43 its journal and forward a certificate to that effect to the  
44 county commission of the county wherein the municipal-  
45 ity or the major portion of the territory thereof,  
46 including the additional territory, is located. The county  
47 commission shall thereupon enter an order along the  
48 lines of the order described in the immediately preced-  
49 ing section of this article. After the date of such order,  
50 the corporate limits of the municipality shall be as set  
51 forth therein.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

§8-6-5. Annexation by minor boundary adjustment.

1 In the event a municipality desires to increase its  
2 corporate limits by making a minor boundary adjust-  
3 ment, the governing body of such municipality may  
4 apply to the county commission of the county wherein  
5 the municipality or the major portion of the territory  
6 thereof, including the territory to be annexed, is located  
7 for permission to effect such annexation by minor  
8 boundary adjustment.

9 Such application shall disclose the number of persons  
10 residing in the territory to be annexed to the corporate  
11 limits by the proposed change, and shall have attached  
12 thereto an accurate map showing the metes and bounds  
13 of such additional territory.

14 If satisfied that the proposed annexation is only a  
15 minor boundary adjustment, the county commission  
16 shall order publication of a notice of the proposed  
17 annexation to the corporate limits and of the date and  
18 time set by the commission for a hearing on such  
19 proposal. Publication shall be as in the case of an order  
20 calling for an election, as set forth in section two of this  
21 article. A like notice shall be prominently posted at not  
22 less than five public places within the area proposed to  
23 be annexed.

24 If the freeholders of the area proposed to be annexed  
25 who are present or are represented at the hearing are  
26 not substantially opposed to the proposed boundary  
27 change, the commission may enter an order changing  
28 the corporate limits of the municipality as requested,

29 which order may be reviewed by the circuit court as an  
30 order of a county commission ordering an election may  
31 be reviewed under section sixteen, article five of this  
32 chapter. After the date of such order, the corporate  
33 limits of the municipality shall be as set forth therein,  
34 unless judicial review is sought under the provisions of  
35 said section sixteen. If the proposed change is substan-  
36 tially opposed at the hearing by any such freeholder, the  
37 commission shall dismiss the application. Dismissal of  
38 any such application shall not preclude proceedings in  
39 accordance with the provisions of sections two and three  
40 or section four of this article. The municipality shall pay  
41 the costs of all proceedings under this section.

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## CHAPTER 133

(Com. Sub. for S. B. 169—By Senator J. Manchin)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-three; to amend article nineteen of said chapter eight by adding thereto a new section, designated section twelve-a; to amend and reenact section ten, article twenty of said chapter; and to amend and reenact section three, article thirteen, chapter sixteen of said code, all relating to municipal sewer, water and electric power facilities; authority to require connection to sewers; authority to require discontinuance of water service by provider other than municipality where only sewer service is provided by municipality and user is delinquent in payment for service rates and charges; notice of delinquency; lien for delinquent sewer, water and electric power service rates and charges; failure of user to cure delinquency; suits to collect delinquent charges; deferral of filing fees and costs of magistrate court action for delinquent rates and charges; and limitation on foreclosure of liens; powers

of sanitary board; contract; employees; compensation thereof; extension and improvements; replacement of damaged public works.

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

That section twenty-two, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-three; that article nineteen of said chapter eight be amended by adding thereto a new section, designated section twelve-a; that section ten, article twenty of said chapter be amended and reenacted; and that section three, article thirteen, chapter sixteen of said code be amended and reenacted, all to read as follows:

## **Chapter**

### **8. Municipal Corporations.**

#### **16. Public Health.**

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **Article**

**18. Assessments to Improve Streets, Sidewalks and Sewers; Sewer Connections and Board of Health; Enforcement of Duty to Pay for Service.**

**19. Municipal Waterworks and Electric Power Systems.**

**20. Combined Waterworks and Sewerage Systems.**

### **ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.**

§8-18-22. Connection to sewers; board of health; penalty.

§8-18-23. Authority to require discontinuance of water service by provider utility for nonpayment of sewer service rates and charges; notice of delinquency; lien for delinquent service rates and charges; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

### **PART XII. CONNECTION TO SEWERS; BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.**

**§8-18-22. Connection to sewers; board of health; penalty.**

- 1 The owner or owners of any lot or parcel of land
- 2 abutting on any street, alley, public way or easement in



3 any municipality on which a public sewer is now located  
4 or may hereafter be constructed and laid (whether  
5 constructed and laid under the provisions of this article  
6 or any other provisions of law) upon which lot or parcel  
7 of land any business or residence building is now located  
8 or may hereafter be erected, not connected with a public  
9 sewer, may be required and compelled by the municipi-  
10 pality or by the board of health to connect any such  
11 building with such sewer. Notice so to connect shall be  
12 given by the municipality or by the board of health to  
13 the owner and to the lessee or occupant of such building.  
14 Each day's failure to comply with such notice and  
15 connect with such sewer by such owner or owners, after  
16 thirty days from the receipt of such notice, shall be a  
17 misdemeanor and a separate and new offense under this  
18 section, and each such offense shall be punishable by a  
19 fine of not less than five nor more than twenty-five  
20 dollars. Jurisdiction to hear, try, determine and sentence  
21 for any violation of this section is hereby vested in the  
22 police or municipal court thereof, or, where no police  
23 court exists, in the mayor thereof.

**§8-18-23. Authority to require discontinuance of water  
service by provider utility for nonpayment  
of sewer service rates and charges; notice of  
delinquency; lien for delinquent service  
rates and charges; failure to cure delin-  
quency; civil actions; deferral of filing fees  
and costs in magistrate court action;  
limitations with respect to foreclosure.**

1 (a) When any municipality owns, maintains, operates  
2 or provides sewer facilities to its residents and custo-  
3 mers and does not own, maintain, operate or provide  
4 water facilities to them when the same is provided by  
5 any other publicly or privately owned utility, municipal-  
6 ity or public service district, the municipality providing  
7 sewer facilities may require the provider of water  
8 facilities to discontinue water service to any of its users  
9 who are delinquent in the payment of sewer service  
10 rates and charges to the municipality. The provider of  
11 water facilities is empowered and authorized hereby to  
12 discontinue water service upon demand of the municipi-

13 pality for this purpose; however, prior to discontinuance  
14 of any water service, the municipality shall contract  
15 with the provider of water facilities which contract shall  
16 provide that the municipality shall reimburse the  
17 provider of water facilities for all costs and expenses  
18 incurred in both the termination of water service to the  
19 delinquent user of sewer facilities and the subsequent  
20 resumption of water service to such user. The contract  
21 shall provide for reasonable methods and assurances so  
22 that the provider of water facilities will be protected  
23 and held harmless from claims and damages when  
24 water service is discontinued in error or in violation of  
25 the rights of the user through the fault of the munic-  
26 ipality providing sewer facilities and making the  
27 demand for discontinuance of water service to the user  
28 of such sewer facilities. Any contract made for this  
29 purpose shall have the approval of the public service  
30 commission prior to its execution and performance. Any  
31 disconnection of water service must comply with all  
32 rules, regulations and orders of the public service  
33 commission.

34 (b) Whenever any rates and charges for services or  
35 facilities furnished remain unpaid for a period of thirty  
36 days after the same become due and payable, the  
37 property and the owner thereof, as well as the user of  
38 the services and facilities provided shall be delinquent  
39 and the owner, user and property shall be held liable  
40 at law until such time as all such rates and charges are  
41 fully paid: *Provided*, That in the event the user is a  
42 tenant, the property owner shall be given notice of any  
43 said delinquency by certified mail, return receipt  
44 requested, and the user shall be given such notice by  
45 first-class mail: *Provided, however*, That failure of the  
46 user to cure the delinquency within a thirty-day period  
47 after receipt of such notice shall constitute grounds to  
48 terminate the user's lease of the premises concerned.

49 (c) All rates and charges whenever delinquent, as  
50 provided by ordinance of the municipality, shall be liens  
51 of equal dignity, rank and priority with the lien on such  
52 premises of state, county, school and municipal taxes for  
53 the amount thereof upon the real property served, and

54 the municipality shall have plenary power and authority  
55 from time to time to enforce such lien in a civil action  
56 to recover the money due for such services rendered plus  
57 court fees and costs and a reasonable attorney's fee:  
58 *Provided,* That a municipality shall have exhausted all  
59 remedies available in magistrate courts against such  
60 delinquent users before it may proceed in a civil action  
61 against the owner.

62 (d) Municipalities are hereby granted a deferral of  
63 filing fees or other fees and costs incidental to the  
64 bringing and maintenance of an action in magistrate  
65 court for the collection of the delinquent rates and  
66 charges. If the municipality collects the delinquent  
67 account, plus fees and costs, from its customer or other  
68 responsible party, the municipality shall pay to the  
69 magistrate court the filing fees or other fees and costs  
70 which were previously deferred.

71 (e) No municipality may foreclose upon the premises  
72 served by it for delinquent rates and charges for which  
73 a lien is authorized by this section except through the  
74 bringing and maintenance of a civil action for such  
75 purpose brought in the circuit court of the county  
76 wherein the municipality lies. In every such action, the  
77 court shall be required to make a finding based upon  
78 the evidence and facts presented that the municipality  
79 had exhausted all other remedies for the collection of  
80 debts with respect to such delinquencies prior to the  
81 bringing of such action. In no event shall foreclosure  
82 procedures be instituted by any municipality or on its  
83 behalf unless such delinquency has been in existence or  
84 continued for a period of two years from the date of the  
85 first such delinquency for which foreclosure is being  
86 instituted.

**ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC  
POWER SYSTEMS.**

**§8-19-12a. Lien for delinquent service rates and charges;  
notice of delinquency; failure to cure  
delinquency; civil actions; deferral of filing  
fees and costs in magistrate court action;  
limitations with respect to foreclosure.**

1 (a) Whenever any rates and charges for water servi-  
2 ces or facilities furnished remain unpaid for a period of  
3 thirty days after the same become due and payable, the  
4 property and the owner thereof, as well as the user of  
5 the services and facilities provided shall be delinquent  
6 and the owner, user and property shall be held liable  
7 at law until such time as all such rates and charges are  
8 fully paid: *Provided*, That in the event the user is a  
9 tenant, the property owner shall be given notice of any  
10 said delinquency by certified mail, return receipt  
11 requested, and the user shall be given such notice by  
12 first-class mail: *Provided, however*, That failure of the  
13 user to cure the delinquency within a thirty-day period  
14 after receipt of such notice shall constitute grounds to  
15 terminate the user's lease of the premises concerned.

16 (b) All rates or charges for water service whenever  
17 delinquent, as provided by ordinance of the municipal-  
18 ity, shall be liens of equal dignity, rank and priority  
19 with the lien on such premises of state, county, school  
20 and municipal taxes for the amount thereof upon the  
21 real property served, and the municipality shall have  
22 plenary power and authority from time to time to  
23 enforce such lien in a civil action to recover the money  
24 due for such services rendered plus court fees and costs  
25 and a reasonable attorney's fee: *Provided*, That a  
26 municipality shall have exhausted all remedies available  
27 against such delinquent users before it may proceed in  
28 a civil action against the owner.

29 (c) Municipalities are hereby granted a deferral of  
30 filing fees or other fees and costs incidental to the  
31 bringing and maintenance of an action in magistrate  
32 court for the collection of the delinquent rates and  
33 charges. If the municipality collects the delinquent  
34 account, plus fees and costs, from its customer or other  
35 responsible party, the municipality shall pay to the  
36 magistrate court the filing fees or other fees and costs  
37 which were previously deferred.

38 (d) No municipality may foreclose upon the premises  
39 served by it for delinquent rates or charges for which  
40 a lien is authorized by this section except through the  
41 bringing and maintenance of a civil action for such

42 purpose brought in the circuit court of the county  
43 wherein the municipality lies. In every such action, the  
44 court shall be required to make a finding based upon  
45 the evidence and facts presented that the municipality  
46 had exhausted all other remedies for the collection of  
47 debts with respect to such delinquencies prior to the  
48 bringing of such action. In no event shall foreclosure  
49 procedures be instituted by any municipality or on its  
50 behalf unless such delinquency had been in existence or  
51 continued for a period of two years from the date of the  
52 first such delinquency for which foreclosure is being  
53 sought.

**ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.**

**§8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; notice of delinquency; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.**

1 (a) The governing body of any municipality availing  
2 itself of the provisions of this article shall have plenary  
3 power and authority to make, enact and enforce all  
4 needful rules and regulations for the repair, mainte-  
5 nance and operation and management of the combined  
6 waterworks and sewerage system of such municipality  
7 and for the use thereof, and shall also have plenary  
8 power and authority to make, enact and enforce all  
9 needful rules and regulations and ordinances for the  
10 care and protection of any such system, which may be  
11 conducive to the preservation of the public health,  
12 comfort and convenience and to rendering the water  
13 supply of such municipality pure and the sewerage  
14 harmless insofar as it is reasonably possible so to do, and  
15 any such municipality shall have plenary power and  
16 authority to charge the users for the use and service of  
17 such combined waterworks and sewerage system and to  
18 establish rates or charges for such purpose. Separate

19 rates or charges may be fixed for the water and sewer  
20 services respectively or combined rates or charges for  
21 the combined water and sewer services. Such rates or  
22 charges, whether separate or combined, shall be  
23 sufficient at all times to pay the cost of repair,  
24 maintenance and operation of the combined waterworks  
25 and sewerage system, provide an adequate reserve fund  
26 and adequate depreciation fund and pay the principal  
27 of and interest upon all revenue bonds issued under this  
28 article. Rates or charges shall be established, revised  
29 and maintained by ordinance and become payable as the  
30 governing body may determine by ordinance, and such  
31 rates or charges shall be changed from time to time as  
32 needful, consistent with the provisions of this article.

33 (b) Whenever any rates and charges for services or  
34 facilities furnished remain unpaid for a period of thirty  
35 days after the same become due and payable, the  
36 property and the owner thereof, as well as the user of  
37 the services and facilities provided shall be delinquent  
38 and the owner, user and property shall be held liable  
39 at law until such time as all such rates and charges are  
40 fully paid: *Provided*, That in the event the user is a  
41 tenant, the property owner shall be given notice of any  
42 said delinquency by certified mail, return receipt  
43 requested, and the user shall be given such notice by  
44 first-class mail: *Provided, however*, That failure of the  
45 user to cure the delinquency within a thirty-day period  
46 after receipt of such notice shall constitute grounds to  
47 terminate user's lease of the premises concerned.

48 (c) All rates or charges for water service and sewer  
49 service whenever delinquent, as provided by ordinance  
50 of the municipality, shall be liens of equal dignity, rank  
51 and priority with the lien on such premises of state,  
52 county, school and municipal taxes for the amount  
53 thereof upon the real property served, and the munic-  
54 ipality shall have plenary power and authority from  
55 time to time to enforce such lien in a civil action to  
56 recover the money due for such services rendered plus  
57 court fees and costs and a reasonable attorney's fee:  
58 *Provided*, That a municipality shall have exhausted all  
59 remedies available in magistrate courts against such

60 delinquent users before it may proceed in a civil action  
61 against the owner.

62 (d) Municipalities are hereby granted a deferral of  
63 filing fees or other fees and costs incidental to the  
64 bringing and maintenance of an action in magistrate  
65 court for the collection of the delinquent rates and  
66 charges. If the municipality collects the delinquent  
67 account, plus fees and costs, from its customer or other  
68 responsible party, the municipality shall pay to the  
69 magistrate court the filing fees or other fees and costs  
70 which were previously deferred.

71 (e) No municipality may foreclose upon the premises  
72 served by it for delinquent rates, fees or charges for  
73 which a lien is authorized by this section except through  
74 the bringing and maintenance of a civil action for such  
75 purpose brought in the circuit court of the county  
76 wherein the municipality lies. In every such action, the  
77 court shall be required to make a finding based upon  
78 the evidence and facts presented that the municipality  
79 had exhausted all other remedies for the collection of  
80 debts with respect to such delinquencies prior to the  
81 bringing of such action. In no event shall foreclosure  
82 procedures be instituted by any municipality or on its  
83 behalf unless such delinquency had been in existence or  
84 continued for a period of two years from the date of the  
85 first such delinquency for which foreclosure is being  
86 sought.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

#### §16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and im- provements; replacement of damaged public works.

1 The board shall have power to take all steps and  
2 proceedings and to make and enter into all contracts or  
3 agreements necessary or incidental to the performance  
4 of its duties and the execution of its powers under this  
5 article: *Provided*, That any contract relating to the

6 financing of the acquisition or construction of any such  
7 works, or any trust indenture as hereinafter provided  
8 for, shall be approved by the governing body of such  
9 municipality before the same shall be effective. The  
10 board may employ engineers, architects, inspectors,  
11 superintendents, managers, collectors, attorneys, and  
12 such other employees as in its judgment may be  
13 necessary in the execution of its powers and duties, and  
14 may fix their compensation, all of whom shall do such  
15 work as the board shall direct. All such compensation  
16 and all expenses incurred in carrying out the provisions  
17 of this article shall be paid solely from funds provided  
18 under the authority of this article, and the board shall  
19 not exercise or carry out any authority or power herein  
20 given it so as to bind said board of said municipality  
21 beyond the extent to which money shall have been or  
22 may be provided under the authority of this article. No  
23 contract or agreement with any contractor or contrac-  
24 tors for labor and/or material, exceeding in amount the  
25 sum of five thousand dollars, shall be made without  
26 advertising for bids, which bids shall be publicly opened  
27 and award made to the best bidder, with power in the  
28 board to reject any or all bids. After the construction,  
29 installation, and completion of the works, or the  
30 acquisition thereof, the board shall operate, manage and  
31 control the same and may order and complete any  
32 extensions, betterments and improvements of and to the  
33 works that the board may deem expedient, if funds  
34 therefor be available or are made available as provided  
35 in this article, and shall establish rules and regulations  
36 for the use and operation of the works, and of other  
37 sewers and drains connected therewith so far as they  
38 may affect the operation of such works, and do all things  
39 necessary or expedient for the successful operation  
40 thereof. The sanitary board may declare an emergency  
41 situation in the event of collector line breaks or vital  
42 treatment plant equipment failure and shall be exemp-  
43 ted from competitive bidding requirements and enter  
44 into direct purchase agreements or contracts for such  
45 expenses. All public ways or public works damaged or  
46 destroyed by the board in carrying out its authority  
47 under this article shall be restored or repaired by the



48 board and placed in their original condition, as nearly  
49 as practicable, if requested so to do by proper authority,  
50 out of the funds provided by this article.

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## CHAPTER 134

(H. B. 2689—By Delegate Ryan)

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[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four, article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enhancing ability of municipal and county hospitals to borrow money for hospital purposes.

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

That section four, article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 32. INTERGOVERNMENTAL RELATIONS-CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS OR HEALTH INSTITUTIONS FOR PUBLIC PURPOSES.**

### **PART IV. HEALTH INSTITUTIONS.**

**§8-32-4. Legislative findings; authority of municipalities and county commissions to make appropriations; limitations and restrictions.**

1 (a) The Legislature hereby finds that the support of  
2 public or nonprofit health institutions dedicated to  
3 making available to the general public health and  
4 mental health services is for the general welfare of the  
5 public and is a public purpose for which funds of a  
6 municipality or county commission may be lawfully  
7 expended. This section is enacted in view of this finding  
8 and shall be liberally construed in the light thereof. As  
9 used in this section, the term "health institution" means  
10 a hospital, health or mental health clinic, regional or  
11 community health or mental health center, mental  
12 retardation facility, extended care facility, nursing

13 home, or other health or mental health institution, which  
14 is open to the general public.

15 (b) Notwithstanding any statutory or charter provi-  
16 sion to the contrary, municipalities and county commis-  
17 sions are hereby empowered and authorized to appropri-  
18 ate funds, subject to the conditions and limitations set  
19 forth in this section, for the establishment, cost,  
20 operation, maintenance and projects of any health  
21 institution, whether such health institution be situate  
22 within or without the confines of any such municipality  
23 or county. Funds may not be appropriated by a  
24 municipality or county commission for the benefit and  
25 use of any health institution unless such health institu-  
26 tion is either owned and operated by a unit of govern-  
27 ment, or is owned and operated by a nonstock, nonprofit  
28 corporation chartered under the laws of or licensed to  
29 do business in this state which provides in its charter  
30 that no member trustee or member of the board of  
31 directors (by whatever name the same may be called)  
32 shall receive any compensation, gain or profit from such  
33 corporation and which is operated in compliance with  
34 such charter provisions. Any such appropriation shall be  
35 made from the general funds of such municipality or  
36 county commission not otherwise appropriated or from  
37 federal revenue sharing funds received by such munic-  
38 ipality or county commission.

39 (c) The recipient of any funds appropriated under the  
40 provisions of this section shall upon demand at any time  
41 make a full and complete accounting of all such funds  
42 to the governing body of the municipality or county  
43 commission which made such appropriation and shall in  
44 every event without demand make to such governing  
45 body an annual accounting thereof.

46 (d) Under no circumstances whatever shall any action  
47 taken by any municipality or county commission under  
48 the authority of this section give rise to or create any  
49 indebtedness on the part of the municipality, the county,  
50 the governing body of such municipality, the county  
51 commission, any member of such governing body or  
52 county commission or any municipal or county official  
53 or employee.

54 (e) No provision within this article prohibits the  
55 ability of a county or municipal hospital to borrow  
56 money and to perform such actions and do those things  
57 which are reasonably necessary to effectuate the  
58 purposes of this section, including, but not limited to,  
59 obtaining credit to further the mission of such hospital  
60 and acceptance of a loan for working capital require-  
61 ments, as that term is generally defined: *Provided*, That  
62 the hospital complies with the provisions of subsection  
63 (d) of this section so that any indebtedness created is at  
64 no time an obligation of any municipality, the county  
65 commission, any member of such governing body or  
66 county commission or any municipal or county official  
67 or employee.

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## CHAPTER 135

(Com. Sub. for H. B. 2241—By Delegate S. Cook)

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[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fifteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend said chapter by adding thereto a new article, designated article one-a, all relating to the public land corporation of West Virginia; altering membership, establishing powers and duties, criteria for public land disposal; creating a special public land corporation fund and uses of fund moneys; license and permit issuance authority of corporation; requiring state agencies, with exception of department of highways, to prepare and submit inventories of all public land held or under control of such agencies; public bidding procedures and land appraisal requirements; and requiring public hearings by the corporation for the sale, exchange or transfer of public land.

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

That section fifteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be repealed; that said chapter be amended by adding thereto a new article, designated article one-a, to read as follows:

**ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.**

§20-1A-1. Public land corporation.

§20-1A-2. Corporation boards of directors, members, expenses, appointment, terms, qualifications; director as board chairman; meetings, quorum; executive secretary, secretary to board; professional and support staff; execution of legal documents, permits and licenses.

§20-1A-3. Public land corporation, powers and duties.

§20-1A-4. Public land corporation to conduct sales of public lands by competitive bidding, modified competitive bidding or direct sale.

§20-1A-5. Public land corporation to hold public hearing before sale, exchange or transfer of land.

§20-1A-6. Competitive bidding and notice requirements before the development of natural resources on certain lands.

§20-1A-7. Adopt a state park or forest program.

**§20-1A-1. Public land corporation.**

1 (a) The public land corporation, heretofore created  
2 and established as an activity of the department of  
3 natural resources, is hereby continued and established  
4 within and as a unit of the department of natural  
5 resources. The personal property and employees of the  
6 public land corporation are hereby transferred to the  
7 department of natural resources: *Provided*, That the  
8 employees so transferred shall continue to have merit  
9 system status or are hereby vested with such merit  
10 system status if not previously included therein.

11 (b) The corporation shall be a public benefit corpora-  
12 tion and an instrumentality of the state and may sue or  
13 be sued, contract and be contracted with, plead and be  
14 impleaded, have and use a common seal.

15 (c) The corporation shall be vested with the title of the  
16 state of West Virginia in public lands, the title to which  
17 now is or may hereafter become vested in the state of  
18 West Virginia by reason of any law governing the title  
19 of lands of the state: *Provided*, That those lands for  
20 which title is specifically vested by law in other state  
21 agencies, institutions and departments shall continue to

22 be vested in such state agencies, institutions and  
23 departments.

**§20-1A-2. Corporation boards of directors, members, expenses, appointment, terms, qualifications; director as board chairman; meetings, quorum; executive secretary, secretary to board; professional and support staff; execution of legal documents, permits and licenses.**

1 (a) The public land corporation shall be governed by  
2 a board of directors comprised of five members of which  
3 three shall be ex officio and two shall be appointed by  
4 the governor. The members of the board shall receive  
5 no compensation for their service thereon. The board  
6 members who are not ex officio shall be reimbursed by  
7 the director for their actual and necessary expenses  
8 incurred pursuant to their duties under this article from  
9 funds authorized for such purposes.

10 (b) The director of the department of natural resour-  
11 ces shall be an ex officio member and chairman of the  
12 board of directors. The commissioner of the department  
13 of culture and history and the commissioner of the  
14 department of commerce, or their designees who shall  
15 be employees of their respective departments, shall be  
16 ex officio members of the board of directors.

17 (c) The governor shall appoint two members of the  
18 board of directors, with the advice and consent of the  
19 Senate, which members shall serve a term of four years:  
20 *Provided*, That the initial appointments shall be to terms  
21 of two and four years, respectively, which terms shall  
22 commence on the first day of July, one thousand nine  
23 hundred eighty-nine. The members of the board of  
24 directors appointed by the governor shall be persons  
25 with a demonstrated interest and knowledge in the  
26 conservation and protection of the aesthetic, biological,  
27 geological, historical, archeological, cultural or recrea-  
28 tional values of the public lands of the state.

29 (d) A majority of the board of directors shall consti-  
30 tute a quorum for the transaction of business. The board  
31 shall meet at such times and places as it may determine

32 and shall meet on call of the chairman. It shall be the  
33 duty of the chairman to call a meeting of the board on  
34 the written request of any three members thereof.

35 (e) The director shall appoint and supervise an  
36 executive secretary of the public land corporation, and  
37 may employ other necessary professional and support  
38 staff for the purposes of this article, who shall be  
39 employees of the department with merit system status.

40 An affirmative vote of a majority of the members of  
41 the corporation is required for any action of the  
42 corporation with respect to the sale or exchange of  
43 public lands or for the issuance of a lease or contract  
44 for the development of minerals, oil or gas. All actions  
45 must be taken at a scheduled meeting of the corporation  
46 held in compliance with the provisions of article nine-  
47 a, chapter six of this code.

48 The powers and duties of the corporation are nonde-  
49 legable, except that the executive secretary may  
50 negotiate and enter into preliminary agreements on  
51 behalf of the corporation, and shall, upon authorization  
52 of the corporation, be entitled to engage in valid actions  
53 of the corporation in respect of day-to-day administra-  
54 tive activities. An agreement entered into by the  
55 executive secretary on behalf of the corporation is not  
56 valid until such agreement is approved by an affirma-  
57 tive vote of a majority of the corporation.

### §20-1A-3. Public land corporation, powers and duties.

1 The corporation is hereby authorized and empowered  
2 to:

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

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

11 (3) Sell or exchange public lands where it is deter-

12 mined that the sale or exchange of such tract meets any  
13 or all of the following disposal criteria:

14 (A) Such tract was acquired for a specific purpose  
15 and the tract is no longer required for that or any other  
16 state purpose; or

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

25 (C) Such tract, because of its location or other  
26 characteristics, is difficult and uneconomic to manage  
27 as part of the public lands and is not suitable for  
28 management by another state department or agency.

29 There is hereby created in the state treasury a special  
30 public land corporation fund into which shall be paid  
31 all proceeds from public land sales and exchanges. The  
32 corporation may acquire public lands from use of the  
33 payments made to the fund, along with any interest  
34 accruing to said fund. The corporation shall report  
35 annually, just prior to the beginning of the regular  
36 session of the Legislature, to the finance committees of  
37 the Legislature on the financial condition of the special  
38 fund.

39 (4) Sell, purchase or exchange lands or stumpage for  
40 the purpose of consolidating lands under state or federal  
41 government administration subject to the disposal  
42 criteria specified in subdivision three of this section;

43 (5) Negotiate and effect loans or grants from the  
44 government of the United States or any agency thereof  
45 for acquisition and development of such lands as may  
46 be authorized by law to be acquired for public use;

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

49 (A) Liquidate obligations incurred in the acquisition,

50 development and administration of such lands, until all  
51 such obligations have been fully discharged;

52 (B) Purchase, develop, restore and preserve for public  
53 use, sites, structures, objects and documents of prehis-  
54 toric, historical, archaeological, recreational, architectu-  
55 ral and cultural significance to the state of West  
56 Virginia; and

57 (C) Obtain grants or matching moneys available from  
58 the government of the United States or any of its  
59 instrumentalities for prehistoric, historic, archaeologi-  
60 cal, recreational, architectural and cultural purposes;

61 The corporation shall have the authority to designate  
62 lands to which it has title for development and admin-  
63 istration for the public use including recreation, wildlife  
64 stock grazing, agricultural rehabilitation and home-  
65 steading or other conservation activities. The corpora-  
66 tion shall have authority to enter into leases for the  
67 development and extraction of minerals, including sand  
68 and gravel, except as otherwise circumscribed herein.  
69 The corporation shall reserve title and ownership to the  
70 mineral rights in all cases. It shall convey, assign, or  
71 allot lands to the title or custody of proper departments  
72 or other agencies of state government for administration  
73 and control within the functions of such departments or  
74 other agencies as provided by law. The corporation shall  
75 make proper lands available for the purpose of cooper-  
76 ating with the government of the United States in the  
77 relief of unemployment and hardship or for any other  
78 public purpose. The corporation shall report annually to  
79 the Legislature on its public land holdings, its financial  
80 condition and its operations and shall make such  
81 recommendations to the Legislature as deemed proper  
82 concerning the acquisition, development, disposition and  
83 use of public lands. All state agencies, institutions and  
84 departments shall make an inventory of the public lands  
85 of the state as may be by law specifically allocated to  
86 and used by each and provide to the corporation a list  
87 of such public lands, including their current use,  
88 intended use or best use to which such land may be put:  
89 *Provided*, That the state department of highways need  
90 not provide such inventory of public lands allocated to



91 and used by it. The inventory shall identify those parcels  
92 of land which have no present or foreseeable useful  
93 purpose to the state of West Virginia. The inventory  
94 shall be submitted to the corporation by the first day  
95 of August, one thousand nine hundred eighty-nine. The  
96 corporation shall compile such inventory of all public  
97 lands and report to the Legislature by no later than the  
98 first day of January, one thousand nine hundred ninety,  
99 on its public land holdings and the land holdings of the  
100 other agencies or departments of this state which are  
101 required to report their holdings to the corporation as  
102 set forth hereinabove, its financial condition and its  
103 operations.

104 During the continuance of the Blennerhassett histor-  
105 ical park commission, the public land corporation and  
106 its members shall consult with and keep the said  
107 Blennerhassett historical park commission fully in-  
108 formed as to any official action to be taken or proposed  
109 to be taken pursuant to this act regarding or affecting  
110 Blennerhassett Island and its prehistoric, historic,  
111 archaeological, architectural, cultural and recreational  
112 significance or development or any of the powers and  
113 duties of the Blennerhassett historical park commission.

**§20-1A-4. Public land corporation to conduct sales of  
public lands by competitive bidding, modi-  
fied competitive bidding or direct sale.**

1 (a) Sales, exchanges or transfers of public lands under  
2 this article shall be conducted under competitive  
3 bidding procedures. However, where the secretary  
4 determines it necessary and proper in order to assure  
5 the following public policies including, but not limited  
6 to, a preference to users, lands may be sold by modified  
7 competitive bidding or without competitive bidding. In  
8 recognizing public policies, the secretary shall give  
9 consideration to the following potential purchasers:

10 (1) The local government entities which are in the  
11 vicinity of the lands;

12 (2) Adjoining land owners.

13 (b) The policy for selecting the methods of sale is as  
14 follows:

15 (1) Competitive sale is the general procedure for sales  
16 of public lands and shall be used in the following  
17 circumstances:

18 (A) Wherever in the judgment of the secretary the  
19 lands are accessible and usable regardless of adjoining  
20 land ownership; or

21 (B) Wherever the lands are within a developing or  
22 urbanizing area and land values are increasing due to  
23 the location of the land and interest on the competitive  
24 market.

25 (2) Modified competitive sales may be used to permit  
26 the adjoining landowner or local governmental entity to  
27 meet the high bid at the public sale. Lands otherwise  
28 offered under this procedure would normally be public  
29 lands not located near urban expansion areas, or not  
30 located near areas with rapidly increasing land values,  
31 and where existing use of adjacent lands would be  
32 jeopardized by sale under competitive bidding  
33 procedures.

34 (3) Direct sale may be used when the lands offered for  
35 sale are completely surrounded by lands in one owner-  
36 ship with no public access, or where the lands are  
37 needed by local governments.

38 (4) In no event shall lands be offered for sale by  
39 "modified competitive sales" or "direct sale" unless and  
40 until the corporation makes a written finding of  
41 justification for use of an alternative bidding procedure.

42 (5) Subject to the bidding procedures set forth herein,  
43 the corporation is authorized, at its discretion, to sell  
44 public lands subject to rights of way, restrictive  
45 covenants or easements retained by the corporation,  
46 limiting the use of such lands to purposes consistent  
47 with the use of adjoining or nearby lands owned by the  
48 corporation.

49 (c) When lands have been offered for sale by one  
50 method of sale and the lands remain unsold, then the  
51 lands may be reoffered by another method of sale.

52 (d) In no case may lands be sold or exchanged for less  
53 than fair market value. Fair market value shall be  
54 determined by an appraisal made by an independent  
55 person or firm chosen by the public land corporation.  
56 The appraisal shall be performed using the principles  
57 contained in the "Uniform Appraisal Standards for  
58 Federal Land Acquisitions" published under the auspi-  
59 ces of the Interagency Land Acquisition Conference,  
60 United States Government Printing Office, 1972.

61 (e) The corporation may reject all bids when such bids  
62 do not represent the corporation's considered value of  
63 the property exclusive of the fair market value.

64 (f) The corporation shall promulgate rules, in accor-  
65 dance with the provisions of chapter twenty-nine-a of  
66 this code, regarding procedures for conducting public  
67 land sales by competitive bidding, modified competitive  
68 bidding and direct sales.

**§20-1A-5. Public land corporation to hold public hearing  
before sale, exchange or transfer of land.**

1 (a) Prior to any final decision of any state agency to  
2 sell, exchange or transfer land, the public land corpo-  
3 ration shall:

4 (1) Prepare and reduce to writing the reasons and  
5 supporting data regarding such sale or exchange. The  
6 written reasons required under this section shall be  
7 available for public inspection at the office of the county  
8 clerk at the county courthouse of each county in which  
9 the affected land is located during the two successive  
10 weeks before the date of the public hearing required by  
11 this section;

12 (2) Provide for a public hearing to be held at a  
13 reasonable time and place within each county in which  
14 the affected land is located to allow interested members  
15 of the public to attend the hearing without undue  
16 hardship. Members of the public may be present, submit  
17 statements and testimony and question the corporation's  
18 representative appointed pursuant to this section;

19 (3) Not less than thirty days prior to such public  
20 hearing, provide notice to all members of the Legisla-

21 ture, to the head of the governing body of any political  
22 subdivision having zoning or other land use regulatory  
23 responsibility in the geographic area within which the  
24 public lands are located and to the head of any political  
25 subdivision having administrative or public services  
26 responsibility in the geographic area within which the  
27 lands are located;

28 (4) Cause to be published a notice of the required  
29 public hearing. The notice shall be published as a Class  
30 II legal advertisement in compliance with the provisions  
31 of article three, chapter fifty-nine of this code and the  
32 publication area shall be each county in which the  
33 affected land is located. The public hearing shall be held  
34 no earlier than the fourteenth successive day and no  
35 later than the twenty-first successive day following the  
36 first publication of the notice. The notice shall contain  
37 the time and place of the public hearing along with a  
38 brief description of the affected land;

39 (5) Cause a copy of the required notice to be posted  
40 in a conspicuous place at the affected land for members  
41 of the public to observe. Such notice shall remain posted  
42 for two successive weeks prior to the date of the public  
43 hearing;

44 (6) Appoint a representative of the corporation who  
45 shall conduct the required public hearing. The corpora-  
46 tion's representative shall have full knowledge of all the  
47 facts and circumstances surrounding the proposed sale,  
48 exchange or transfer. The representative of the corpo-  
49 ration shall make a report of the public hearing  
50 available for inspection by the public or, upon written  
51 request of any interested person, provide a written copy  
52 thereof and to all individuals previously receiving  
53 written notice of the hearing within thirty days  
54 following the public hearing; and

55 (7) If the evidence at the public hearing establishes by  
56 a preponderance that the appraisal provided for in  
57 subsection (c), section four of this article does not reflect  
58 the true, fair market value, the public land corporation  
59 shall cause another appraisal to be made. If the evidence  
60 at the public hearing establishes by a preponderance

61 that the sale or exchange of land does not meet the  
62 criteria set forth in subdivision three, section three of  
63 this article, the public land corporation shall not proceed  
64 with the sale or exchange of said land without judicial  
65 approval.

66 The representative of the corporation conducting the  
67 public hearing shall make the results of the hearing  
68 available to the corporation for its consideration prior  
69 to the board making decisions regarding the affected  
70 lands.

71 (b) No sale, exchange or transfer of land subject to the  
72 provisions of this section may be made before the  
73 thirtieth successive day following the public hearing  
74 required by this section, but in no event shall the sale,  
75 exchange or transfer of such lands be made prior to  
76 fifteen days after the report of the public hearings are  
77 made available to the public in general.

**§20-1A-6. Competitive bidding and notice requirements  
before the development of natural resources  
on certain lands.**

1 The corporation may enter into a lease or contract for  
2 the development of minerals, gas or oil on or under lands  
3 in which the corporation holds any right, title or  
4 interest: *Provided*, That no lease or contract may be  
5 entered into for the extraction and removal of minerals  
6 by surface mining or auger mining of coal. With the  
7 exception of deep mining operations which are already  
8 in progress and permitted as of the effective date of this  
9 article, extraction of coal by deep mining methods under  
10 state forests or wildlife refuges may be permitted only  
11 if such lease or contract provides that no entries, portals,  
12 air shafts or other incursions upon and into said land  
13 incident to said mining operations may be placed or  
14 constructed upon said lands or within three thousand  
15 feet of the boundary thereof. Any lease or contract  
16 entered into shall reserve to the state all rights to  
17 subjacent surface support which the state is seized or  
18 possessed of at the time of such lease or contract.  
19 Notwithstanding any other provisions of the code to the

20 contrary, nothing herein shall be construed to permit  
21 extraction of minerals, oil or gas by any method from,  
22 on or under, any state park or state recreation area, nor  
23 the extraction of minerals by strip or auger mining upon  
24 any state forest or wildlife refuge. The corporation may  
25 enter into a lease or contract for the development of  
26 minerals, oil or gas, where such lease or contract is not  
27 prohibited by any other provisions of this code, only  
28 after receiving sealed bids therefor, after notice by  
29 publication as a Class II legal advertisement in com-  
30 pliance with the provisions of article three, chapter fifty-  
31 nine of this code. The area for such publication shall be  
32 each county in which such lands are located. The  
33 minerals, oil or gas so advertised may be leased or  
34 contracted for development at not less than the fair  
35 market value, as determined by an appraisal made by  
36 an independent person or firm chosen by the corpora-  
37 tion, to the highest responsible bidder, who shall give  
38 bond for the proper performance of the contract or lease  
39 as the corporation shall designate; but the corporation  
40 shall have the right to reject any and all bids and to  
41 readvertise for bids. If the foregoing provisions of this  
42 section have been complied with, and no bid equal to or  
43 in excess of the fair market value of such natural  
44 resources is received, the corporation may, at any time  
45 during a period of six months after the opening of the  
46 bids, lease or contract for the development of such  
47 natural resources in such manner as it is deemed  
48 appropriate, but the lease or contract price shall not be  
49 less than the fair market value of such natural resources  
50 advertised.

**§20-1A-7. Adopt a state park or forest program.**

1 The commissioner of the department of commerce  
2 shall establish an "adopt a state park or forest program"  
3 to encourage and coordinate the efforts of volunteers to  
4 help maintain and improve state parks, forests, or other  
5 public lands within the state.

6 The commissioner shall establish a matching grant  
7 program to assist such volunteer efforts by legislative  
8 rule pursuant to chapter twenty-nine-a of this code.

## CHAPTER 136

(S. B. 266—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

[Passed April 4, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact sections five and fifty-six, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unlawful methods of hunting and fishing; and permit to hold a field trial, water race or wild hunt.

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

That sections five and fifty-six, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

### ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing.

§20-2-56. Permit to hold a field trial, shoot-to-retrieve field trial, water race or wild hunt; license exemption.

#### §20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it is unlawful  
2 at any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless  
4 it is plainly visible to him;

5 (2) Dig out, cut out or smoke out, or in any manner  
6 take or attempt to take, any live wild animal or wild  
7 bird out of its den or place of refuge, except as may be  
8 authorized by regulations promulgated by the director  
9 or by law;

10 (3) Make use of, or take advantage of, any artificial  
11 light in hunting, locating, attracting, taking, trapping,  
12 or killing any wild bird or wild animal, or to attempt  
13 to do so, while having in his possession or subject to his  
14 control, or for any person accompanying him to have in  
15 his possession or subject to his control, any firearm,  
16 whether cased or uncased, bow, arrow, or both, or other

17 implement or device suitable for taking, killing or  
18 trapping a wild bird or animal: *Provided*, That it shall  
19 not be unlawful to hunt or take raccoon, opossum or  
20 skunk by the use of artificial lights. No person shall be  
21 guilty of a violation of this subdivision merely because  
22 he looks for, looks at, attracts or makes motionless a wild  
23 bird or wild animal with or by the use of an artificial  
24 light, unless at such time he has in his possession a  
25 firearm, whether cased or uncased, bow, arrow, or both,  
26 or other implement or device suitable for taking, killing  
27 or trapping a wild bird or wild animal, or unless such  
28 artificial light (other than the head lamps of an  
29 automobile or other land conveyance) is attached to, a  
30 part of, or used from within or upon an automobile or  
31 other land conveyance.

32 Any person violating the provisions of this subdivision  
33 shall be guilty of a misdemeanor, and, upon conviction  
34 thereof, shall for each offense be fined not less than one  
35 hundred dollars nor more than five hundred dollars and  
36 shall be imprisoned in the county jail for not less than  
37 ten days nor more than one hundred days;

38 (4) Hunt for, take, kill, wound or shoot at wild  
39 animals or wild birds from an airplane, or other  
40 airborne conveyance, an automobile, or other land  
41 conveyance, or from a motor-driven water conveyance,  
42 except as may be authorized by regulations promul-  
43 gated by the director;

44 (5) Take any beaver or muskrat by any means other  
45 than by trap;

46 (6) Catch, capture, take or kill by seine, net, bait, trap  
47 or snare or like device of any kind, any wild turkey,  
48 ruffed grouse, pheasant or quail;

49 (7) Destroy or attempt to destroy needlessly or  
50 willfully the nest or eggs of any wild bird or have in  
51 his possession such nest or eggs unless authorized to do  
52 so under regulations or under a permit by the director;

53 (8) Except as provided in section six of this article,  
54 carry an uncased or loaded gun in any of the woods of  
55 this state except during the open firearms hunting



56 season for wild animals and nonmigratory wild birds  
57 within any county of the state, unless he has in his  
58 possession a permit in writing issued to him by the  
59 director: *Provided*, That this section shall not prohibit  
60 hunting or taking of unprotected species of wild animals  
61 and wild birds and migratory wild birds, during the  
62 open season, in the open fields, open water and open  
63 marshes of the state;

64 (9) Except as provided in section six of this article,  
65 carry an uncased or loaded gun after the hour of five  
66 o'clock antemeridian on Sunday in any woods or on any  
67 highway, railroad right-of-way, public road, field or  
68 stream of this state, except at a regularly used rifle,  
69 pistol, skeet, target or trapshooting ground or range;

70 (10) Have in his possession a loaded firearm or a  
71 firearm from the magazine of which all shells and  
72 cartridges have not been removed, in or on any vehicle  
73 or conveyance, or its attachments, within the state,  
74 except as may otherwise be provided by law or regu-  
75 lation. Except as hereinafter provided, between five  
76 o'clock postmeridian of one day and seven o'clock  
77 antemeridian, eastern standard time of the day follow-  
78 ing, any unloaded firearm, being lawfully carried in  
79 accordance with the foregoing provisions, shall be so  
80 carried only when in a case or taken apart and securely  
81 wrapped. During the period from July first to Sep-  
82 tember thirtieth, inclusive, of each year, the foregoing  
83 requirements relative to carrying certain unloaded  
84 firearms shall be permissible only from eight-thirty  
85 o'clock postmeridian to five o'clock antemeridian,  
86 eastern standard time;

87 (11) Hunt, catch, take, kill, trap, injure or pursue with  
88 firearms or other implement by which wildlife may be  
89 taken after the hour of five o'clock antemeridian on  
90 Sunday any wild animals or wild birds: *Provided*, That  
91 traps previously and legally set may be tended after the  
92 hour of five o'clock antemeridian on Sunday, if the  
93 person so doing shall not have firearms or long bow of  
94 any description in his possession;

- 95 (12) Hunt with firearms or long bow while under the  
96 influence of intoxicating liquor;
- 97 (13) Hunt, catch, take, kill, injure or pursue a wild  
98 animal or bird with the use of a ferret;
- 99 (14) Buy raw furs, pelts or skins of fur-bearing  
100 animals unless licensed to do so;
- 101 (15) Have in his possession or about his premises,  
102 without the written permission of the director, any  
103 hunting or fishing paraphernalia which cannot be used  
104 lawfully in this state for hunting or fishing, and any  
105 conservation officer shall remove and destroy such  
106 hunting and fishing paraphernalia, whenever found in  
107 this state, and the person or persons claiming ownership  
108 shall have no recourse at law against such confiscation  
109 and destruction;
- 110 (16) Catch, take, kill, or attempt to catch, take or kill  
111 any fish at any time by any means other than by rod,  
112 line and hooks with natural or artificial lures unless  
113 otherwise authorized by law or regulation issued by the  
114 director: *Provided*, That snaring of any species of  
115 suckers, carp, fallfish and creek chubs shall at all times  
116 be lawful;
- 117 (17) Employ or hire, or induce or persuade, by the use  
118 of money or other things of value, or by any means, any  
119 person to hunt, take, catch or kill, any wild animal or  
120 wild bird except those species on which there is no  
121 closed season, or to fish for, catch, take or kill any fish,  
122 amphibian or aquatic life which is protected by the  
123 provisions of this chapter or regulations of the director,  
124 or the sale of which is prohibited;
- 125 (18) Hunt, catch, take, kill, capture, pursue, trans-  
126 port, possess or use any migratory game or nongame  
127 birds included in the terms of conventions between the  
128 United States and Great Britain and between the  
129 United States and United Mexican States for the  
130 protection of migratory birds and wild mammals  
131 concluded, respectively, August sixteen, one thousand  
132 nine hundred sixteen, and February seven, one thousand  
133 nine hundred thirty-six, except during the time and in

134 the manner and numbers prescribed by the Federal  
135 Migratory Bird Treaty Act and regulations made  
136 thereunder;

137 (19) Kill, take, catch or have in his possession, living  
138 or dead, any wild bird, other than a game bird; or  
139 expose for sale, or transport within or without the state  
140 any such bird, except as aforesaid. No part of the  
141 plumage, skin or body of any protected bird shall be sold  
142 or had in possession for sale, except mounted or stuffed  
143 plumage, skin, bodies or heads of such birds legally  
144 taken and stuffed or mounted, irrespective of whether  
145 such bird was captured within or without this state,  
146 except the English or European sparrow (*Passer*  
147 *domesticus*), starling (*Sturnus vulgaris*), crow (*Corvus*  
148 *brachyrhynchus*) and cowbird (*Molothrus ater*), which  
149 shall not be protected and the killing thereof at any time  
150 is lawful;

151 (20) Use dynamite or any like explosive or poisonous  
152 mixture placed in any waters of the state for the purpose  
153 of killing or taking fish. Any person violating the  
154 provisions of this subdivision shall be guilty of a felony,  
155 and, upon conviction thereof, shall be fined not more  
156 than five hundred dollars or imprisoned for not less than  
157 six months nor more than three years, or both fined and  
158 imprisoned;

159 (21) Have a bow and gun, or have a gun and any  
160 arrow or arrows, in the fields or woods at the same time;

161 (22) Have a crossbow in the woods or fields or use a  
162 crossbow to hunt for, take or attempt to take any  
163 wildlife;

164 (23) Take or attempt to take turkey, bear, elk or deer  
165 with any arrow unless the same is equipped with a point  
166 having at least two sharp cutting edges measuring in  
167 excess of three fourths of an inch wide;

168 (24) Take or attempt to take any wildlife with an  
169 arrow having an explosive head or shaft, a poisoned  
170 arrow, or an arrow which would affect wildlife by any  
171 chemical action;

172 (25) Shoot an arrow across any public highway or

173 from aircraft, motor-driven watercraft, motor vehicle or  
174 other land conveyance;

175 (26) Permit any dog owned by him or under his  
176 control to chase, pursue or follow upon the track of any  
177 wild animal or wild bird, either day or night, between  
178 the first day of May and the fifteenth day of August next  
179 following: *Provided*, That dogs may be trained on wild  
180 animals and wild birds, except deer and wild turkeys,  
181 and field trials may be held or conducted on the grounds  
182 or lands of the owner or by his bona fide tenant or  
183 tenants or upon the grounds or lands of another person  
184 with his written permission or on public lands, at any  
185 time: *Provided, however*, That notwithstanding any of  
186 the above provisions, no person may train a dog in any  
187 county, or portion thereof, in which a legal bear hunting  
188 season has been established prior to the first day of July,  
189 one thousand nine hundred eighty-eight, except that  
190 residents may train dogs in such counties after the  
191 twenty-fourth day of August through the end of the legal  
192 small game hunting season: *Provided further*, That  
193 nonresidents shall not train dogs in this state at any time  
194 except during the legal small game hunting season: *And*  
195 *provided further*, That the person training said dogs does  
196 not have firearms or other implements in his possession  
197 during the closed season on such wild animals and wild  
198 birds, whereby wild animals or wild birds could be  
199 taken or killed;

200 (27) Conduct or participate in a field trial, shoot-to-  
201 retrieve field trial, water race or wild hunt hereafter  
202 referred to as trial: *Provided*, That any person, group  
203 of persons, club or organization may hold such trial at  
204 any time of the year upon obtaining such permit as is  
205 provided for in section fifty-six of this article. The  
206 person responsible for obtaining said permit shall  
207 prepare and keep an accurate record of the names and  
208 addresses of all persons participating in said trial, and  
209 make same readily available for inspection by any  
210 conservation officer upon request; and

211 (28) Except as provided in section four of this article,  
212 hunt, catch, take, kill or attempt to hunt, catch, take or  
213 kill any wild animal, wild bird or wild fowl except

214 during the open season established by regulation of the  
215 director as authorized by subdivision six, section seven,  
216 article one of this chapter.

**§20-2-56. Permit to hold a field trial, shoot-to-retrieve  
field trial, water race or wild hunt; license  
exemption.**

1 The director may issue a permit to any person, group  
2 of persons, club or organization to hold or conduct a field  
3 trial, shoot-to-retrieve field trial, water race or wild  
4 hunt, hereinafter referred to as a trial, upon receipt of  
5 a written application setting forth: (1) The name of the  
6 person, group of persons, club or organization; (2) the  
7 type or kind of trial; (3) the place and county in which  
8 the trial is to be held; and (4) the period or date on which  
9 the trial is to be held. The fee for the permit shall be  
10 five dollars.

11 No person participating in a field trial, shoot-to-  
12 retrieve field trial, water race or wild hunt being held  
13 under a permit authorized by this section shall be  
14 required to possess a state hunting license.

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## CHAPTER 137

(Com. Sub. for H. B. 2705—By Delegates Love and Whitt)

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[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to wildlife resources; hunting, tagging and reporting bear; increasing fines and penalties; suspending licenses for illegal killing.

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

That section twenty-two-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.**

1 (a) No person in any county of this state shall hunt,  
2 capture, or kill any bear, or have in his possession any  
3 bear, or any part thereof, including fresh pelt, except  
4 during the hunting season for bear designated by rules  
5 and regulations to be promulgated by the department  
6 of natural resources and at no other time nor in any  
7 other way than as herein and therein provided. A person  
8 on killing a bear shall within twenty-four hours after  
9 killing, deliver the bear or fresh skin to a conservation  
10 officer or checking station for tagging. The bear shall  
11 have affixed thereto an appropriate tag provided by the  
12 department before any part of the bear may be trans-  
13 ported more than seventy-five miles from the point of  
14 kill. The checking tag shall remain on the skin until it  
15 is tanned or mounted. Any bear not properly tagged, or  
16 any part of such bear, shall be forfeited to the state for  
17 disposal to a charitable institution, or school, or as  
18 otherwise designated by the department of natural  
19 resources.

20 It shall be unlawful:

21 (1) To hunt bear without a bear damage stamp as  
22 prescribed in section forty-four-b of this article, in  
23 addition to a hunting license as prescribed in this  
24 article;

25 (2) To hunt a bear with (a) a shotgun using ammu-  
26 nition loaded with more than one solid ball, or (b) a rifle  
27 of less than twenty-five caliber using rimfire ammuni-  
28 tion or (c) a crossbow;

29 (3) To kill or attempt to kill any bear through the use  
30 of poison, or explosives, or through the use of snares,  
31 steel traps or deadfalls other than as authorized herein;

32 (4) To shoot at or kill a cub bear weighing less than  
33 one hundred pounds or to kill any bear accompanied by  
34 such cub;

35 (5) To have in possession any part of a bear not tagged  
36 in accordance with the provisions of this section;

37 (6) To enter a state game refuge with firearms for the  
38 purpose of pursuing or killing a bear except under the  
39 direct supervision of department personnel;

40 (7) To hunt bear with dogs during seasons other than  
41 those designated for such purpose by the department of  
42 natural resources; after a bear is spotted and the chase  
43 has begun, to pursue the bear with other than the pack  
44 of dogs in use at the beginning of the hunt;

45 (8) To train bear hunting dogs on bear or to cause  
46 dogs to chase bear at times other than those designated  
47 by the department of natural resources for the hunting  
48 of bear;

49 (9) Notwithstanding the provisions of sections twenty-  
50 three and twenty-four of this article, for any person to  
51 organize for commercial purposes, or to professionally  
52 outfit a bear hunt or to give or receive any consideration  
53 whatsoever or any donation in money, goods or services  
54 in connection with a bear hunt;

55 (10) For any person, who is not a resident of this state,  
56 to hunt bear with dogs or to use dogs in any fashion for  
57 the purpose of hunting bear in this state, except in  
58 legally authorized hunts.

59 (b) The following shall apply to bear destroying  
60 property:

61 (1) Any property owner including a lessee, who has  
62 suffered damage to real or personal property including  
63 loss occasioned by the death of livestock or the injury  
64 thereto or the unborn issue thereof, caused by an act of  
65 a bear may complain to any conservation officer of the  
66 department of natural resources, for the protection  
67 against such bear. Upon receipt of the complaint, such  
68 officer shall immediately proceed to investigate the  
69 circumstances giving rise to such complaint, and if such  
70 officer is unable to personally investigate the complaint,  
71 he shall designate a wildlife biologist to investigate on  
72 his behalf and if the complaint is found to be justified,  
73 such officer or designated person, may, together with  
74 the owner and other residents, proceed to hunt and  
75 destroy or capture the bear which is determined to have

76 caused the property damage: *Provided*, That only the  
77 conservation officer or the wildlife biologist shall  
78 determine whether the bear shall be destroyed or  
79 captured. Notwithstanding any provision of this article,  
80 if it is determined that the complaint is justified, the  
81 officer or designated person may summon or use dogs  
82 from within or without this state to effectuate the  
83 hunting and destruction or capture of such bear:  
84 *Provided, however*, That in the event dogs from without  
85 this state are used in such hunt, the owners thereof shall  
86 be the only nonresidents permitted to participate in  
87 hunting such bear.

88 (2) When a property owner has suffered damage as  
89 the result of an act by a bear, such owner shall file a  
90 report with the director of the department of natural  
91 resources, stating whether or not such bear was hunted  
92 and destroyed and if so, the sex, weight and estimated  
93 age of subject bear, and also submit to the department  
94 an appraisal of the property damage occasioned by  
95 subject bear duly signed by three competent appraisers,  
96 fixing the value of the property lost. Such report shall  
97 be ruled upon and the alleged damages examined by a  
98 commission to which it shall be referred by the  
99 department. The commission shall be composed of the  
100 complaining property owner, an officer of the depart-  
101 ment and a person to be selected by the officer of the  
102 department and the complaining property owner. The  
103 department shall by rules and regulations to be  
104 promulgated, establish the procedures to be followed in  
105 presenting and deciding claims under this section and  
106 all such claims shall be paid in the first instance from  
107 the bear damage fund provided in section forty-four-b  
108 of this article, and in the event such fund is insufficient  
109 to pay all claims determined by the commission to be  
110 just and proper the remainder due to owners of lost or  
111 destroyed property shall be paid from the special  
112 revenue account of the department of natural resources.

113 (3) In all cases where the act of the bear complained  
114 of by the property owner is the killing of livestock, the  
115 value to be established is the fair market value of the  
116 livestock at the date of death, and in cases where



117 livestock killed is pregnant, the total value shall be the  
118 sum of the values of the mother and the unborn issue,  
119 with the value of the unborn issue to be determined on  
120 the basis of the fair market value of the issue, had it  
121 been born. In no event shall the fair market value of the  
122 livestock exceed twice the assessed value of the livestock  
123 for personal property taxes.

124 (c) Any person who kills a bear in violation of the  
125 provisions of this section shall be guilty of a misdemea-  
126 nor, and, upon conviction thereof, shall be fined not less  
127 than five hundred dollars nor more than one thousand  
128 dollars, or imprisoned in the county jail not less than  
129 thirty nor more than one hundred days, or both fined  
130 and imprisoned; and the suspension of the person's  
131 hunting and fishing licenses for one year.

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## CHAPTER 138

(H. B. 2725—By Delegates Love and Whitt)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section thirty, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to wildlife resources; making a false application for a license unlawful.

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

That section thirty, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 2. WILDLIFE RESOURCES.

#### §20-2-30. Application and statement of eligibility for licenses; procuring license in violation of chapter.

1 It shall be the duty of every person who makes  
2 application for or procures any class of license for  
3 himself or another to inform correctly the issuing

4 authority that the applicant is eligible and fulfills the  
5 prerequisites of this chapter in respect to age, citizen-  
6 ship and residence which are necessary to entitle such  
7 person to have and hold the class of license applied for.  
8 In the case of an alien, the applicant shall produce the  
9 permit issued by the director. The possession of any  
10 class of license by any licensee shall presume that such  
11 licensee or his agent has duly informed the issuing  
12 authority that the licensee in question was eligible to  
13 have, hold and procure the class of license so issued. It  
14 shall be unlawful for any person to make false applica-  
15 tion for or procure a license in violation of the provisions  
16 of this chapter. It shall not be necessary for the state  
17 to prove, in any proceeding for an offense hereunder,  
18 that false statements were or were not made, if it be  
19 established that the licensee possessed a class of license  
20 he was not entitled to possess, or the license procured  
21 by the offender for another was of a class the licensee  
22 was not entitled to possess.

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## CHAPTER 139

(H. B. 2192—By Delegates Love and Givens)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-a, relating to prohibiting the issuance of a hunting license to persons unless the person submits a certificate of training, another state's certificate of training or a statement that the person has previously held a hunting license; establishing a course in firearm and bow and arrow safety; providing for a certificate of training to be issued upon completion thereof; and providing credit toward license reinstatement.

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

That article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section thirty-a, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-30a. Certificate of training.

1 (a) Notwithstanding any other provisions of this  
2 article, no hunting license may be issued to any person  
3 unless the person submits to the person authorized to  
4 issue hunting licenses either:

5 (1) A certificate of training as provided for in this  
6 section or proof of completion of any course which  
7 promotes as a major objective, safety in the handling of  
8 firearms and of bow and arrows and which course is  
9 approved by the Hunter Education Association;

10 (2) A certificate of training issued by another state or  
11 Canadian province; or

12 (3) An affidavit to be included on the license applica-  
13 tion form and signed by the person applying for a  
14 hunting license, stating that the person has held a  
15 hunting license issued by this or another state or  
16 Canadian province in a prior year. The provision of this  
17 section shall become effective the first day of January,  
18 one thousand nine hundred ninety.

19 (b) The director shall establish a course in the safe  
20 handling of firearms and of bows and arrows, such as  
21 the course approved by the Hunter Education Associa-  
22 tion. This course shall be given at least once per year  
23 in each county in this state and shall be taught by  
24 instructors certified by the director. In establishing and  
25 conducting this course, the director may cooperate with  
26 any reputable association or organization which pro-  
27 motes as a major objective, safety in the handling of  
28 firearms and of bows and arrows: *Provided*, That any  
29 person holding a class A-L or AB-L lifetime resident  
30 license obtained prior to his or her fifteenth birthday  
31 shall be required to obtain a certificate of training as  
32 provided for in this section. This course of instruction  
33 shall be offered without charge, except for materials or  
34 ammunition consumed. Upon satisfactory completion of  
35 the course, each person instructed in the course shall be

36 issued a certification of training for the purposes of  
37 complying with the requirements of subsection (a) of  
38 this section. The certificate shall be in the form  
39 prescribed by the director and shall be valid for hunting  
40 license application purposes.

41 (c) (1) Upon satisfactory completion of this course,  
42 any person whose hunting license has been revoked for  
43 a violation of the provisions of this chapter of the code  
44 may petition the director for a reduction of his revoca-  
45 tion time. However, under no circumstances may the  
46 time be reduced to less than one year.

47 (2) Successful completion of this course shall be  
48 required to consider the reinstatement of a hunting  
49 license of any person whose license has been revoked due  
50 to a conviction for negligent shooting of a human being  
51 or of livestock under the provisions of section fifty-seven  
52 of this article or of section eleven, article seven, chapter  
53 sixty-one of this code, and who petitions the director for  
54 an early reinstatement of his hunting privileges. Such  
55 a petitioner shall also comply with the other require-  
56 ments for consideration of reinstatement contained in  
57 section thirty-eight of this article.

58 Nothing herein contained shall mandate that any  
59 county school district in the state be responsible for  
60 implementing hunter safety education programs.

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## CHAPTER 140

(H. B. 2095—By Delegates Murphy and Love)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section thirty-four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to using interest accrued from game and fish license fees for the department of natural resources in the same manner as license fees are used.

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

That section thirty-four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-34. Disposition of license fees; reports of agents; special funds and uses.**

1 All persons in this state who receive money for  
2 licenses and permits required by this chapter shall, on  
3 the first day of each month, pay over to the director all  
4 moneys so collected by them during the preceding  
5 month. Such payment shall be accompanied by a report  
6 showing, in the case of license money, the name of the  
7 county, the class of license sold, the names and addresses  
8 of the persons paying the same, the date of the receipt  
9 thereof, the signature of the person receiving and  
10 remitting such funds, and such other information as the  
11 director may deem necessary.

12 Except where other provisions of this chapter specif-  
13 ically require and direct payment of any such moneys  
14 into designated funds for specific uses and purposes, all  
15 moneys so received by the director hereunder shall be  
16 by him promptly paid into the state treasury and shall  
17 be credited to the department of natural resources and  
18 shall be further credited to and kept in a separate fund  
19 designated "license fund—wildlife resources" which  
20 shall be used and paid out, upon order of the director  
21 solely for law enforcement and for purposes directly  
22 relating to the conservation, protection, propagation and  
23 distribution of wildlife in this state pursuant to the  
24 provisions of this chapter.

25 No funds from the "license fund—wildlife resources"  
26 shall be expended for recreational facilities or activities  
27 that are used by or for the benefit of the general public,  
28 rather than purchasers of hunting and fishing licenses.

29 Of the annual license fund income, the director shall  
30 retain ten percent for capital improvements and land  
31 purchases benefiting state wildlife, forty percent shall  
32 be budgeted to the wildlife resources division, forty  
33 percent to law enforcement and ten percent apportioned

34 by the director within provisions of this section. Any  
35 unexpended moneys for capital improvements and land  
36 purchases shall be carried forward.

37 All interest generated from game and fish license fees  
38 after the thirty-first day of July, one thousand nine  
39 hundred ninety-one, shall be used by the director for the  
40 department of natural resources in the same manner as  
41 is provided for the use of license fees.

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## CHAPTER 141

(H. B. 2354—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed March 21, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article two, chapter twenty of the code of  
West Virginia, one thousand nine hundred thirty-one, as  
amended, by adding thereto a new section, designated  
section forty- four, relating to free fishing days.

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

That article two, chapter twenty of the code of West  
Virginia, one thousand nine hundred thirty-one, as amended,  
be amended by adding thereto a new section, designated  
section forty-four to read as follows:

### ARTICLE 2. WILDLIFE RESOURCES.

#### §20-2-44. Free fishing days.

1 The director may designate up to two days each year  
2 as free sport fishing days. On a designated free fishing  
3 day, an individual is entitled to fish for all legal fish in  
4 all counties of the state without having a Class B, Class  
5 F, Class I or Class O license and without the payment  
6 of any license fee, subject to the same privileges and  
7 restrictions applicable to a holder of any such license.

## CHAPTER 142

(H. B. 2191—By Delegates Love and Givens)

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[Passed March 22, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section forty-six-j, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting the use of muzzle-loaded pistols under provisions for muzzle-loading deer hunting licenses.

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

That section forty-six-j, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 2. WILDLIFE RESOURCES.

#### §20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses.

1       There shall be a special season of at least three days  
2 each year for the taking of deer with muzzle-loading  
3 firearms, either rifles or pistols, to be set at such time  
4 and to be of such duration as determined by the  
5 commission: *Provided*, That such special season shall not  
6 be set prior to the regular season for the taking of deer  
7 with firearms. For a minimum of two days during this  
8 season, deer of either sex may be taken with muzzle-  
9 loading firearms in all counties open for the taking of  
10 antlerless deer as provided in section forty-six-b of this  
11 article. Antlered deer only may be taken in all other  
12 counties open for the taking of deer with firearms.

13       Only single shot muzzle-loading firearms with iron  
14 sights having a bore diameter of no less than forty-four  
15 one-hundredths inch shall be legal firearms for the  
16 taking of deer during the special season provided herein.

17       In a calendar year, a hunter who has previously killed  
18 more than one deer may hunt for and take only antlered  
19 deer during the special season provided herein.

20 The special season provided herein shall be concurrent  
21 with all other seasons designated for the taking of game.  
22 Any person wishing to hunt for and kill deer during  
23 the special muzzle-loading season must possess a valid  
24 Class V or Class VV license, except that this require-  
25 ment shall not apply to a resident of West Virginia who  
26 is not required to obtain a license or permit to hunt as  
27 provided in this chapter. A Class V license shall be a  
28 resident muzzle-loading deer hunting license. A Class  
29 VV license shall be a nonresident muzzle-loading deer  
30 hunting license. The licenses shall be issued in a form  
31 prescribed by the director, shall be in addition to a Class  
32 A, Class AB or Class E license and shall be valid only  
33 when accompanied thereby. The fee for the Class V  
34 license shall be five dollars. The fee for the Class VV  
35 license shall be ten dollars.

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## CHAPTER 143

(Com. Sub. for H. B. 2357—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two-b, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to lifetime hunting, fishing and trapping licenses.

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

That section seven, article two-b, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

#### §20-2B-7. Lifetime hunting, fishing and trapping licenses created.

1 Pursuant to section three of this article the following  
2 lifetime hunting, fishing and trapping licenses are  
3 hereby created and, for the lifetime of the licensee, shall  
4 serve in lieu of the equivalent annual license:



5 (a) A Class A-L lifetime resident statewide hunting  
6 and trapping license, the fee for which shall be two  
7 hundred dollars: *Provided*, That the fee shall be one  
8 hundred dollars for any resident who has not reached  
9 his or her second birthday; for proof of age, a certified  
10 birth certificate or other notarized record of birth shall  
11 be submitted with the license application;

12 (b) A Class AB-L lifetime resident combination  
13 statewide hunting, fishing and trapping license, the fee  
14 for which shall be three hundred dollars: *Provided*, That  
15 the fee shall be one hundred fifty dollars for any  
16 resident who has not reached his or her second birthday;  
17 for proof of age, a certified birth certificate or other  
18 notarized record of birth shall be submitted with the  
19 license application;

20 (c) A Class B-L lifetime resident statewide fishing  
21 license, the fee for which shall be two hundred dollars:  
22 *Provided*, That the fee shall be one hundred dollars for  
23 any resident who has not reached his or her second  
24 birthday; for proof of age, a certified birth certificate  
25 or other notarized record of birth shall be submitted  
26 with the license application; and

27 (d) A Class O-L lifetime resident trout fishing license,  
28 the fee for which shall be one hundred dollars: *Provided*,  
29 That the fee shall be fifty dollars for any resident who  
30 has not reached his or her second birthday; for proof of  
31 age, a certified birth certificate or other notarized  
32 record of birth shall be submitted with the license  
33 application.

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## CHAPTER 144

(Com. Sub. for S. B. 58—By Senators Parker, Chernenko,  
Brackenrich and Hawse)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections five, six, seven, ten and eleven, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, relating to changing permitted times and procedures for open burning; use of a safety strip; misdemeanor offense created; increasing fines and penalties; regulating underground coal fires; and providing that landowners exercise all means to extinguish forest fires.

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

That sections five, six, seven, ten and eleven, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 3. FORESTS AND WILDLIFE AREAS.

- §20-3-5. Forest fire seasons; permits for fires; prohibited fires; closure of forests.
- §20-3-6. Failure of person to extinguish fire started or used by him; throwing lighted material on forest land.
- §20-3-7. Starting fire on lands of another; penalties.
- §20-3-10. Spark arresters for sawmills, etc.; risk and hazard reduction to protect against fires; underground coal fires.
- §20-3-11. Recovery of costs incurred in fighting fires; landowners responsibility to extinguish fires.

#### **§20-3-5. Forest fire seasons; permits for fires; prohibited fires; closure of forests.**

1 The periods of each year between March first and  
2 May thirty-first, inclusive, and October first and  
3 December thirty-first, inclusive, are hereby designated  
4 as forest fire seasons. No person shall during any such  
5 fire season, except between the hours of four o'clock p.m.  
6 and seven o'clock a.m. prevailing time, set on fire or  
7 cause to be set on fire any forest land, or any grass,  
8 grain, stubble, slash, debris, or other inflammable  
9 materials. Any fire set during this time shall be  
10 extinguished prior to seven o'clock a.m. prevailing time.  
11 Such prohibition of fires between seven o'clock a.m. and  
12 four o'clock p.m. prevailing time shall not be construed  
13 to include (1) small fires set for the purpose of food  
14 preparation, or providing light or warmth around which  
15 all grass, brush, stubble, or other debris has been  
16 removed for a distance of ten feet from the fire, and (2)  
17 burning which may be conducted at any time when the  
18 ground surrounding the burning site is covered by one

19 inch or more of snow. Any person who sets or causes to  
20 be set any fire permitted by this section shall not leave  
21 such fire unattended for any period of time.

22 The director or his designated appointees or em-  
23 ployees may issue permits authorizing fires prohibited  
24 by the preceding paragraph. Such permits may be  
25 granted on such conditions and for such periods of time  
26 as the director deems necessary to prevent danger from  
27 fire to life or property, and noncompliance with any  
28 term of the permit shall be a violation of this section.  
29 Any permit which was obtained through willful misre-  
30 presentation shall be invalid. All permit holders shall  
31 take all necessary and adequate precautions to confine  
32 and control any fire permitted by the authorization;  
33 failure to take such action shall be a violation of this  
34 section and shall be justification for the director or his  
35 duly authorized representative to cancel the permit.

36 When the director considers it necessary to prevent  
37 danger from fire to life or property, he may, with the  
38 prior approval of the governor, prohibit the starting of  
39 and require the extinguishment of any fire in any area  
40 designated by the director, and such action may include  
41 any fire for which a permit has been issued under the  
42 preceding paragraph. In addition, if so deemed neces-  
43 sary, the director may, with the prior approval of the  
44 governor, designate any forest area as a danger area and  
45 prohibit entry thereon or use thereof except for the  
46 purposes and on the conditions he designates. The  
47 director by proclamation shall establish such areas and  
48 designate which fires are prohibited therein; and if a  
49 danger area is established, he shall announce the  
50 purposes for which and conditions under which entry  
51 thereon or use thereof may be made. Action hereunder  
52 may be taken by the director at any time during the  
53 year. Notice of any proclamation hereunder shall be  
54 furnished to newspapers, radio stations and television  
55 stations which serve the area designated. The proclama-  
56 tion shall not be effective until twenty-four hours after  
57 it is proclaimed. Any proclamation hereunder shall  
58 remain in force until the director, with the approval of  
59 the governor, by order terminates it. The order shall

60 designate the time of termination, and notice of any such  
61 order shall be furnished to each newspaper, radio  
62 station and television station which received a copy of  
63 the proclamation. Any person who starts or fails to  
64 extinguish a fire so prohibited or enters or uses a danger  
65 area otherwise than permitted shall be guilty of a  
66 violation of this section.

67 No burning allowed by this section may be done unless  
68 all inflammable material has been removed from  
69 around the material to be burned as a safety strip for  
70 a distance which ensures that the fire will not escape  
71 and which is no less than ten feet. Any person or his  
72 agent or employee who sets or causes to be set any fire  
73 at any time in the use and occupation of any land on  
74 which the burning was being done is in violation of this  
75 section if fire escapes beyond the safety strip and shall  
76 be guilty of a misdemeanor.

**§20-3-6. Failure of person to extinguish fire started or  
used by him; throwing lighted material on  
forest land.**

1 Any person who, by himself, or by his employees,  
2 agents or guides, or as an employee, agent or guide of  
3 any other person, shall at any time build or use any fire  
4 in any field, in any public or private road, or in any area  
5 adjacent to or in any forest land in this state, shall,  
6 before leaving such fire for any period of time, totally  
7 extinguish the same.

8 A person shall not at any time throw or place any  
9 lighted match, cigar, cigarette, firecracker or lighted  
10 material on any forest land, private road, public  
11 highway or railroad right-of-way within this state.

12 Any person who violates any provision of this section  
13 shall be guilty of a misdemeanor.

**§20-3-7. Starting fire on lands of another; penalties.**

1 Any person who willfully sets or causes to be set on  
2 fire any forest land, grass, grain, stubble, brush, slash,  
3 debris, or any other inflammable substance upon the  
4 property of another without his consent, or in a place  
5 from which it is reasonable to expect that the fire may

6 spread to the property of another without his consent,  
7 and as a result of either causes damage or destruction  
8 to any natural resources in or on the other person's  
9 property, shall be guilty of a felony, and, upon conviction  
10 thereof, shall be fined not less than five hundred dollars  
11 nor more than five thousand dollars, or be imprisoned  
12 for not less than one year nor more than five years, or  
13 both, in the discretion of the court.

**§20-3-10. Spark arresters for sawmills, etc.; risk and hazard reduction to protect against fires; underground coal fires.**

1 No person, firm or corporation shall use or operate on  
2 land subject to fire by any cause, a sawmill, a power  
3 shovel, or an engine or machine capable of throwing  
4 sparks, unless the equipment is provided with an  
5 approved spark arrester. Escape of fire from such  
6 equipment shall be prima facie evidence that such  
7 appliance was not maintained properly in compliance  
8 with this section.

9 Any person, firm or corporation owning any land and  
10 knowing of inflammable waste disposal on said land,  
11 and any person, firm or corporation using any land for  
12 the purpose of inflammable waste disposal, shall remove  
13 annually all grass, brush, debris and other inflammable  
14 material adjacent to such disposal areas to provide  
15 adequate protection to prevent the escape of fire to  
16 adjacent lands. Escape of fire from any such disposal  
17 area shall be prima facie evidence that this section had  
18 not been complied with.

19 Any person, firm or corporation owning or leasing any  
20 mineral interests and knowing of underground coal  
21 being on fire under that land shall between the first of  
22 November and the thirty-first of December of each year  
23 clear away all inflammable material within forty feet  
24 of any mine break or other opening through which the  
25 fire could escape to the surface. Any person, firm or  
26 corporation owning any underground mineral interests  
27 shall use all practical means to confine, extinguish or  
28 suppress any such fire in such underground minerals.

29 Any person, firm or corporation violating any provi-  
30 sion of this section shall be guilty of a misdemeanor.

**§20-3-11. Recovery of costs incurred in fighting fires;  
landowners responsibility to extinguish fires.**

1 The director shall, in the name of the state, recover  
2 from the person or persons, firms or corporations whose  
3 negligence or whose violation of any provision of this  
4 article caused any fire at any time on grass or forest  
5 land, the amount expended by the state for the personal  
6 services of persons especially employed under the  
7 provisions of section four of this article to control,  
8 confine, extinguish or suppress such fire, and the costs  
9 associated therewith, including payment for the per-  
10 sonal services rendered by full-time state department of  
11 natural resources employees, operating costs of state  
12 equipment used and costs related thereto in controlling,  
13 confining, extinguishing or suppressing such fire. Such  
14 recovery shall not bar an action for damages by any  
15 other person.

16 Any such fire which was caused by a trespasser or by  
17 a person who was upon the property without the consent  
18 of the owner shall not be deemed caused by the  
19 negligence of the owner; but the owner shall use all  
20 practical means to confine, extinguish or suppress any  
21 such fire on his land even though it was caused by any  
22 such person. If he fails to do so, after becoming aware  
23 of such fire, the director shall, in the name of the state,  
24 recover from him amounts expended by the state for the  
25 personal services of persons especially employed under  
26 the provisions of section four of this article to control,  
27 confine, extinguish or suppress such fire and the costs  
28 associated therewith, including payment for the per-  
29 sonal services rendered by full-time state department of  
30 natural resources employees, operating costs of state  
31 equipment used and costs related thereto in controlling,  
32 confining, extinguishing or suppressing such fire.

33 Any time that a landowner, his or her agent or  
34 employee is aware of a fire on the landowner's property,  
35 the landowner shall use all practical means to confine,  
36 extinguish or suppress the fire.

## CHAPTER 145

(H. B. 2224—By Delegates M. Burke and Stemple)

[Passed March 22, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-five and twenty-nine, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including the State of Ohio in the Middle Atlantic Interstate Forest Fire Protection Compact.

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

That sections twenty-five and twenty-nine, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-25. Governor's authority to execute.

§20-3-29. Other powers supplementary.

#### PART III. MIDDLE ATLANTIC INTERSTATE FOREST FIRE PROTECTION COMPACT.

##### §20-3-25. Governor's authority to execute.

1 The governor of West Virginia, on behalf of this state,  
2 is hereby authorized to execute a compact in substan-  
3 tially the following form, with any one or more of the  
4 states of Delaware, Maryland, New Jersey, Ohio,  
5 Pennsylvania and Virginia, and the Legislature hereby  
6 signifies in advance its approval and ratification of such  
7 compact:

#### MIDDLE ATLANTIC INTERSTATE FOREST FIRE PROTECTION COMPACT

##### 10 ARTICLE I.

11 The purpose of this compact is to promote effective  
12 prevention and control of forest fires in the middle  
13 Atlantic region of the United States by the development  
14 of integrated forest fire plans, by the maintenance of  
15 adequate forest fire-fighting services by the member  
16 states, and by providing for mutual aid in fighting forest

17 fires among the compacting states of the region and  
18 with states which are party to other regional forest fire  
19 protection compacts or agreements.

## 20 ARTICLE II.

21 This compact shall become operative immediately as  
22 to those states ratifying it whenever any two or more  
23 of the states of Delaware, Maryland, New Jersey, Ohio,  
24 Pennsylvania, Virginia and West Virginia which are  
25 contiguous have ratified it and Congress has given  
26 consent thereto.

## 27 ARTICLE III.

28 In each state, the state forester or officer holding the  
29 equivalent position who is responsible for forest fire  
30 control shall act as compact administrator for that state  
31 and shall consult with like officials of the other member  
32 states and shall implement cooperation between such  
33 states in forest fire prevention and control.

34 The compact administrators of the member states  
35 shall organize to coordinate the services of the member  
36 states and provide administrative integration in carry-  
37 ing out the purposes of this compact.

38 The compact administrators shall formulate and, in  
39 accordance with need, from time to time, revise a  
40 regional forest fire plan for the member states.

41 It shall be the duty of each member state to formulate  
42 and put in effect a forest fire plan for that state and take  
43 such measures as may be necessary to integrate such  
44 forest fire plan with the regional forest fire plan  
45 formulated by the compact administrators.

## 46 ARTICLE IV.

47 Whenever the state forest fire control agency of a  
48 member state requests aid from the state forest fire  
49 control agency of any other member state in combating,  
50 controlling or preventing forest fires, it shall be the duty  
51 of the state forest fire control agency of that state to  
52 render all possible aid to the requesting agency which  
53 is consonant with the maintenance of protection at home.



54

## ARTICLE V.

55 Whenever the forces of any member state are render-  
56 ing outside aid pursuant to the request of another  
57 member state under this compact, the employees of such  
58 state shall, under the direction of the officers of the state  
59 to which they are rendering aid, have the same powers  
60 (except the power of arrest), duties, rights, privileges  
61 and immunities as comparable employees of the state to  
62 which they are rendering aid.

63 No member state or its officers or employees render-  
64 ing outside aid pursuant to this compact shall be liable  
65 on account of any act or omission on the part of such  
66 forces while so engaged, or on account of the mainte-  
67 nance or use of any equipment or supplies in connection  
68 therewith.

69 All liability, except as otherwise provided hereinafter,  
70 that may arise either under the laws of the requesting  
71 state or under the laws of the aiding state or under the  
72 laws of a third state on account of or in connection with  
73 a request for aid, shall be assumed and borne by the  
74 requesting state.

75 Any member state rendering outside aid pursuant to  
76 this compact shall be reimbursed by the member state  
77 receiving such aid for any loss or damage to, or expense  
78 incurred in the operation of any equipment answering  
79 a request for aid, and for the cost of all materials,  
80 transportation, wages, salaries, and maintenance of  
81 employees and equipment incurred in connection with  
82 such request: *Provided*, That nothing herein contained  
83 shall prevent any assisting member state from assuming  
84 such loss, damage, expense or other costs or from  
85 loaning such equipment or from donating such services  
86 to the receiving member state without charge or cost.

87 Each member state shall provide for the payment of  
88 compensation and death benefits to injured employees  
89 and the representatives of deceased employees in case  
90 employees sustain injuries or are killed while rendering  
91 outside aid pursuant to this compact, in the same  
92 manner and on the same terms as if the injury or death  
93 were sustained within such state: *Provided*, That  
94 nothing herein shall be construed as relieving any

95 person from liability for his own negligent act or  
96 omission, or as imposing liability for such negligent act  
97 or omission upon any state.

98 For the purposes of this compact the term "employee"  
99 shall include any volunteer or auxiliary legally included  
100 within the forest fire-fighting forces of the aiding state  
101 under the laws thereof.

102 The compact administrators shall formulate proce-  
103 dures for claims and reimbursement under the provi-  
104 sions of this article, in accordance with the laws of the  
105 member states.

106

#### ARTICLE VI.

107 Nothing in this compact shall be construed to auth-  
108 orize or permit any member state to curtail or diminish  
109 its forest fire-fighting forces, equipment, services or  
110 facilities, and it shall be the duty and responsibility of  
111 each member state to maintain adequate forest fire-  
112 fighting forces and equipment to meet demands for  
113 forest fire protection within its borders in the same  
114 manner and to the same extent as if this compact were  
115 not operative.

116 Nothing in this compact shall be construed to limit or  
117 restrict the powers of any state ratifying the same to  
118 provide for the prevention, control and extinguishment  
119 of forest fires, or to prohibit the enactment or enforce-  
120 ment of state laws, rules or regulations intended to aid  
121 in such prevention, control and extinguishment in such  
122 state.

123 Nothing in this compact shall be construed to affect  
124 any existing or future cooperative relationship or  
125 arrangement between the United States forest service  
126 and a member state or states.

127

#### ARTICLE VII.

128 The compact administrators may request the United  
129 States forest service to act as the primary research and  
130 coordinating agency of the middle Atlantic interstate  
131 forest fire protection compact in cooperation with the  
132 appropriate agencies in each state, and the United  
133 States forest service may accept the initial responsibility  
134 in preparing and presenting to the compact administra-

135 tors its recommendations with respect to the regional  
 136 fire plan. Representatives of the United States forest  
 137 service may attend meetings of the compact  
 138 administrators.

139

### ARTICLE VIII.

140 The provisions of articles four and five of this compact  
 141 which relate to mutual aid in combating, controlling or  
 142 preventing forest fires shall be operative as between any  
 143 state party to this compact and any other state which  
 144 is party to a regional forest fire protection compact in  
 145 another region: *Provided*, That the Legislature of such  
 146 other state shall have given its assent to such mutual aid  
 147 provisions of this compact.

148

### ARTICLE IX.

149 This compact shall continue in force and remain  
 150 binding on each state ratifying it until the Legislature  
 151 or the governor of such state takes action to withdraw  
 152 therefrom. Such action shall not be effective until six  
 153 months after notice thereof has been sent by the chief  
 154 executive of the state desiring to withdraw to the chief  
 155 executive of all states then parties to the compact.

### §20-3-29. Other powers supplementary.

1 Any powers herein granted to the state forester shall  
 2 be regarded as in aid of and supplemental to, and in no  
 3 case a limitation upon, any of the powers vested in said  
 4 director by other laws of the State of West Virginia or  
 5 by the laws of the State of Delaware, Maryland, New  
 6 Jersey, Ohio, Pennsylvania and Virginia, or by the  
 7 Congress or the terms of said compact.

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## CHAPTER 146

(H. B. 2677—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request)

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[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact section six, article five-a,  
 chapter twenty of the code of West Virginia, one

thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section six-a, relating to form of application for permit under the water pollution control act; information required; water quality management fund established; permit application fees; annual permit fees; dedication of proceeds; rules and regulations.

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

That section six, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section six-a, to read as follows:

**ARTICLE 5A. WATER POLLUTION CONTROL ACT.**

§20-5A-6. Form of application for permit; information required.

§20-5A-6a. Water quality management fund established; permit application fees; annual permit fees; dedication of proceeds; rules and regulations.

**§20-5A-6. Form of application for permit; information required.**

1 The chief shall prescribe a form of application for all  
 2 permits for any activity specified in section five of this  
 3 article and, notwithstanding any other provision of law  
 4 to the contrary, no other discharge permit or discharge  
 5 authorization from any other state department, agency,  
 6 commission, board or officer shall be required for such  
 7 activity except that which is required from the depart-  
 8 ment of mines by the provisions of chapter twenty-two  
 9 of this code. All applications must be submitted on a  
 10 form as prescribed above. An applicant shall furnish all  
 11 information reasonably required by any such form,  
 12 including without limiting the generality of the forego-  
 13 ing, a plan of maintenance and proposed method of  
 14 operation of the activity or activities. Until all such  
 15 required information is furnished, an application shall  
 16 not be considered a complete application. The chief and  
 17 board shall protect any information (other than effluent  
 18 data) contained in such permit application form, or

19 other records, reports or plans as confidential upon a  
20 showing by any person that such information, if made  
21 public, would divulge methods or processes entitled to  
22 protection as trade secrets of such person. If, however,  
23 the information being considered for confidential  
24 treatment is contained in a national pollutant discharge  
25 elimination form, the chief or board shall forward such  
26 information to the regional administrator of the United  
27 States environmental protection agency for his concur-  
28 rence in any determination of confidentiality.

**§20-5A-6a. Water quality management fund established;  
permit application fees; annual permit  
fees; dedication of proceeds; rules and  
regulations.**

1 (a) A special revenue fund designated the "Water  
2 Quality Management Fund" shall be established in the  
3 state treasury on the first day of July, one thousand nine  
4 hundred eighty-nine.

5 (b) The permit application fees and annual permit fees  
6 established and collected pursuant to this section shall  
7 be deposited into the water quality management fund.  
8 The director shall expend the proceeds of the water  
9 quality management fund for the review of initial  
10 permit applications, renewal permit applications and  
11 permit issuance activities.

12 (c) The director shall promulgate rules in accordance  
13 with the provisions of chapter twenty-nine-a of this code,  
14 to establish a schedule of application fees for which the  
15 appropriate fee shall be submitted by the applicant to  
16 the department with the application filed pursuant to  
17 this article for any state water pollution control permit  
18 or national pollutant discharge elimination system  
19 permit. Such schedule of application fees shall be  
20 designed to establish reasonable categories of permit  
21 application fees based upon the complexity of the permit  
22 application review process required by the department  
23 pursuant to the provisions of this article and the rules  
24 promulgated thereunder: *Provided*, That no initial  
25 application fee shall exceed seven thousand five hundred  
26 dollars for any facility nor shall any permit renewal

27 application fee exceed two thousand five hundred  
28 dollars. The department shall not process any permit  
29 application pursuant to this article until said permit  
30 application fee has been received.

31 (d) The director shall promulgate rules in accordance  
32 with the provisions of chapter twenty-nine-a of this code,  
33 to establish a schedule of annual permit fees which shall  
34 be assessed annually upon each person holding a state  
35 water pollution control permit or national pollutant  
36 discharge elimination system permit issued pursuant to  
37 this article. Each person holding such a permit shall pay  
38 the prescribed annual permit fee to the department  
39 pursuant to the rules and regulations promulgated  
40 hereunder. Such schedule of annual permit fees shall be  
41 designed to establish reasonable categories of annual  
42 permit fees based upon the relative potential of such  
43 categories or permits to degrade the waters of the state:  
44 *Provided*, That no annual permit fee may exceed two  
45 thousand five hundred dollars. Any such permit issued  
46 pursuant to this article shall be void when the annual  
47 permit fee is more than one hundred eighty days past  
48 due pursuant to the rules promulgated hereunder.

49 (e) The provisions of this section shall not be applica-  
50 ble to fees required for permits issued under article  
51 three, chapter twenty-two-a of this code.

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## CHAPTER 147

(H. B. 2761—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections five and twenty-four, article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia water development authority by adding thereto provisions authorizing the refinancing of certain existing debt of local governmental agencies and increasing the limit on

borrowing by the water development authority from one hundred million dollars to two hundred million dollars.

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

That sections five and twenty-four, article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT AUTHORITY.**

§20-5C-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies shall be subject to terms of loan agreements.

§20-5C-24. Authorized limit on borrowing.

**§20-5C-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies shall be subject to terms of loan agreements.**

1 To accomplish the public policies and purposes and to  
2 meet the responsibility of the state as set forth in this  
3 article, the West Virginia water development authority  
4 may initiate, acquire, construct, maintain, repair and  
5 operate water development projects or cause the same  
6 to be operated pursuant to a lease, sublease or agree-  
7 ment with any person or governmental agency; may  
8 make loans and grants to governmental agencies for the  
9 acquisition or construction of water development  
10 projects by such governmental agencies, which loans  
11 may include amounts to refinance debt issued for  
12 existing water development projects of the governmen-  
13 tal agency when such refinancing is in conjunction with  
14 a loan for a new water development project: *Provided,*  
15 That the amount of the refinancing may not exceed fifty  
16 percent of the loan to the governmental agency; and may  
17 issue water development revenue bonds of this state,  
18 payable solely from revenues, to pay the cost of, or  
19 finance, in whole or in part, by loans to governmental  
20 agencies, such projects. A water development project  
21 shall not be undertaken unless it has been determined  
22 by the authority to be consistent with any applicable  
23 comprehensive plan of water management approved by

24 the director of the department of natural resources or  
25 in the process of preparation by such director and to be  
26 consistent with the standards set by the state water  
27 resources board, for the waters of the state affected  
28 thereby. Any resolution of the authority providing for  
29 acquiring or constructing such projects or for making  
30 a loan or grant for such projects shall include a finding  
31 by the authority that such determinations have been  
32 made. A loan agreement shall be entered into between  
33 the authority and each governmental agency to which  
34 a loan is made for the acquisition or construction of a  
35 water development project, which loan agreement shall  
36 include without limitation the following provisions:

37 (1) The cost of such project, the amount of the loan,  
38 the terms of repayment of such loan and the security  
39 therefor, which may include, in addition to the pledge  
40 of all revenues from such project after a reasonable  
41 allowance for operation and maintenance expenses, a  
42 deed of trust or other appropriate security instrument  
43 creating a lien on such project;

44 (2) The specific purposes for which the proceeds of the  
45 loan shall be expended including the refinancing of  
46 existing water development project debt as provided  
47 above, the procedures as to the disbursement of loan  
48 proceeds and the duties and obligations imposed upon  
49 the governmental agency in regard to the construction  
50 or acquisition of the project;

51 (3) The agreement of the governmental agency to  
52 impose, collect, and, if required to repay the obligations  
53 of such governmental agency under the loan agreement,  
54 increase, service charges from persons using said  
55 project, which service charges shall be pledged for the  
56 repayment of such loan together with all interest, fees  
57 and charges thereon and all other financial obligations  
58 of such governmental agency under the loan agreement;  
59 and

60 (4) The agreement of the governmental agency to  
61 comply with all applicable laws, rules and regulations  
62 issued by the authority or other state, federal and local



- 63 bodies in regard to the construction, operation, mainte-  
64 nance and use of the project.

**§20-5C-24. Authorized limit on borrowing.**

- 1 The aggregate principal amount of bonds and notes  
2 issued by the authority shall not exceed two hundred  
3 million dollars outstanding at any one time: *Provided,*  
4 That in computing the total amount of bonds and notes  
5 which may at any one time be outstanding, the principal  
6 amount of any outstanding bonds or notes refunded or  
7 to be refunded either by application of the proceeds of  
8 the sale of any refunding bonds or notes of the authority  
9 or by exchange for any such refunding bonds or notes,  
10 shall be excluded.

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## CHAPTER 148

(Com. Sub. for S. B. 262—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections two, three, four, five, six, seven, fourteen and sixteen, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article five-e by adding thereto two new sections, designated sections eight-a and twenty-four; and to amend and reenact sections two and six, article five-f of said chapter twenty, all relating to solid and hazardous waste management generally; declaration of hazardous waste management policy; legislative findings and purposes; definitions; designation of department of natural resources as the state hazardous waste management lead agency; powers and duties of director, department of natural resources; integration with other acts; establishment of study of hazardous waste management; promulgation of regulations by director, department of natural resources; authority and jurisdiction of other state agencies; corrective action; enforcement orders; hearings; civil penalties and

injunctive relief; financial responsibility provisions; solid waste management definitions; order, inspections and enforcement; and civil and criminal penalties.

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

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

## CHAPTER 20. NATURAL RESOURCES.

### Article

5E. Hazardous Waste Management Act.

5F. Solid Waste Management Act.

### ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.

§20-5E-2. Declaration of policy.

§20-5E-3. Definitions.

§20-5E-4. Designation of department of natural resources as the state hazardous waste management lead agency.

§20-5E-5. Powers and duties of director; integration with other acts; establishment of study of hazardous waste management.

§20-5E-6. Promulgation of regulations by director.

§20-5E-7. Authority and jurisdiction of other state agencies.

§20-5E-8a. Corrective action.

§20-5E-14. Enforcement orders; hearings.

§20-5E-16. Civil penalties and injunctive relief.

§20-5E-24. Financial responsibility provisions.

#### §20-5E-2. Declaration of policy.

1 (a) The Legislature finds that:

2 (1) Continuing technological progress and increases in  
3 the amount of manufacture and the abatement of air  
4 and water pollution have resulted in ever increasing  
5 quantities of hazardous wastes;

6 (2) The public health and safety and the environment  
7 are threatened where hazardous wastes are not man-  
8 aged in an environmentally sound manner;

9 (3) The knowledge and technology necessary for

10 alleviating adverse health, environmental and aesthetic  
11 impacts resulting from current hazardous waste man-  
12 agement and disposal practices are generally available;

13 (4) The manufacture, refinement, processing, treat-  
14 ment and use of coal, raw chemicals, ores, petroleum,  
15 gas and other natural and synthetic products are  
16 activities that make a significant contribution to the  
17 economy of this state; and

18 (5) The problem of managing hazardous wastes has  
19 become a matter of statewide concern.

20 (b) Therefore, it is hereby declared that the purposes  
21 of this article are:

22 (1) To protect the public health and safety, and the  
23 environment from the effects of the improper, inade-  
24 quate or unsound management of hazardous wastes;

25 (2) To establish a program of regulation over the  
26 storage, transportation, treatment and disposal of  
27 hazardous wastes;

28 (3) To assure the safe and adequate management of  
29 hazardous wastes within this state; and

30 (4) To assume regulatory primacy through Subtitle C  
31 of the Resource Conservation and Recovery Act.

### §20-5E-3. Definitions.

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

3 (1) "Chief" means the chief of the division of waste  
4 management of the department of natural resources;

5 (2) "Director" means the director of the department  
6 of natural resources;

7 (3) "Disposal" means the discharge, deposit, injection,  
8 dumping, spilling, leaking or placing of any hazardous  
9 waste into or on any land or water so that such  
10 hazardous waste or any constituent thereof may enter  
11 the environment or be emitted into the air, or dis-  
12 charged into any waters, including ground waters;

13 (4) "Division" means the division of waste manage-  
14 ment of the department of natural resources;

15 (5) "Generation" means the act or process of produc-  
16 ing hazardous waste materials;

17 (6) "Hazardous and Solid Waste Amendments of  
18 1984" means the federal Hazardous and Solid Waste  
19 Amendments of 1984 (P.L. 98-616) amending the  
20 Resource Conservation and Recovery Act;

21 (7) "Hazardous waste" means a waste or combination  
22 of wastes, which because of its quantity, concentration  
23 or physical, chemical or infectious characteristics, may  
24 (A) cause, or significantly contribute to, an increase in  
25 mortality or an increase in serious irreversible, or  
26 incapacitating reversible, illness; or (B) pose a substan-  
27 tial present or potential hazard to human health or the  
28 environment when improperly treated, stored, trans-  
29 ported, disposed of or otherwise managed;

30 (8) "Hazardous waste fuel" means fuel produced from  
31 any hazardous waste identified or listed pursuant to  
32 subdivision (2), subsection (a), section six of this article,  
33 or produced from any hazardous waste identified or  
34 listed pursuant to section six;

35 (9) "Hazardous waste management" means the syste-  
36 matic control of the collection, source separation,  
37 storage, transportation, processing, treatment, recovery  
38 and disposal of hazardous wastes;

39 (10) "Land disposal" means any placement of hazard-  
40 ous waste in a landfill, surface impoundment, waste pile,  
41 injection well, land treatment facility, salt dome  
42 formation, salt bed formation, or underground mine or  
43 cave;

44 (11) "Manifest" means the form used for identifying  
45 the quantity, composition and the origin, routing and  
46 destination of hazardous waste during its transportation  
47 from the point of generation to the point of disposal,  
48 treatment or storage;

49 (12) "Person" means any individual, trust, firm, joint  
50 stock company, public, private or government corpora-  
51 tion, partnership, association, state or federal agency,  
52 the United States government, this state or any other

53 state, municipality, county commission or any other  
54 political subdivision of a state or any interstate body;

55 (13) "Resource Conservation and Recovery Act"  
56 means the federal Resource Conservation and Recovery  
57 Act of 1976, 90 Stat. 2806, as amended;

58 (14) "Storage" means the containment of hazardous  
59 waste, either on a temporary basis or for a period of  
60 years, in such a manner as not to constitute disposal of  
61 such hazardous waste;

62 (15) "Subtitle C" means Subtitle C of the Resource  
63 Conservation and Recovery Act;

64 (16) "Treatment" means any method, technique or  
65 process, including neutralization, designed to change the  
66 physical, chemical or biological character or composi-  
67 tion of any hazardous waste so as to neutralize such  
68 waste or so as to render such waste nonhazardous, safer  
69 for transport, amenable to recovery, amenable to storage  
70 or reduced in volume. Such term includes any activity  
71 or processing designed to change the physical form or  
72 chemical composition of hazardous waste so as to render  
73 it nonhazardous;

74 (17) "Waste" means any garbage, refuse, sludge from  
75 a waste treatment plant, water supply treatment plant  
76 or air pollution control facility and other discarded  
77 material including solid, liquid, semisolid or contained  
78 gaseous material resulting from industrial, commercial,  
79 mining and agricultural operations, and from commun-  
80 ity activities, but does not include solid or dissolved  
81 material in domestic sewage, or solid or dissolved  
82 materials in irrigation return flows or industrial  
83 discharges which are point sources subject to permits  
84 under section 402 of the federal Water Pollution Control  
85 Act, as amended, or source, special nuclear or by-  
86 product material as defined by the federal Atomic  
87 Energy Act of 1954, as amended.

**§20-5E-4. Designation of department of natural resources  
as the state hazardous waste management  
lead agency.**

1 The department of natural resources is hereby

2 designated as the hazardous waste management lead  
3 agency for this state for purposes of Subtitle C of the  
4 Resource Conservation and Recovery Act, and is hereby  
5 authorized to take all action necessary or appropriate to  
6 secure to this state the benefits of said legislation. In  
7 carrying out the purposes of this article, the director is  
8 hereby authorized to cooperate with the federal envir-  
9 onmental protection agency and other agencies of the  
10 federal government, this state and other states, and  
11 other interested persons in all matters relating to  
12 hazardous waste management.

**§20-5E-5. Powers and duties of director; integration with  
other acts; establishment of study of hazard-  
ous waste management.**

1 (a) In addition to all other powers and duties pres-  
2 cribed in this article or otherwise by law, and unless  
3 otherwise specifically set forth in this article, the  
4 director shall perform any and all acts necessary to  
5 carry out the purposes and requirements of Subtitle C  
6 of the Resource Conservation and Recovery Act as of the  
7 effective date of this article.

8 (b) The director shall integrate all provisions of this  
9 article for purposes of administration and enforcement  
10 and shall avoid duplication to the maximum extent  
11 practicable, with the appropriate provisions of the water  
12 pollution control act, article five-a of this chapter; the  
13 surface mining and reclamation act, article six of this  
14 chapter; the coal refuse disposal control act, article six-  
15 c of this chapter; the air pollution control act, article  
16 twenty, chapter sixteen of this code; the oil and gas laws  
17 of article four, chapter twenty-two of this code; the  
18 public health laws, chapter sixteen of this code; the dam  
19 control act, article five-d of this chapter; the pesticide  
20 use and application act of 1975, article sixteen-b,  
21 chapter nineteen of this code; and the pesticide act of  
22 1961, article sixteen-a, chapter nineteen of this code.

23 (c) The director may enter into any agreements,  
24 including reimbursement for services rendered, con-  
25 tracts or cooperative arrangements, under such terms  
26 and conditions as he deems appropriate, with other state

27 agencies, educational institutions or other organizations  
28 and individuals as necessary to implement the provi-  
29 sions of this article.

30 (d) The director shall cooperate with and may receive  
31 and expend money from the federal government and  
32 other sources.

33 (e) Within twelve months after the effective date of  
34 this article, the director, or upon designation by the  
35 director, the chief, shall conduct and publish a study of  
36 hazardous waste management in this state which shall  
37 include, but not be limited to:

38 (1) A description of the sources of hazardous waste  
39 generation within the state, including the types and  
40 quantities of such wastes;

41 (2) A description of current hazardous waste manage-  
42 ment practices and costs, including treatment, storage  
43 and disposal within the state; and

44 (3) An inventory of existing and abandoned hazardous  
45 waste treatment, storage and disposal sites.

46 (f) The director, or upon designation by the director,  
47 the chief, in preparing the study provided for in  
48 subsection (e) of this section may (1) require any owner  
49 or operator of a storage, treatment or disposal facility,  
50 or site, or any transporter or generator of hazardous  
51 wastes to furnish or permit access to any and all  
52 information that may reasonably be required to fulfill  
53 the duty imposed upon him in subsection (e) of this  
54 section, and (2) may issue subpoenas or subpoena duces  
55 tecum to compel the production of information regard-  
56 ing the location of any existing or abandoned hazardous  
57 waste treatment, disposal or storage site as well as  
58 production of information regarding quantity, quality  
59 and hazardous waste management practices from any  
60 generator or transporter of hazardous waste or any  
61 owner or operator of an existing or abandoned hazard-  
62 ous waste treatment, storage or disposal site.

63 (g) The director, or upon designation by the director,  
64 the chief, shall (1) encourage, participate in and conduct  
65 an ongoing investigation and analysis of methods,

66 incentives, technologies of source reduction, reuse,  
67 recycling or recovery of potentially hazardous waste and  
68 a strategy for encouraging the utilization or reduction  
69 of hazardous waste, and (2) investigate the feasibility of  
70 operating an information clearinghouse for hazardous  
71 wastes.

72 (h) The director, or upon designation by the director,  
73 the chief, shall provide for the continuing education and  
74 training of appropriate department personnel in mat-  
75 ters of hazardous waste management.

**§20-5E-6. Promulgation of regulations by director.**

1 (a) The director has overall responsibility for the  
2 promulgation of rules and regulations under this article.  
3 Within six months of the effective date of this article the  
4 director shall promulgate the following rules and  
5 regulations, in consultation with the department of  
6 health, the air pollution control commission, the office  
7 of emergency services, the public service commission,  
8 the state fire marshal, the department of public safety,  
9 the department of highways, the department of agricul-  
10 ture, the water resources board and the department of  
11 mines office of oil and gas. In promulgating and revising  
12 such rules and regulations the director shall comply  
13 with the provisions of chapter twenty-nine-a of this code,  
14 shall avoid duplication to the maximum extent practi-  
15 cable with the appropriate provisions of the acts and  
16 laws set out in subsection (b), section five of this article  
17 and shall be consistent with but no more expansive in  
18 coverage nor more stringent in effect than the rules and  
19 regulations promulgated by the federal environmental  
20 protection agency pursuant to the Resource Conserva-  
21 tion and Recovery Act:

22 (1) Rules and regulations establishing a plan for the  
23 safe and effective management of hazardous wastes  
24 within the state;

25 (2) Rules and regulations establishing criteria for  
26 identifying the characteristics of hazardous waste,  
27 identifying the characteristics of hazardous waste and  
28 listing particular hazardous wastes which are subject to  
29 the provisions of this article: *Provided, That:*



30 (A) Each waste listed below shall, except as provided  
31 in paragraph (B) of this subdivision, be subject only to  
32 regulation under other applicable provisions of federal  
33 or state law in lieu of this article until proclamation by  
34 the governor finding that at least six months have  
35 elapsed since the date of submission of the applicable  
36 study required to be conducted under section 8002 of the  
37 federal Solid Waste Disposal Act, as amended, and that  
38 regulations have been promulgated with respect to such  
39 wastes in accordance with section 3001 (b)(3)(C) of the  
40 Resource Conservation and Recovery Act, and finding in  
41 the case of the wastes identified in subparagraph (iv) of  
42 this paragraph that the regulation of such wastes have  
43 been authorized by an act of Congress in accordance  
44 with section 3001 (b)(2) of the Resource Conservation  
45 and Recovery Act:

46 (i) Fly ash waste, bottom ash waste, slag waste and  
47 flue gas emission control waste generated primarily  
48 from the combustion of coal or other fossil fuels;

49 (ii) Solid waste from the extraction, beneficiation and  
50 processing of ores and minerals, including phosphate  
51 rock and overburden from the mining of uranium ore;

52 (iii) Cement kiln dust waste; and

53 (iv) Drilling fluids, produced waters and other wastes  
54 associated with the exploration, development or produc-  
55 tion of crude oil or natural gas or geothermal energy.

56 (B) Owners and operators of disposal sites for wastes  
57 listed in paragraph (A) of this subdivision may be  
58 required by the director of the department of natural  
59 resources through regulation prescribed under author-  
60 ity of this section:

61 (i) As to disposal sites for such wastes which are to  
62 be closed, to identify the locations of such sites through  
63 surveying, platting or other measures, together with  
64 recordation of such information on the public record, to  
65 assure that the locations where such wastes are disposed  
66 of are known and can be located in the future; and

67 (ii) To provide chemical and physical analysis and  
68 composition of such wastes, based on available informa-  
69 tion, to be placed on the public record.

70 (3) Rules and regulations establishing such standards  
71 applicable to generators of hazardous waste identified  
72 or listed under this article as may be necessary to  
73 protect public health and safety and the environment,  
74 which standards shall establish requirements respecting  
75 (A) record keeping practices that accurately identify  
76 the quantities of such hazardous waste generated, the  
77 constituents thereof which are significant in quantity or  
78 in potential harm to human health or the environment  
79 and the disposition of such wastes, (B) labeling practices  
80 for any containers used for the storage, transport or  
81 disposal of such hazardous waste such as will identify  
82 accurately such waste, (C) use of appropriate containers  
83 for such hazardous waste, (D) furnishing of information  
84 on the general chemical composition of such hazardous  
85 wastes to persons transporting, treating, storing or  
86 disposing of such wastes, (E) use of a manifest system  
87 and any other reasonable means necessary to assure that  
88 all such hazardous waste generated is designated for  
89 treatment, storage or disposal in, and arrives at  
90 treatment, storage or disposal facilities (other than  
91 facilities on the premises where the waste is gener-  
92 ated) with respect to which permits have been issued  
93 which are required (1) by this article or any rule and  
94 regulation required by this article to be promulgated;  
95 (2) by Subtitle C of the Resource Conservation and  
96 Recovery Act; (3) by the laws of any other state which  
97 has an authorized hazardous waste program pursuant  
98 to section 3006 of the Resource Conservation and  
99 Recovery Act; or (4) by Title I of the federal Marine  
100 Protection, Research and Sanctuaries Act, and (F) the  
101 submission of reports to the director at such times as  
102 the director deems necessary setting out the quantities  
103 of hazardous wastes identified or listed under this  
104 article that the generator has generated during a  
105 particular time period, and the disposition of all such  
106 hazardous waste;

107 (4) Rules and regulations establishing such perfor-

108 mance standards applicable to owners and operators of  
109 facilities for the treatment, storage or disposal of  
110 hazardous waste identified or listed under this article  
111 as may be necessary to protect public health and safety  
112 and the environment, which standards shall, where  
113 appropriate, distinguish in such standards between  
114 requirements appropriate for new facilities and for  
115 facilities in existence on the date of promulgation of  
116 such rules and regulations and shall include, but need  
117 not be limited to, requirements respecting:  
118 (A) Maintaining records of all hazardous wastes iden-  
119 tified or listed under this article which are treated,  
120 stored or disposed of, as the case may be, and the  
121 manner in which such wastes were treated, stored or  
122 disposed of; (B) satisfactory reporting, monitoring and  
123 inspection and compliance with the manifest system  
124 referred to in subdivision (3) of subsection (a) of this  
125 section; (C) treatment, storage or disposal of all such  
126 waste received by the facility pursuant to such operating  
127 methods, techniques and practices as may be satisfac-  
128 tory to the director; (D) the location, design and  
129 construction of such hazardous waste treatment, dispo-  
130 sal or storage facilities; (E) contingency plans for  
131 effective action to minimize unanticipated damage from  
132 any treatment, storage or disposal of any such hazardous  
133 waste; (F) the maintenance of operation of such facili-  
134 ties and requiring such additional qualifications as to  
135 ownership, continuity of operation, training for person-  
136 nel and financial responsibility as may be necessary or  
137 desirable; however, no private entity may be precluded  
138 by reason of criteria established under this subsection  
139 from the ownership or operation of facilities providing  
140 hazardous waste treatment, storage or disposal services  
141 where such entity can provide assurances of financial  
142 responsibility and continuity of operation consistent  
143 with the degree and duration of risks associated with the  
144 treatment, storage or disposal of specified hazardous  
145 waste; and (G) compliance with the requirements of  
146 section eight of this article respecting permits for  
147 treatment, storage or disposal;

148 (5) Rules and regulations specifying the terms and  
149 conditions under which the chief shall issue, modify,

150 suspend, revoke or deny such permits as may be  
151 required by this article;

152 (6) Rules and regulations for the establishment and  
153 maintenance of records; the making of reports; the  
154 taking of samples and the performing of tests and  
155 analyses; the installing, calibrating, operating and  
156 maintaining of monitoring equipment or methods; and  
157 the providing of any other information as may be  
158 necessary to achieve the purposes of this article;

159 (7) Rules and regulations establishing standards and  
160 procedures for the certification of personnel at hazard-  
161 ous waste treatment, storage or disposal facilities or  
162 sites;

163 (8) Rules and regulations for public participation in  
164 the implementation of this article;

165 (9) Rules and regulations establishing procedures and  
166 requirements for the use of a manifest during the  
167 transport of hazardous wastes;

168 (10) Rules and regulations establishing procedures  
169 and requirements for the submission and approval of a  
170 plan, applicable to owners or operators of hazardous  
171 waste storage, treatment and disposal facilities, as  
172 necessary or desirable for closure of the facility, post-  
173 closure monitoring and maintenance, sudden and  
174 accidental occurrences and nonsudden and accidental  
175 occurrences;

176 (11) Rules and regulations establishing a schedule of  
177 fees to recover the costs of processing permit applica-  
178 tions and permit renewals;

179 (12) Rules and regulations, including exemptions and  
180 variances, as appropriate, (A) establishing standards  
181 and prohibitions relating to the management of hazard-  
182 ous waste by land disposal methods; (B) establishing  
183 standards and prohibitions relating to the land disposal  
184 of liquid hazardous wastes or free liquids contained in  
185 hazardous wastes and any other liquids which are not  
186 hazardous wastes; (C) establishing standards applicable  
187 to producers, distributors, or marketers of hazardous  
188 waste fuels; (D) establishing such standards relating to

189 the management of used oil as may be necessary to  
190 protect human health and the environment;  
191 (E) establishing such standards relating to the manage-  
192 ment of recycled oil as may be necessary to protect  
193 human health and the environment; and (F) as are  
194 otherwise necessary to allow the state to assume  
195 primacy for the administration of the federal hazardous  
196 waste management program under the Resource Con-  
197 servation and Recovery Act and in particular, the  
198 Hazardous and Solid Waste Amendments of 1984:  
199 *Provided*, That such rules and regulations authorized by  
200 this subdivision shall be consistent with but no more  
201 expansive in coverage nor more stringent in effect than  
202 rules and regulations promulgated by the federal  
203 environmental protection agency under Subtitle C; and

204 (13) Such other rules and regulations as are necessary  
205 to effectuate the purposes of this article.

206 (b) The rules and regulations required by this article  
207 to be promulgated shall be reviewed and, where  
208 necessary, revised not less frequently than every three  
209 years. Additionally, the rules and regulations required  
210 to be promulgated by this article shall be revised, as  
211 necessary, within six months of the effective date of any  
212 amendment of the Resource Conservation and Recovery  
213 Act and within six months of the effective date of any  
214 adoption or revision of rules and regulations required to  
215 be promulgated by the Resource Conservation and  
216 Recovery Act.

217 (c) Notwithstanding any other provision in this article  
218 the director shall not promulgate rules and regulations  
219 which are more properly within the jurisdiction and  
220 expertise of any of the agencies empowered with rule-  
221 making authority pursuant to section seven of this  
222 article.

#### **§20-5E-7. Authority and jurisdiction of other state agencies.**

1 (a) The commissioner of highways, in consultation  
2 with the director, and avoiding inconsistencies with and  
3 avoiding duplication to the maximum extent practicable  
4 with rules and regulations required to be promulgated

87 tendencies with, and avoiding duplication to the maximum  
88 extent practicable with rules and regulations required  
89 to be promulgated pursuant to this article by the  
90 director of the department of natural resources or any  
91 other rule-making authority, shall promulgate rules and  
92 regulations establishing standards applicable to gener-  
93 ators and to permitting, licensing and operation of  
94 facilities that treat, store or dispose of hazardous wastes  
95 with infectious characteristics. Such rules and regula-  
96 tions shall specify the terms, conditions and procedures  
97 under which the state director of health or his autho-  
98 rized representative shall issue, modify, suspend, revoke  
99 or deny such permits required pursuant to those  
100 regulations. Such permits as the board of health  
101 regulations may require shall be issued by the state  
102 director of health or his authorized representative. All  
103 rules and regulations promulgated under this subsection  
104 shall be promulgated in accordance with the provisions  
105 of chapter twenty-nine-a of this code. Nothing in this  
106 subsection shall be construed to diminish or alter the  
107 authority of the air pollution control commission or its  
108 director under this article or article twenty, chapter  
109 sixteen of this code: *Provided*, That such permitting or  
110 licensing required by this subsection shall be in addition  
111 to those permits required by section eight of this article.  
112 Such rules and regulations shall be consistent with this  
113 article and shall be promulgated within six months of  
114 the effective date of this article.

115 Any person aggrieved or adversely affected by an  
116 order of the state director of health pursuant to this  
117 article, or the denial or issuance of a permit, or the  
118 failure or refusal of said director to act within a  
119 reasonable time on an application for a permit or the  
120 terms or conditions of a permit granted under the  
121 provisions of this article, may appeal to a special  
122 hearing examiner appointed to hear contested cases in  
123 accordance with the provisions of chapter twenty-nine-  
124 a of this code. All procedures for appeal and conduct of  
125 hearings shall comply with rules and regulations  
126 promulgated by the state board of health. Unless the  
127 board of health directs otherwise, the appeal hearing  
128 shall be held in the city of Charleston, Kanawha County.

129 In lieu of those enforcement and inspection powers  
130 conferred upon the state director of health elsewhere by  
131 law with respect to hazardous waste with infectious  
132 characteristics, the state director of health shall have  
133 the same enforcement and inspection powers as those  
134 granted to the chief, his authorized representative or  
135 agent or any authorized employee or agent of the  
136 department of natural resources, as the case may be,  
137 under sections eleven, twelve, thirteen, fourteen, fifteen,  
138 sixteen and seventeen of this article.

139 (e) The director shall rely, to the maximum extent  
140 practicable, on the department of health for expertise  
141 on the adverse effects of toxic hazardous waste on  
142 human health.

143 (f) The air pollution control commission, in consulta-  
144 tion with the director, and avoiding inconsistencies with  
145 and avoiding duplication to the maximum extent  
146 practicable with rules and regulations required to be  
147 promulgated pursuant to this article by the director or  
148 any other rule-making authority, and in accordance  
149 with the provisions of article twenty, chapter sixteen  
150 and chapter twenty-nine-a of this code, shall promulgate  
151 such rules and regulations establishing air pollution  
152 performance standards and permit requirements and  
153 procedures as may be necessary to comply with the  
154 requirements of this article. Such permits shall be in  
155 addition to those permits required by section eight of  
156 this article. All rules and regulations promulgated  
157 pursuant to this subsection shall be consistent with this  
158 article.

159 The commission shall adopt regulations for the  
160 monitoring and control of air emissions at hazardous  
161 waste treatment storage and disposal facilities, includ-  
162 ing, but not limited to, open tanks, surface impound-  
163 ments and landfills, as may be necessary to protect  
164 human health and the environment.

165 The commission shall promulgate rules and regula-  
166 tions establishing standards applicable to the owners  
167 and operators of facilities which burn, for purposes of  
168 energy recovery, any fuel produced from any hazardous

169 waste identified or listed pursuant to subdivision (2),  
170 subsection (a), section six of this article or which is  
171 produced from any hazardous waste identified or listed  
172 pursuant to subdivision (2), subsection (a), section six of  
173 this article and any other material, as may be necessary  
174 to protect human health and the environment: *Provided*,  
175 That such rules and regulations shall be consistent with  
176 Subtitle C.

177 With respect to this article, and any rules or regula-  
178 tions promulgated pursuant thereto, the director of the  
179 air pollution control commission has the same enforce-  
180 ment and inspection powers as those of the chief under  
181 sections eleven, twelve, thirteen, fourteen, fifteen,  
182 sixteen and seventeen of this article: *Provided*, That no  
183 action for penalties may be initiated by the director of  
184 the air pollution control commission without the  
185 approval of that commission. Any person aggrieved or  
186 adversely affected by an order of the director of the air  
187 pollution control commission made and entered in  
188 accordance with the provisions of this article, or by the  
189 failure or refusal of said director to act within a  
190 reasonable time on an application for a permit or by the  
191 issuance or denial of or by the terms and conditions of  
192 a permit granted under the provisions of this article,  
193 may appeal to the air pollution control commission in  
194 accordance with the procedure set forth in section six,  
195 article twenty, chapter sixteen of this code, and orders  
196 made and entered by said commission shall be subject  
197 to judicial review in accordance with the procedures set  
198 forth in section seven, article twenty, chapter sixteen of  
199 this code, except that as to cases involving an order  
200 granting or denying an application for a permit,  
201 revoking or suspending a permit or approving or  
202 modifying the terms and conditions of a permit or the  
203 failure to act within a reasonable time on an application  
204 for a permit, the petition for judicial review shall be  
205 filed in the circuit court of Kanawha County.

206 (g) The director of the department of natural resour-  
207 ces has exclusive responsibility for carrying out any  
208 requirement of this article with respect to coal mining  
209 wastes or overburden for which a permit is issued under



210 the surface coal mining and reclamation act of 1980,  
211 article six of this chapter.

212 (h) To the extent that this article relates to activities  
213 with respect to oil and gas wells, liquid injection wells  
214 and waste disposal wells now regulated by articles four,  
215 four-b and seven, chapter twenty-two of this code, the  
216 administrator of the office of oil and gas and the shallow  
217 gas-well review board has the jurisdiction with respect  
218 to the regulation of such activities and shall promulgate  
219 such rules and regulations as may be necessary to  
220 comply with the requirements of this article: *Provided*,  
221 That nothing in this subsection may be construed to  
222 diminish or alter the authority and responsibility of the  
223 chief or the water resources board under articles five  
224 and five-a, chapter twenty of this code.

225 In lieu of those enforcement and inspection powers  
226 conferred upon the administrator of the office of oil and  
227 gas and the shallow gas-well review board elsewhere by  
228 law, with respect to hazardous wastes, the administrator  
229 of the office of oil and gas and the shallow gas-well  
230 review board have the same enforcement and inspection  
231 powers as those granted to the chief, his authorized  
232 representative or agent or any authorized employee or  
233 agent of the department of natural resources, as the case  
234 may be, under sections eleven, twelve, thirteen, fourteen,  
235 fifteen, sixteen and seventeen of this article.

236 (i) The water resources board, in consultation with the  
237 director, and avoiding inconsistency with and avoiding  
238 duplication to the maximum extent practicable with  
239 rules and regulations required to be promulgated  
240 pursuant to this article by the director or any other rule-  
241 making authority, and in accordance with the provisions  
242 of chapter twenty-nine-a of this code, shall, as necessary,  
243 promulgate rules and regulations governing discharges  
244 into the waters of this state of hazardous waste resulting  
245 from the treatment, storage or disposal of hazardous  
246 waste as may be required by this article. Such rules and  
247 regulations shall be consistent with this article.

248 (j) All rules and regulations promulgated pursuant to  
249 this section shall be consistent with rules and regula-

250 tions promulgated by the federal environmental protec-  
251 tion agency pursuant to the Resource Conservation and  
252 Recovery Act.

253 (k) The director shall submit his written comments to  
254 the legislative rule-making review committee regarding  
255 all rules and regulations promulgated pursuant to this  
256 article.

**§20-5E-8a. Corrective action.**

1 (a) All permits issued after the date the state is  
2 delegated authority by the federal environmental  
3 protection agency to administer the portion of the  
4 federal hazardous waste program covered under the  
5 Hazardous and Solid Waste Amendments of 1984 shall  
6 contain conditions requiring corrective action for all  
7 releases of hazardous waste or constituents from any  
8 solid waste management unit at a treatment, storage or  
9 disposal facility seeking a permit under this article  
10 regardless of the time at which waste was placed in such  
11 unit. Permits issued under this article shall contain  
12 schedules of compliance for such corrective action  
13 (where such corrective action cannot be completed prior  
14 to issuance of the permit) and assurances of financial  
15 responsibility for completing such corrective action.

16 (b) The director shall amend the standards under  
17 subdivision (4), subsection (a), section six of this article,  
18 regarding corrective action required at facilities for the  
19 treatment, storage, or disposal of hazardous waste listed  
20 or identified in rules and regulations promulgated  
21 pursuant to subdivision (2), subsection (a), section six of  
22 this article, to require that corrective action be taken  
23 beyond the facility boundary where necessary to protect  
24 human health and the environment unless the owner or  
25 operator of the facility concerned demonstrates to the  
26 satisfaction of the director that, despite the owner or  
27 operator's best efforts, the owner or operator was unable  
28 to obtain the necessary permission to undertake such  
29 action. Such regulations shall take effect immediately  
30 upon promulgation, and shall apply to:

31 (1) All facilities operating under permits issued under  
32 subdivision (4), subsection (a), section six of this article;  
33 and

34 (2) All landfills, surface impoundments and waste pile  
35 units (including any new units, replacement of existing  
36 units or lateral expansions of existing units) which  
37 receive hazardous waste after the twenty-sixth day of  
38 July, one thousand nine hundred eighty-two. Pending  
39 promulgation of such regulations the director shall issue  
40 corrective action orders for facilities referred to in  
41 subdivisions (1) and (2) above on a case-by-case basis  
42 consistent with the purposes of this subsection.

**§20-5E-14. Enforcement orders; hearings.**

1 (a) If the chief, upon inspection, investigation or  
2 through other means observes, discovers or learns of a  
3 violation of the provisions of this article, any permit,  
4 order or rules or regulations issued or promulgated  
5 hereunder, he may:

6 (1) Issue an order stating with reasonable specificity  
7 the nature of the violation and requiring compliance  
8 immediately or within a specified time. An order under  
9 this section includes, but is not limited to, any or all of  
10 the following: Orders suspending, revoking or modifying  
11 permits, orders requiring a person to take remedial  
12 action or cease and desist orders;

13 (2) Seek an injunction in accordance with subsection  
14 (c) of section sixteen of this article;

15 (3) Institute a civil action in accordance with subsec-  
16 tion (c) of section sixteen of this article; or

17 (4) Request the attorney general, or the prosecuting  
18 attorney of the county in which the alleged violation  
19 occurred, to bring a criminal action in accordance with  
20 section fifteen of this article.

21 (b) Any person issued a cease and desist order may  
22 file a notice of request for reconsideration with the chief  
23 not more than seven days from the issuance of such  
24 order and shall have a hearing before the chief contest-  
25 ing the terms and conditions of such order within ten  
26 days of the filing of such notice of a request for  
27 reconsideration. The filing of a notice of request for

28 reconsideration shall not stay or suspend the execution  
29 or enforcement of such cease and desist order.

**§20-5E-16. Civil penalties and injunctive relief.**

1 (a) (1) Any person who violates any provision of this  
2 article, any permit or any rule, regulation or order  
3 issued pursuant to this article shall be subject to a civil  
4 administrative penalty, to be levied by the director, of  
5 not more than seventy-five hundred dollars for each day  
6 of such violation, not to exceed a maximum of twenty-  
7 two thousand five hundred dollars. In assessing any such  
8 penalty, the director shall take into account the  
9 seriousness of the violation and any good faith efforts to  
10 comply with applicable requirements as well as any  
11 other appropriate factors as may be established by the  
12 director by rules and regulations promulgated pursuant  
13 to this article and article three, chapter twenty-nine-a  
14 of this code. No assessment shall be levied pursuant to  
15 this subsection until after the alleged violator has been  
16 notified by certified mail or personal service. The notice  
17 shall include a reference to the section of the statute,  
18 rule, regulation, order or statement of permit conditions  
19 that was allegedly violated, a concise statement of the  
20 facts alleged to constitute the violation, a statement of  
21 the amount of the administrative penalty to be imposed  
22 and a statement of the alleged violator's right to an  
23 informal hearing. The alleged violator shall have twenty  
24 calendar days from receipt of the notice within which  
25 to deliver to the director a written request for an  
26 informal hearing. If no hearing is requested, the notice  
27 shall become a final order after the expiration of the  
28 twenty-day period. If a hearing is requested, the  
29 director shall inform the alleged violator of the time and  
30 place of the hearing. The director may appoint an  
31 assessment officer to conduct the informal hearing and  
32 then make a written recommendation to the director  
33 concerning the assessment of a civil administrative  
34 penalty. Within thirty days following the informal  
35 hearing, the director shall issue and furnish to the  
36 violator a written decision, and the reasons therefor,  
37 concerning the assessment of a civil administrative  
38 penalty. Within thirty days after notification of the

39 director's decision, the alleged violator may request a  
40 formal hearing before the water resources board in  
41 accordance with the provisions of section nineteen of this  
42 article. The authority to levy an administrative penalty  
43 shall be in addition to all other enforcement provisions  
44 of this article and the payment of any assessment shall  
45 not be deemed to affect the availability of any other  
46 enforcement provision in connection with the violation  
47 for which the assessment is levied: *Provided*, That no  
48 combination of assessments against a violator under this  
49 section shall exceed twenty-five thousand dollars per  
50 day of each such violation: *Provided, however*, That any  
51 violation for which the violator has paid a civil administrative penalty assessed under this section shall not  
52 be the subject of a separate civil penalty action under  
53 this article to the extent of the amount of the civil  
54 administrative penalty paid. All administrative penalties shall be levied in accordance with rules and  
55 regulations issued pursuant to subsection (a) of section  
56 six of this article. The net proceeds of assessments  
57 collected pursuant to this subsection shall be deposited  
58 in the hazardous waste emergency response fund  
59 established pursuant to section three, article five-g of  
60 this chapter.

63 (2) No assessment levied pursuant to subdivision (1),  
64 subsection (a) above shall become due and payable until  
65 the procedures for review of such assessment as set out  
66 in said subsection have been completed.

67 (b) Any person who violates any provision of this  
68 article, any permit or any rule, regulation or order  
69 issued pursuant to this article shall be subject to a civil  
70 penalty not to exceed twenty-five thousand dollars for  
71 each day of such violation, which penalty shall be  
72 recovered in a civil action either in the circuit court  
73 wherein the violation occurs or in the circuit court of  
74 Kanawha County.

75 (c) The chief may seek an injunction, or may institute  
76 a civil action against any person in violation of any  
77 provisions of this article or any permit, rule, regulation  
78 or order issued pursuant to this article. In seeking an  
79 injunction, it is not necessary for the chief to post bond

80 nor to allege or prove at any stage of the proceeding that  
81 irreparable damage will occur if the injunction is not  
82 issued or that the remedy at law is inadequate. An  
83 application for injunctive relief or a civil penalty action  
84 under this section may be filed and relief granted  
85 notwithstanding the fact that all administrative reme-  
86 dies provided for in this article have not been exhausted  
87 or invoked against the person or persons against whom  
88 such relief is sought.

89 (d) Upon request of the chief, the attorney general, or  
90 the prosecuting attorney of the county in which the  
91 violation occurs, shall assist the chief in any civil action  
92 under this section.

93 (e) In any action brought pursuant to the provisions  
94 of this section, the state, or any agency of the state which  
95 prevails, may be awarded costs and reasonable attor-  
96 ney's fees.

**§20-5E-24. Financial responsibility provisions.**

1 (1) Financial responsibility required by subdivision  
2 (4), subsection (a), section six of this article may be  
3 established in accordance with regulations promulgated  
4 by the director by any one, or any combination, of the  
5 following: Insurance, guarantee, surety bond, letter of  
6 credit or qualification as a self-insurer. In promulgating  
7 requirements under this section, the director is autho-  
8 rized to specify policy or other contractual terms,  
9 conditions or defenses which are necessary or are  
10 unacceptable in establishing such evidence of financial  
11 responsibility in order to effectuate the purposes of this  
12 act.

13 (2) In any case where the owner or operator is in  
14 bankruptcy reorganization, or arrangement pursuant to  
15 the federal bankruptcy code or where (with reasonable  
16 diligence) jurisdiction in any state court or any federal  
17 court cannot be obtained over an owner or operator  
18 likely to be solvent at the time of judgment, any claim  
19 arising from conduct for which evidence of financial  
20 responsibility must be provided under this section may  
21 be asserted directly against the guarantor providing  
22 such evidence of financial responsibility. In the case of

23 any action pursuant to this subsection, such guarantor  
24 shall be entitled to invoke all rights and defenses which  
25 would have been available to the owner or operator if  
26 any action had been brought against the owner or  
27 operator by the claimant and which would have been  
28 available to the guarantor if an action had been brought  
29 against the guarantor by the owner or operator.

30 (3) The total liability of any guarantor shall be limited  
31 to the aggregate amount which the guarantor has  
32 provided as evidence of financial responsibility to the  
33 owner or operator under this act. Nothing in this  
34 subsection shall be construed to limit any other state or  
35 federal statutory contractual or common law liability of  
36 a guarantor to its owner or operator including, but not  
37 limited to, the liability of such guarantor for bad faith  
38 either in negotiating or in failing to negotiate the  
39 settlement of any claim. Nothing in this subsection shall  
40 be construed to diminish the liability of any person  
41 under section 107 or 111 of the Comprehensive Envir-  
42 onmental Response Compensation and Liability Act of  
43 1980 or other applicable law.

44 (4) For the purposes of this section, the term "guaran-  
45 tor" means any person other than the owner or operator  
46 who provides evidence of financial responsibility for an  
47 owner or operator under this section.

#### ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-2. Definitions.

§20-5F-6. Orders, inspections and enforcement; civil and criminal penalties.

#### §20-5F-2. Definitions.

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

3 (a) "Approved solid waste facility" means a solid  
4 waste facility or practice which has a valid permit  
5 under this article;

6 (b) "Chief" shall mean the chief of the division of  
7 waste management of the department of natural  
8 resources;

9 (c) "Commercial solid waste facility" means any solid

10 waste facility which accepts solid waste generated by  
11 sources other than the owner or operator of the facility  
12 and shall not include an approved solid waste facility  
13 owned and operated by a person for the sole purpose of  
14 disposing of solid wastes created by that person or such  
15 person and other persons on a cost-sharing or nonprofit  
16 basis;

17 (d) "Department" shall mean the department of  
18 natural resources;

19 (e) "Director" shall mean the director of the depart-  
20 ment of natural resources;

21 (f) "Open dump" means any solid waste disposal  
22 which does not have a permit under this article, or is  
23 in violation of state law, or where solid waste is disposed  
24 in a manner that does not protect the environment;

25 (g) "Person," "persons" or "applicant" shall mean any  
26 industrial user, public or private corporation, institu-  
27 tion, association, firm or company organized or existing  
28 under the laws of this or any other state or country; state  
29 of West Virginia; governmental agency, including  
30 federal facilities; political subdivision; county commis-  
31 sion; municipal corporation; industry; sanitary district;  
32 public service district; drainage district; soil conserva-  
33 tion district; watershed improvement district; partner-  
34 ship; trust; estate; person or individual; group of persons  
35 or individuals acting individually or as a group; or any  
36 legal entity whatever;

37 (h) "Sludge" means any solid, semisolid, residue or  
38 precipitate, separated from or created by a municipal,  
39 commercial or industrial waste treatment plant, water  
40 supply treatment plant or air pollution control facility  
41 or any other such waste having similar origin;

42 (i) "Solid waste" means any garbage, paper, litter,  
43 refuse, cans, bottles, sludge from a waste treatment  
44 plant, water supply treatment plant or air pollution  
45 control facility, other discarded material, including  
46 carcasses of any dead animal or any other offensive or  
47 unsightly matter, solid, liquid, semisolid or contained  
48 liquid or gaseous material resulting from industrial,



49 commercial, mining or from community activities but  
50 does not include solid or dissolved material in sewage,  
51 or solid or dissolved materials in irrigation return flows  
52 or industrial discharges which are point sources and  
53 have permits under article five-a, chapter twenty of the  
54 code, or source, special nuclear or by-product material  
55 as defined by the Atomic Energy Act of 1954, as  
56 amended, or a hazardous waste either identified or  
57 listed under article five-e, chapter twenty of the code or  
58 refuse, slurry, overburden or other wastes or material  
59 resulting from coal-fired electric power generation, the  
60 exploration, development, production, storage and  
61 recovery of coal, oil and gas, and other mineral  
62 resources placed or disposed of at a facility which is  
63 regulated under chapter twenty-two, twenty-two-a, or  
64 twenty-two-b of the code, so long as such placement or  
65 disposal is in conformance with a permit issued  
66 pursuant to such chapters; "solid waste" shall not  
67 include materials which are recycled by being used or  
68 reused in an industrial process to make a product, as  
69 effective substitute for commercial products, or are  
70 returned to the original process as a substitute for raw  
71 material feed stock;

72 (j) "Solid waste disposal" means the practice of  
73 disposing solid waste including placing, depositing,  
74 dumping or throwing or causing to be placed, deposited,  
75 dumped or thrown any solid waste;

76 (k) "Solid waste disposal shed" means the geographi-  
77 cal area which the resource recovery—solid waste  
78 disposal authority designates and files in the state  
79 register pursuant to section eight, article twenty-six,  
80 chapter sixteen of this code; and

81 (l) "Solid waste facility" means any system, facility,  
82 land, contiguous land, improvements on the land,  
83 structures or other appurtenances or methods used for  
84 processing, recycling or disposing of solid waste,  
85 including landfills, transfer stations, resource recovery  
86 facilities and other such facilities not herein specified.

**§20-5F-6. Orders, inspections and enforcement; civil and  
criminal penalties.**

1 (a) If the director or chief, upon inspection, investiga-  
2 tion or through other means observes, discovers or  
3 learns of a violation of this article, its rules, article five-  
4 a of this chapter or its rules, or any permit or order  
5 issued under this article, he may:

6 (1) Issue an order stating with reasonable specificity  
7 the nature of the alleged violation and requiring  
8 compliance immediately or within a specified time. An  
9 order under this section includes, but is not limited to,  
10 any or all of the following: orders suspending, revoking  
11 or modifying permits, orders requiring a person to take  
12 remedial action or cease and desist orders;

13 (2) Seek an injunction in accordance with subsection  
14 (e) of this section;

15 (3) Institute a civil action in accordance with subsec-  
16 tion (e) of this section; or

17 (4) Request the attorney general, or the prosecuting  
18 attorney of the county wherein the alleged violation  
19 occurred, to bring a criminal action in accordance with  
20 subsection (b) of this section.

21 (b) Any person who willfully or negligently violates  
22 the provisions of this article, any permit or any rule,  
23 regulation or order issued pursuant to this article shall  
24 be subject to the same criminal penalties as set forth in  
25 section nineteen, article five-a, chapter twenty of the  
26 code.

27 (c) (1) Any person who violates any provision of this  
28 article, any permit or any rule, regulation or order  
29 issued pursuant to this article shall be subject to civil  
30 administrative penalty, to be levied by the director, of  
31 not more than five thousand dollars for each day of such  
32 violation, not to exceed a maximum of twenty thousand  
33 dollars. In assessing any such penalty, the director shall  
34 take into account the seriousness of the violation and any  
35 good faith efforts to comply with the applicable  
36 requirements as well as any other appropriate factors  
37 as may be established by the director by rules and  
38 regulations promulgated pursuant to this article and  
39 article three, chapter twenty-nine-a of the code. No

40 assessment shall be levied pursuant to this subsection  
41 until after the alleged violator has been notified by  
42 certified mail or personal service. The notice shall  
43 include a reference to the section of the statute, rule,  
44 regulation, order or statement of permit conditions that  
45 was allegedly violated, a concise statement of the facts  
46 alleged to constitute the violation, a statement of the  
47 amount of the administrative penalty to be imposed and  
48 a statement of the alleged violator's right to an informal  
49 hearing. The alleged violator shall have twenty calendar  
50 days from receipt of the notice within which to deliver  
51 to the director a written request for an informal  
52 hearing. If no hearing is requested, the notice shall  
53 become a final order after the expiration of the twenty-  
54 day period. If a hearing is requested, the director shall  
55 inform the alleged violator of the time and place of the  
56 hearing. The director may appoint an assessment officer  
57 to conduct the informal hearing and then make a  
58 written recommendation to the director concerning the  
59 assessment of a civil administrative penalty. Within  
60 thirty days following the informal hearing, the director  
61 shall issue and furnish to the alleged violator a written  
62 decision, and the reasons therefor, concerning the  
63 assessment of a civil administrative penalty. Within  
64 thirty days after notification of the director's decision,  
65 the alleged violator may request a formal hearing before  
66 the water resources board in accordance with the  
67 provisions of section seven of this article. The authority  
68 to levy a civil administrative penalty shall be in addition  
69 to all other enforcement provisions of this article and the  
70 payment of any assessment shall not be deemed to affect  
71 the availability of any other enforcement provision in  
72 connection with the violation for which the assessment  
73 is levied: *Provided*, That no combination of assessments  
74 against a violator under this section shall exceed twenty-  
75 five thousand dollars per day of each such violation:  
76 *Provided, however*, That any violation for which the  
77 violator has paid a civil administrative penalty assessed  
78 under this section shall not be the subject of a separate  
79 civil penalty action under this article to the extent of the  
80 amount of the civil administrative penalty paid. All  
81 administrative penalties shall be levied in accordance

82 with rules and regulations issued pursuant to subsection  
83 (a) of section four of this article. The net proceeds of  
84 assessments collected pursuant to this subsection shall  
85 be deposited in the solid waste reclamation and environ-  
86 mental response fund established in subdivision (3),  
87 subsection (h), section five-a of this article.

88 (2) No assessment levied pursuant to subdivision (1),  
89 subsection (c) above shall become due and payable until  
90 the procedures for review of such assessment as set out  
91 in said subsection have been completed.

92 (d) Any person who violates any provision of this  
93 article, any permit or any rule, regulation or order  
94 issued pursuant to this article shall be subject to a civil  
95 penalty not to exceed twenty-five thousand dollars for  
96 each day of such violation, which penalty shall be  
97 recovered in a civil action either in the circuit court  
98 wherein the violation occurs or in the circuit court of  
99 Kanawha County.

100 (e) The director or chief may seek an injunction, or  
101 may institute a civil action against any person in  
102 violation of any provisions of this article or any permit,  
103 rule, regulation or order issued pursuant to this article.  
104 In seeking an injunction, it is not necessary for the  
105 director or chief to post bond nor to allege or prove at  
106 any state of the proceeding that irreparable damage will  
107 occur if the injunction is not issued or that the remedy  
108 at law is inadequate. An application for injunctive relief  
109 or a civil penalty action under this section may be filed  
110 and relief granted notwithstanding the fact that all  
111 administrative remedies provided for in this article have  
112 not been exhausted or invoked against the person or  
113 persons against whom such relief is sought.

114 (f) Upon request of the director or chief, the attorney  
115 general or the prosecuting attorney of the county in  
116 which the violation occurs shall assist the director in any  
117 civil action under this section.

118 (g) In any civil action brought pursuant to the  
119 provisions of this section, the state, or any agency of the  
120 state which prevails, may be awarded costs and  
121 reasonable attorney's fees.

## CHAPTER 149

(H. B. 2676—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request)

Clerk's Note: It has been determined that H. B. 2676, originally styled as Chapter 149, was enrolled and signed by the Governor in an incorrect form, certain amendments adopted by the Senate having been omitted from the original House Bill.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, H. B. 2676 did not become law.

## CHAPTER 150

(H. B. 2696—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-i, relating to the creation of the West Virginia water pollution control revolving fund; definitions; designation of department of natural resources as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency; disbursement of fund moneys; administration of the fund; annual audit; collection of money due to the fund; state construction grants program established; special fund created; promulgation of legislative rules: environmental review of funded projects; conflicting provisions.

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

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-i, to read as follows:

### ARTICLE 5I. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§20-5I-1. Definitions.

- §20-5I-2. Designation of department of natural resources as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.
- §20-5I-3. West Virginia water pollution control revolving fund created; disbursement of fund moneys; administration of the fund.
- §20-5I-4. Annual audit.
- §20-5I-5. Collection of money due to the fund.
- §20-5I-6. State construction grants program established; special fund created.
- §20-5I-7. Environmental review of funded projects.
- §20-5I-8. Conflicting provisions.

### §20-5I-1. Definitions.

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

3 (a) "Authority" means the West Virginia water  
4 development authority created in section four, article  
5 five-c, chapter twenty of this code.

6 (b) "Cost" as applied to any project financed under the  
7 provisions of this article means the total of all costs  
8 incurred by a local government that are reasonable and  
9 necessary for carrying out all works and undertakings  
10 necessary or incident to the accomplishment of any  
11 project including:

12 (1) Developmental, planning and feasibility studies,  
13 surveys, plans and specifications;

14 (2) Architectural, engineering, financial, legal or  
15 other special services;

16 (3) Acquisition of land and any buildings and im-  
17 provements thereon, including the discharge of any  
18 obligations of the sellers of such land, buildings or  
19 improvements;

20 (4) Site preparation and development, including  
21 demolition or removal of existing structures, construc-  
22 tion and reconstruction, labor, materials, machinery and  
23 equipment;

24 (5) The reasonable costs of financing incurred by the  
25 local government in the course of the development of the  
26 project, carrying charges incurred before placing the  
27 project in service, interest on funds borrowed to finance  
28 the project to a date subsequent to the estimated date

29 the project is to be placed in service, necessary expenses  
30 incurred in connection with placing the project in  
31 service, and the funding of accounts and reserves which  
32 the authority may require; and

33 (6) Other items that the department of natural  
34 resources determines to be reasonable and necessary.

35 (c) "Fund" means the state water pollution control  
36 revolving fund created by this article.

37 (d) "Instrumentality" means the agency of state  
38 government empowered with the primary responsibility  
39 associated with water pollution control activities  
40 regulating publicly-owned wastewater treatment  
41 facilities.

42 (e) "Local government" means any county, city, town,  
43 municipal corporation, authority, district, public service  
44 district commission or political subdivision in West  
45 Virginia.

46 (f) "Project" means any wastewater treatment facility  
47 located or to be located in this state by a local govern-  
48 ment and includes:

49 (1) Sewage and wastewater collection, treatment and  
50 disposal facilities;

51 (2) Drainage facilities and projects;

52 (3) Administrative, maintenance, storage and labora-  
53 tory facilities related to the facilities delineated in  
54 subdivisions (1) and (2) of this subsection;

55 (4) Interests in land related to the facilities delineated  
56 in subdivisions (1), (2) and (3) of this subsection; and

57 (5) Other projects allowable under federal law.

**§20-5I-2. Designation of department of natural resources  
as state instrumentality for purposes of  
capitalization agreements with the United  
States environmental protection agency.**

1 The department of natural resources shall act as the  
2 instrumentality that is empowered to enter into capital-  
3 ization agreements with the United States environmen-

4 tal protection agency, to accept capitalization grant  
5 awards made under Title 6 of the federal clean water  
6 act, as amended, and to otherwise manage the fund  
7 created pursuant to this article in accordance with the  
8 requirements of said Title 6.

**§20-5I-3. West Virginia water pollution control revolving  
fund created; disbursement of fund moneys;  
administration of the fund.**

1 (a) Under the direction of the department of natural  
2 resources, the West Virginia water development author-  
3 ity shall establish, administer and manage a permanent  
4 and perpetual fund, to be known as the "West Virginia  
5 Water Pollution Control Revolving Fund." The fund  
6 shall be comprised of moneys appropriated to said fund  
7 by the Legislature, moneys allocated to the state by the  
8 federal government expressly for the purposes of  
9 establishing and maintaining a state water pollution  
10 control revolving fund, all receipts from loans made  
11 from the fund to local governments, all income from the  
12 investment of moneys held in the fund, and all other  
13 sums designated for deposits to the fund from any  
14 source, public or private. Moneys in the fund shall be  
15 used solely to make loans to local governments to finance  
16 or refinance the costs of a project: *Provided*, That  
17 moneys in the fund shall be utilized to defray the costs  
18 incurred by the authority and the department of natural  
19 resources in administering the provisions of this article.

20 (b) The director of the department of natural resour-  
21 ces, in consultation with the authority, shall promulgate  
22 rules in accordance with the provisions of chapter  
23 twenty-nine-a of this code, to:

24 (1) Govern the disbursement of moneys from the fund;  
25 and

26 (2) Establish a state water pollution control revolving  
27 fund program to direct the distribution of loans from the  
28 fund to particular local governments and establish the  
29 interest rates and repayment terms of such loans.

30 (c) In order to carry out the administration and  
31 management of the fund, the authority is authorized to



32 employ officers, employees, agents, advisers and consul-  
33 tants, including attorneys, financial advisers, engineers,  
34 other technical advisers and public accountants and,  
35 notwithstanding any provisions of this code to the  
36 contrary, to determine their duties and compensation  
37 without the approval of any other agency or  
38 instrumentality.

39 (d) The authority shall promulgate rules in accord-  
40 dance with the provisions of chapter twenty-nine-a of  
41 this code to govern the pledge of loans to secure bonds  
42 of the authority.

43 (e) All moneys belonging to the fund shall be kept in  
44 appropriate depositories and secured in conformance  
45 with this code. Disbursements from the fund shall be  
46 authorized for payment by the director of the authority  
47 or his designee. Any depository or officer of such  
48 depository to which moneys of the fund are paid shall  
49 act as trustee of such moneys and shall hold and apply  
50 them solely for the purposes for which said moneys are  
51 provided under this article. Moneys in the fund shall not  
52 be commingled with other money of the authority. If not  
53 needed for immediate use or disbursement, moneys in  
54 the fund may be invested or reinvested by the authority  
55 in obligations or securities which are considered lawful  
56 investments for public funds under this code.

#### §20-5I-4. Annual audit.

1 The authority shall cause an audit of its books and  
2 accounts to be made at least once each fiscal year by  
3 certified public accountants, and the cost thereof may  
4 be defrayed as a part of the cost of construction of a  
5 project or as an administrative expense under the  
6 provisions of subsection (a), section three of this article.

#### §20-5I-5. Collection of money due to the fund.

1 In order to ensure the timely payment of all sums due  
2 and owing to the fund under a revolving fund loan  
3 agreement between the state and a local government,  
4 and notwithstanding any provisions of this code to the  
5 contrary, the authority shall have, and may, at its  
6 option, exercise the following rights and remedies in the

7 event of any default by a local government under such  
8 a loan agreement:

9 (a) The authority may directly impose, in its own  
10 name and for its own benefit, service charges upon all  
11 users of a project funded by a loan distributed to a local  
12 government pursuant to this article, and may proceed  
13 directly to enforce and collect such service charges,  
14 together with all necessary costs of such enforcement  
15 and collection.

16 (b) The authority may exercise, in its own name or in  
17 the name of and as the agent for a particular local  
18 government, all of the rights, powers and remedies of  
19 the local government with respect to the project or  
20 which may be conferred upon the local government by  
21 statute, rule, regulation or judicial decision, including  
22 all rights and remedies with respect to users of the  
23 project funded by the loan distributed to that local  
24 government pursuant to this article.

25 (c) The authority may, by civil action, mandamus or  
26 other judicial or administrative proceeding, compel  
27 performance by a local government of all of the terms  
28 and conditions of the loan agreement between the state  
29 and that local government including:

30 (1) The adjustment of service charges as required to  
31 repay the loan or otherwise satisfy the terms of the loan  
32 agreement;

33 (2) The enforcement and collection of service charges;  
34 and

35 (3) The enforcement by the local government of all  
36 rights and remedies conferred by statute, rule, regula-  
37 tion or judicial decision.

38 The rights and remedies enumerated in this section  
39 shall be in addition to rights and remedies conferred  
40 upon the authority by law or pursuant to the loan  
41 agreement.

**§20-5I-6. State construction grants program established;  
special fund created.**

1 (a) The director of the department of natural resour-

2 ces shall promulgate rules in accordance with the  
3 provisions of chapter twenty-nine-a of this code to  
4 establish a state construction grants program that is  
5 designed to complement and supplement the state water  
6 pollution control revolving fund program established  
7 pursuant to subsection (b), section three of this article.

8 (b) A special fund designated "The West Virginia  
9 Construction Grants Fund" shall be established in the  
10 state treasury on the first day of July, one thousand nine  
11 hundred eighty-nine. The special fund shall be com-  
12 prised of moneys appropriated to said fund by the  
13 Legislature, assessments on existing wastewater treat-  
14 ment facilities, and all other sums designated for deposit  
15 to the special fund from any source, public or private:  
16 *Provided*, That such assessments shall be made and  
17 collected in accordance with fee schedules to be  
18 established by legislative rules promulgated by the  
19 director of the department of natural resources, in  
20 accordance with chapter twenty-nine-a of this code, and  
21 which rules shall provide that no such assessments may  
22 be collected before the first day of July, one thousand  
23 nine hundred ninety. Moneys in the special fund shall  
24 be used solely for the state construction grants program  
25 established under subsection (a) of this section:  
26 *Provided, however*, That moneys in the special fund may  
27 be utilized to defray the costs incurred by the depart-  
28 ment of natural resources in administering the provi-  
29 sions of this section.

**§20-5I-7. Environmental review of funded projects.**

1 (a) The department of natural resources shall conduct  
2 an environmental review on each project funded under  
3 this article. The director of the department of natural  
4 resources shall promulgate rules in accordance with the  
5 provisions of chapter twenty-nine-a of this code to  
6 implement the environmental review of funded projects:  
7 *Provided*, That said rules shall be consistent with the  
8 rules and regulations promulgated by the United States  
9 environmental protection agency pursuant to the federal  
10 clean water act, as amended.

11 (b) The director of the department of natural resour-

12 ces is authorized to direct a local government, or its  
 13 agent, to implement all measures that, in the judgment  
 14 of the director, are necessary in order to mitigate or  
 15 prevent adverse impacts to the public health, safety or  
 16 welfare or to the environment that may result from a  
 17 project funded under this article. The director is further  
 18 authorized to require all projects to comply with all  
 19 other appropriate federal laws and regulations that are  
 20 required of such projects under the federal clean water  
 21 act, as amended.

### §20-5I-8. Conflicting provisions.

1 The provisions of this article shall be liberally  
 2 construed to the end that its beneficial purposes may be  
 3 effectuated. Insofar as the provisions of this article are  
 4 inconsistent with the provisions of any other general,  
 5 special or local law, the provisions of this article shall  
 6 be controlling.

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## CHAPTER 151

(Com. Sub. for H. B. 2201—By Delegate Love)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one-a, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conservation officers employed by the department of natural resources; providing salary increases for conservation officers based on length of service.

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

That section one-a, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING; WEST VIRGINIA LITTER CONTROL PROGRAM.**

**§20-7-1a. Conservation officers excluded from coverage of wage and hour laws; supplemental pay in lieu of overtime; regulation; salary increase based on length of service.**

1 (a) The Legislature finds and declares that the  
2 supreme court of appeals of West Virginia has held that  
3 conservation officers are covered by the provisions of the  
4 state wage and hour law, article five-c, chapter twenty-  
5 one of this code. The Legislature further finds and  
6 declares that because of the unique duties of conserva-  
7 tion officers, it is not appropriate to apply said wage and  
8 hour provisions to them. Accordingly, conservation  
9 officers are hereby excluded from the provisions of said  
10 wage and hour law and department of civil service  
11 guidelines, rules or regulations relating thereto. They  
12 shall be subject to duty whenever and wherever  
13 required by the functions, services and needs of the  
14 department.

15 The minimum workweek for conservation officers  
16 shall be five eight hour days and the maximum number  
17 of days and hours per day shall be unrestricted.  
18 Conservation officers shall not be entitled to compensa-  
19 tory time for days or hours worked in excess of the  
20 minimum in a work day or week except a compensatory  
21 day shall be granted for any holiday worked. In lieu of  
22 any benefits to which they would have been entitled by  
23 the coverage from which they are hereby excluded,  
24 conservation officers, except those classified by the West  
25 Virginia civil service system as conservation officer IV  
26 and natural resources administrator, shall receive in  
27 addition to their salaries an annual premium payment  
28 of two thousand one hundred dollars which sum shall  
29 be prorated and included in the payment of their salary  
30 checks.

31 (b) Effective the first day of January, one thousand  
32 nine hundred ninety, each conservation officer shall  
33 receive and be entitled to an increase in salary based  
34 on length of service, including that heretofore and  
35 hereafter served as a conservation officer as follows: For  
36 five years of service with the department, such conser-  
37 vation officer shall receive a salary increase of three

38 hundred dollars per year payable during his next three  
39 years of service and a like increase at three-year  
40 intervals thereafter, with such increases to be cumula-  
41 tive: *Provided*, That for purposes of calculating such  
42 salary increase, a maximum of twenty-five years of  
43 service shall be applicable. Such salary increase shall be  
44 based upon years of service as of the first day of July  
45 of each year and shall not be recalculated until the first  
46 day of July of the following year.

47 Conservation officers in service at the time the  
48 amendment to this section becomes effective shall be  
49 given credit for prior service and shall be paid such  
50 salaries as the same length of service will entitle them  
51 to receive under the provisions hereof.

52 (c) This section shall not apply to special or emer-  
53 gency conservation officers appointed under the author-  
54 ity of section one of this article.

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## CHAPTER 152

(H. B. 2569—By Delegate Schoonover)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to making the payment of personal property taxes a prerequisite to application for certificate of number or renewal for motorboats; duties of assessors; and requiring the tax commissioner to compile schedule of motorboat values.

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

That article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-a, to read as follows:

**ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING; WEST VIRGINIA LITTER CONTROL PROGRAM.**

**§20-7-12a. Payment of personal property taxes prerequisite to application for certificate or renewal of number; duties of assessors; schedule of motorboat values.**

1 Certificates of number and renewals therefor shall not  
2 be issued or furnished by the department of motor  
3 vehicles, or any other officer charged with such duty,  
4 unless the applicant therefor, furnishes the receipt  
5 hereinafter provided to show full payment of the  
6 personal property taxes for the calendar year which  
7 immediately precedes the calendar year in which  
8 application is made on all motorboats which were listed  
9 with the department of motor vehicles in the applicant's  
10 name on the tax day for the former calendar year. If  
11 the applicant contends that any motorboat so listed was  
12 not subject to personal property taxation for that year,  
13 he shall furnish such information and evidence as the  
14 commissioner of motor vehicles may require to substan-  
15 tiate his contention.

16 The assessor shall require any person having a duty  
17 to make a return of property for taxation to him to  
18 furnish information identifying each motorboat subject  
19 to the numbering provisions of this article. When the  
20 property taxes on any such motorboat have been paid,  
21 the officer to whom the payment was made shall deliver  
22 to the person paying such taxes a written or printed  
23 receipt therefor, and shall retain for his records a  
24 duplicate of such receipt. The assessor and sheriff,  
25 respectively, shall see that the assessment records and  
26 the receipts contain information adequately identifying  
27 the motorboat as registered under the provisions of this  
28 article. The officer receiving payment shall sign each  
29 receipt in his own handwriting.

30 The assessors shall commence their duties hereunder  
31 during the tax year one thousand nine hundred eighty-  
32 nine and the department of motor vehicles shall  
33 commence its duties hereunder as of the first day of  
34 January, one thousand nine hundred ninety.

35 The state tax commissioner shall annually compile a  
36 schedule of motorboat values, based on the lowest values

37 shown in a nationally accepted used motorboat guide,  
38 which schedule shall be furnished to each assessor and  
39 shall be used by him as a guide in placing the assessed  
40 values on all motorboats in his county.

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## CHAPTER 153

(H. B. 2129—By Delegates Hatfield and White)

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[Passed March 21, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section five-a, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to substituted consent for nursing home and personal care home health services by making applicable to prospective patients.

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

That section five-a, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5C. NURSING AND PERSONAL CARE HOMES.**

**§16-5C-5a. Substituted consent for nursing home and personal care home health care services.**

1 (a) For purposes of this section, “physical or mental  
2 incapacity” or like words shall mean the inability,  
3 because of physical or mental impairment, of a nursing  
4 home or personal care home patient or prospective  
5 patient to appreciate the nature and implications of a  
6 health care decision, to make an informed choice  
7 regarding the alternatives presented, and to commun-  
8 icate that choice in an unambiguous manner.

9 (b) Where there has been no adjudication of incompete-  
10 nce of a patient or prospective patient, or appointment  
11 of a guardian for such patient or prospective patient,  
12 and where there is no applicable durable power of  
13 attorney for such patient or prospective patient, but



14 where such patient or prospective patient is unable to  
15 grant informed consent for nursing home or personal  
16 care home health care services or to acknowledge  
17 notification by a nursing home or personal care home  
18 of his or her rights, responsibilities, and any applicable  
19 rules and regulations of the nursing home or personal  
20 care home due to physical or mental incapacity, as  
21 documented in such patient's or prospective patient's  
22 health care records by two physicians licensed to  
23 practice medicine in this state under the provisions of  
24 article three or article fourteen, both of chapter thirty  
25 of this code, or one such physician and one licensed  
26 psychologist, the following persons shall be deemed the  
27 patient's or prospective patient's, representative autho-  
28 rized to consent to nursing home or personal care home  
29 health care services for such patient or prospective  
30 patient to acknowledge notification by a nursing home  
31 or personal care home of such patient's or prospective  
32 patient's rights, responsibilities and any applicable rules  
33 and regulations of the nursing home or personal care  
34 home, in the order of class priority set forth below:

- 35 (1) The patient's or prospective patient's spouse;
- 36 (2) An adult child of the patient or prospective  
37 patient;
- 38 (3) A parent of the patient or prospective patient;
- 39 (4) An adult sibling of the patient or prospective  
40 patient;
- 41 (5) The nearest living relative of the patient or  
42 prospective patient;
- 43 (6) Such other persons or classes of persons including,  
44 but not limited to, such public agencies, public  
45 guardians, other public officials, public and private  
46 corporations, protective service agencies and other  
47 representatives as the board of health may from time  
48 to time designate in its rules and regulations promul-  
49 gated pursuant to chapter twenty-nine-a of this code:  
50 *Provided*, That there is no reason to believe that such  
51 health care services are contrary to the patient's or  
52 prospective patient's religious beliefs and there is no

53 actual notice of opposition by a member of the same or  
54 a prior class.

55 (c) A nursing home or personal care home, as appli-  
56 cable, shall document its good faith efforts to contact  
57 permitted representatives in the order of class priority  
58 and its efforts to contact all members of a class before  
59 the next class is contacted but shall suffer no liability  
60 or deficiency for any failure to apprise the proper  
61 persons of the requirements of this section, so long as  
62 it has acted reasonably and in good faith. A nursing  
63 home or personal care home, as applicable, may rely on  
64 the apparent authority of one member of a class to speak  
65 for that class.

66 (d) The determination of incapacity hereunder shall  
67 expire after six months or upon the patient's earlier  
68 discharge from the nursing home or personal care home.  
69 At the end of every such six-month period, if the patient  
70 remains admitted to the nursing home or personal care  
71 home the patient shall be reexamined by two physicians  
72 licensed to practice medicine in this state as set forth  
73 in subsection (b), or by one such physician and one  
74 licensed psychologist, who shall render a determination  
75 whether or not the patient remains physically or  
76 mentally incapacitated, and such determination shall be  
77 documented in the patient's health care records. The  
78 authority of the representatives provided in subsection  
79 (b) above shall terminate unless upon such reevaluation  
80 the examining physicians, or the physician and the  
81 psychologist, as the case may be, shall certify that the  
82 patient remains physically or mentally incapacitated.

83 (e) In addition to the reevaluations required by  
84 subsection (d) above, a nursing home or personal care  
85 home, as applicable, upon request of any interested  
86 person, or upon its own initiative if it shall have reason  
87 to believe that the patient has regained his or her  
88 capacity, shall permit or obtain a reevaluation at any  
89 time by one or more physicians licensed to practice  
90 medicine in this state as set forth in subsection (b), of  
91 a prior determination of capacity or incapacity: *Pro-*  
92 *vided*, That no patient shall be required to be reeval-  
93 ated within three months of a prior evaluation except

94 for good cause shown. A physician's determination of  
95 capacity upon such reevaluation shall terminate any  
96 authority of a patient's representative under this section.

97 (f) The board of health shall adopt rules and regula-  
98 tions pursuant to the provisions of chapter twenty-nine-  
99 a of this code setting forth a procedure by which any  
100 interested person may obtain an administrative review  
101 of any determination of capacity or incapacity made  
102 pursuant to this section. Nothing contained in this  
103 section shall preclude an interested person from seeking  
104 a determination of competency or incompetency under  
105 the provisions of article eleven, chapter twenty-seven of  
106 this code in an appropriate case or from seeking any  
107 form of judicial review.

108 (g) At least one of the physicians, or the psychologist,  
109 who certifies the incapacity under subsections (b) and  
110 (d) shall not be associated, in any way, with the personal  
111 care home or the nursing home. The two persons  
112 performing the certification shall not be associated in  
113 the same medical practice.

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## CHAPTER 154

(Com. Sub. for S. B. 387—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections one, two, three, four and five, article six, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article six by adding thereto a new section, designated section six, all relating to allowing a man to bring a paternity action; jurisdiction; default judgment; statute of limitations; scope of representation of the child advocate; and establishment of paternity upon acknowledgment.

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

That sections one, two, three, four and five, article six,

chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article six be further amended by adding thereto a new section, designated section six, all to read as follows:

**ARTICLE 6. ESTABLISHMENT OF PATERNITY.**

§48A-6-1. Action for establishment of paternity.

§48A-6-2. Statute of limitations; prior statute of limitations not a bar to action under this article; effect of prior adjudication between husband and wife.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

§48A-6-4. Establishment of paternity and duty of support.

§48A-6-5. Representation of parties.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

**§48A-6-1. Action for establishment of paternity.**

1 (a) A civil action to establish the paternity of a child  
2 and to obtain an order of support for the child may be  
3 instituted, by verified complaint, in the circuit court of  
4 the county where the plaintiff, the defendant or the child  
5 resides. Such action may be brought by any of the  
6 following persons:

7 (1) An unmarried woman with physical or legal  
8 custody of a child to whom she gave birth;

9 (2) A married woman with physical or legal custody  
10 of a child to whom she gave birth, if the complaint  
11 alleges that:

12 (A) Such married woman lived separate and apart  
13 from her husband for a period of one year or more  
14 immediately preceding the birth of the child;

15 (B) Such married woman did not cohabit with her  
16 husband at any time during such separation and that  
17 such separation has continued without interruption; and

18 (C) The defendant, rather than her husband, is the  
19 father of the child.

20 (3) Any person, including the state of West Virginia  
21 or the department of human services, who is not the  
22 mother of the child, but who has physical or legal  
23 custody of such child;

- 24 (4) The guardian or committee of such child;
- 25 (5) The next friend of such child when the child is a  
26 minor;
- 27 (6) By such child in his own right at any time after  
28 the child's eighteenth birthday but prior to the child's  
29 twenty-first birthday; or
- 30 (7) A man purporting to be the father of a child born  
31 out-of-wedlock, when there has been no prior judicial  
32 determination of paternity.
- 33 (b) A person who has sexual intercourse in this state  
34 submits to the jurisdiction of the courts of this state for  
35 an action brought under this article with respect to a  
36 child who was conceived by that act of intercourse.  
37 Service of process may be perfected according to the  
38 rules of civil procedure.
- 39 (c) If the person against whom the action is brought  
40 has failed to plead or otherwise defend the action after  
41 proper service has been obtained, judgment by default  
42 may be issued by the court as provided by the rules of  
43 civil procedure.

**§48A-6-2. Statute of limitations; prior statute of limitations not a bar to action under this article; effect of prior adjudication between husband and wife.**

- 1 (a) Except for an action brought by a child in his or  
2 her own right under the provisions of subdivision (6),  
3 subsection (a), section one of this article, an action for  
4 the establishment of the paternity of a child shall be  
5 brought prior to such child's eighteenth birthday.
- 6 (b) An action to establish paternity under the provi-  
7 sions of this article may be brought by or on behalf of  
8 a child notwithstanding the fact that, prior to the  
9 effective date of this section, an action to establish  
10 paternity may have been barred by a prior statute of  
11 limitations set forth in this code or otherwise provided  
12 for by law.
- 13 (c) An action to establish paternity under the provi-  
14 sions of this article may be brought for any child who

15 was not yet eighteen years of age on the sixteenth day  
16 of August, one thousand nine hundred eighty-four,  
17 regardless of the current age.

18 (d) An action to establish paternity under the provi-  
19 sions of this article may be brought for any child who  
20 was not yet eighteen years of age on the sixteenth day  
21 of August, one thousand nine hundred eighty-four, and  
22 for whom a paternity action was brought but dismissed  
23 because a statute of limitations of less than eighteen  
24 years was then in effect.

25 (e) Any other provision of law to the contrary notwith-  
26 standing, when a husband and wife or former husband  
27 and wife, in an action for divorce or an action to obtain  
28 a support order, have litigated the issue of the paternity  
29 of a child conceived during their marriage to the end  
30 that the husband has been adjudged not to be the father  
31 of such child, such prior adjudication of the issue of  
32 paternity between the husband and the wife shall not  
33 preclude the mother of such child from bringing an  
34 action against another person to establish paternity  
35 under the provisions of this article.

**§48A-6-3. Medical testing procedures to aid in the  
determination of paternity.**

1 (a) The court may, on its own motion, or shall upon  
2 the motion of any party, order the mother, her child and  
3 the man to submit to blood tests or tissue tests to aid  
4 the court in proving or disproving paternity. If such  
5 tests are ordered, the court shall direct that the  
6 inherited characteristics, including, but not limited to,  
7 blood types, be determined by appropriate testing  
8 procedures at a hospital, independent medical institu-  
9 tion or independent medical laboratory, duly licensed  
10 under the laws of this state, or any other state, and shall  
11 appoint an expert qualified as an examiner of genetic  
12 markers to analyze and interpret the results and to  
13 report to the court. The court shall consider the results  
14 as follows:

15 (1) Blood or tissue test results which exclude the man  
16 as the father of the child are admissible and shall be  
17 clear and convincing evidence of nonpaternity and the

18 court shall, upon considering such evidence, dismiss the  
19 action.

20 (2) Blood or tissue test results which show a statistical  
21 probability of paternity of more than seventy-five  
22 percent are admissible and shall be weighed along with  
23 other evidence of the defendant's paternity.

24 (3) If the results of the blood or tissue tests or the  
25 expert's analysis of inherited characteristics is disputed,  
26 the court, upon reasonable request of a party, shall order  
27 that additional tests be made by the same laboratory or  
28 another laboratory at the expense of the party request-  
29 ing additional testing.

30 (b) Documentation of the chain of custody of the blood  
31 or tissue specimens is competent evidence to establish  
32 such chain of custody. A verified expert's report shall  
33 be admitted at trial unless a challenge to the testing  
34 procedures or a challenge to the results of test analysis  
35 has been made before trial. The costs and expenses of  
36 making such tests shall be paid by the parties in  
37 proportions and at times determined by the court.

#### **§48A-6-4. Establishment of paternity and duty of support.**

1 If the defendant, by verified responsive pleading shall  
2 admit that the man is the father of the child and owes  
3 a duty of support, or if after a trial on the merits, the  
4 court or jury shall find, by clear and convincing  
5 evidence that the man is the father of the child, the court  
6 shall order support in accordance with the provisions of  
7 this chapter.

#### **§48A-6-5. Representation of parties.**

1 (a) The children's advocate of the county where the  
2 action under this section is brought shall litigate the  
3 action in the best interests of the child although the  
4 action is commenced in the name of a plaintiff listed in  
5 section one of this article.

6 (b) The defendant shall be advised of his right to  
7 counsel. In the event he files an affidavit that he is a

8 poor person within the meaning of section one, article  
9 two, chapter fifty-nine of this code, counsel shall be  
10 appointed to represent him. The service and expenses of  
11 counsel shall be paid in accordance with the provisions  
12 of article twenty-one, chapter twenty-nine of this code:  
13 *Provided*, That the court shall make a finding of  
14 eligibility for appointed counsel in accordance with the  
15 requirements of said article and, if the person qualifies,  
16 any blood or tissue tests ordered to be taken shall be  
17 paid as part of the costs of the proceeding.

18 (c) The children's advocate shall litigate the action  
19 only to the extent of establishing paternity and estab-  
20 lishing and enforcing a child support order. The  
21 children's advocate shall participate in matters of  
22 custody and visitation only to the extent provided by  
23 article three of this chapter.

**§48A-6-6. Establishing paternity by acknowledgment of  
natural father.**

1 (a) The natural father of a child may file an applica-  
2 tion to establish paternity in circuit court when he  
3 acknowledges that the child is his or when he has  
4 married the mother of the child after the child's birth  
5 and upon consent of the mother, or if she is deceased  
6 or incompetent, or has surrendered custody, upon the  
7 consent of the person or agency having custody of the  
8 child or of a court having jurisdiction over the child's  
9 custody. The application may be filed in the county  
10 where the natural father resides, the child resides, or  
11 the child was born. The circuit court, if satisfied that  
12 the applicant is the natural father and that establish-  
13 ment of the relationship is for the best interest of the  
14 child, shall enter the finding of fact and an order upon  
15 its docket, and thereafter the child is the child of the  
16 applicant, as though born to him in lawful wedlock.

17 (b) A written acknowledgment by both the man and  
18 woman that the man is the father of the named child  
19 legally establishes the man as the father of the child for  
20 all purposes and child support can be established under  
21 the provisions of this chapter.



## CHAPTER 155

(Com. Sub. for S. B. 46—By Senator Tucker, Mr. President, By Request)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article five-a of said chapter, all relating to permitting trustees of permanent endowment funds for cemetery associations to receive negotiable, reasonable compensation for their services; permitting nonresident trust companies and banks to serve as trustees for permanent endowment care funds; providing that secretary of state accepts service of process on behalf of such nonresident trustees; and bond.

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

That section five, article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article five-a of said chapter be amended and reenacted, all to read as follows:

### Article

#### 5. Cemeteries.

#### 5A. Peperual Care of and Trust Funds for Cemeteries.

### ARTICLE 5. CEMETERIES.

#### §35-5-5. Permanent endowment funds for cemetery associations — Trustee therefor; appointment; bond; compensation; vacancy.

1 The board of directors of any such cemetery associ-  
2 ation shall appoint a trustee, who shall be a responsible  
3 businessman or some solvent federally insured banking  
4 institution, to act as such trustee for a period of two  
5 years, or until his, or its, successor is appointed. Such  
6 trustee shall be known as the trustee of the permanent  
7 endowment fund of such cemetery association, and shall  
8 immediately upon his, or its, appointment and accep-  
9 tance of the trust, give bond to the said cemetery  
10 association, with some solvent and reliable bonding

11 company authorized to do business in this state, in a sum  
12 equal to the amount which may come into the hands of  
13 such trustee, which bond shall be increased or dimin-  
14 ished from time to time so as always to equal at least  
15 the amount of the trust funds in the hands of such  
16 trustee; and the premium upon such bond shall be paid  
17 out of the income of the trust funds in the trustee's hands  
18 and as part of the cost of the administration of the trust  
19 fund. No trustee appointed under this section shall enter  
20 upon the discharge of his, or its, duties until such bond  
21 is given and approved by the board of directors of such  
22 cemetery association: *Provided*, That if the trustee so  
23 appointed by any such cemetery association be a  
24 federally insured banking institution authorized and  
25 qualified to exercise trust powers under and subject to  
26 the provisions of article four, chapter thirty-one-a of the  
27 code of West Virginia, one thousand nine hundred  
28 thirty-one, as amended, it shall not be required to give  
29 the bond hereinbefore provided, excepting and unless  
30 required by the provisions of section eighteen, article  
31 four, chapter thirty-one-a of said code. The board of  
32 directors of such cemetery association shall allow such  
33 trustee, for service as such, a negotiable, reasonable fee  
34 to be paid from such trust funds. In the event of a  
35 vacancy in such trusteeship, or failure of the board of  
36 directors of any such cemetery association to appoint  
37 such trustee, after being requested so to do by any  
38 stockholder of any such cemetery association, or its  
39 successor, or any citizen interested, application may be  
40 made to the circuit court of the county wherein such  
41 cemetery association is located, and it shall be the duty  
42 of the circuit court of such county to appoint a trustee,  
43 who, when so appointed and qualified, shall have all the  
44 powers and perform all the duties of such trustee as  
45 provided in this section.

**ARTICLE 5A. PERPETUAL CARE OF AND TRUST FUNDS FOR  
CEMETERIES.**

**§35-5A-5. Trustee of the permanent endowment care  
funds.**

1 The trustee of the permanent endowment care fund  
2 shall be a federally insured trust company or a federally

3 insured banking institution with fiduciary powers  
4 authorized and qualified to exercise trust powers under  
5 and subject to the provisions of article four, chapter  
6 thirty-one-a of this code, or of the corresponding law of  
7 another state. A nonresident federally insured trust  
8 company or nonresident federally insured banking  
9 institution so authorized and qualified may become a  
10 trustee of a permanent endowment care fund notwith-  
11 standing the provision of section seven, article eight-a,  
12 chapter thirty-one-a of this code. When a nonresident  
13 trust company or nonresident banking institution  
14 becomes a trustee of a permanent endowment care fund  
15 for a perpetual care cemetery in this state, said  
16 nonresident trust company or nonresident banking  
17 institution thereby constitutes the secretary of state as  
18 its true and lawful attorney-in-fact upon whom service  
19 of notice and process in any action or proceeding against  
20 it as trustee, and acceptance of such trust by said  
21 nonresident trust company or nonresident banking  
22 institution shall be a manifestation of agreement that  
23 any notice or process, which is served in the manner  
24 hereinafter provided in this section, shall be of the same  
25 legal force and validity as though such nonresident trust  
26 company or nonresident banking institution was person-  
27 ally served with notice and process within this state.  
28 Service of such notice and process and the manner of  
29 acceptance of the same by the secretary of state shall  
30 be in accordance with the provisions of section fifteen,  
31 article one, chapter thirty-one of this code.

32 Any nonresident trust company or nonresident bank-  
33 ing institution appointed as trustee of a permanent  
34 endowment care fund shall immediately upon accep-  
35 tance of the trust give bond in accordance with the  
36 provisions of section five, article five, chapter thirty-five  
37 of this code.

38 The trustee shall invest such permanent endowment  
39 care funds for the purpose of providing an income to be  
40 used for the maintenance, improvement and preserva-  
41 tion of the grounds, lots, buildings, equipment, records,  
42 statuary, and other real and personal property of the

43 cemetery, and shall acquire, invest, reinvest, exchange,  
44 retain, sell and manage all property now or hereafter  
45 coming into such trustee's care or control.

46 The trustee shall exercise the judgment and care  
47 under the circumstances then prevailing, which men of  
48 prudence, discretion and intelligence, exercise in the  
49 management of their own affairs, not in regard to  
50 speculation, but in regard to the permanent disposition  
51 of their funds, considering the probable income as well  
52 as the probable safety of their capital.

53 Within the limitations of the foregoing standard, any  
54 such trustee is authorized to acquire and retain without  
55 any order of any court, every kind of property, real,  
56 personal or mixed, and every kind of investment,  
57 specifically including, but not by way of limitation,  
58 bonds, debentures and other corporate obligations, and  
59 stocks, preferred or common, which men of prudence,  
60 discretion and intelligence acquire or retain for their  
61 own account.

62 The trustee shall prepare an annual report of all of  
63 the assets and investments of the permanent endowment  
64 care fund. One copy shall be maintained at the office of  
65 the cemetery and shall be available for inspection at  
66 reasonable times by owners of interment rights in the  
67 cemetery.

68 The trustee shall pay over to the cemetery all income  
69 derived from the permanent endowment care fund  
70 semiannually to be expended only for the maintenance,  
71 improvement and preservation of the grounds, lots,  
72 buildings, equipment, records, statuary and other real  
73 and personal property of the cemetery.

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## CHAPTER 156

(H. B. 2740—By Delegates Flanigan and Kephart)

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[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to authorize and direct the commissioner of the

department of commerce to accept as an addition to the state park system and particularly as an addition to Pipestem State Resort Park, Pipestem, West Virginia, approximately twenty acres, more or less, known as Brush Creek Falls in Mercer County.

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

**ADDITION TO PIPESTEM STATE RESORT PARK.**

**§1. Acceptance of Brush Creek Falls property.**

1 The Legislature hereby directs the commissioner of  
2 the Department of Commerce to accept the transfer by  
3 deed from Princeton area business development corpo-  
4 ration, of twenty acres, more or less, situate in Plymouth  
5 District, Mercer County, West Virginia, known as the  
6 "Brush Creek Falls Property," bounded and described  
7 as follows:

8 "BEGINNING at a spruce pine on the bank of Brush  
9 Creek; thence S. 38 degrees E. crossing the creek 12  
10 poles (198.0 feet) to a large spruce pine on a hillside;  
11 thence N. 32 degrees E. 60 Poles, (990. feet) to a Spruce  
12 Pine on a cliff; thence S. 44 degrees W., crossing the  
13 creek at 10 poles (165.0 feet) 59 poles (973.50 feet) to a  
14 white pine on top of a hill; thence S. 32 degrees W. 90  
15 poles (1485.0 feet) to a white pine and chestnut sapling;  
16 thence N. 44 degrees E. 28 poles (462 feet) to a spruce,  
17 pine, buckeye and cucumber sapling on bank of the  
18 creek; thence with the meanderings of the creek to the  
19 BEGINNING containing 30 acres, more or less. There  
20 is excepted and reserve from the operation of this deed  
21 a five acre tract which was conveyed by Lark Farley  
22 and wife to L.A. Farley by deed dated June 1, 1922, of  
23 record in said Clerk's Office in Deed Book 147 at page  
24 154, which said exception is bounded and described as  
25 follows:

26 "BEGINNING in the J.W. Johnston line near a  
27 chestnut; thence running in a southeasterly direction  
28 about 18 poles to a chestnut on a cliff; thence in a  
29 southern direction about 20 poles to a chestnut on a cliff,  
30 with the meanderings of the cliff; thence in a  
31 southwesterly direction about 31 1/2 poles to a Bunch

32 of Chestnut Sprouts; thence about 2 poles to the Johnston  
33 line, and then with the Johnston line about 37 poles to  
34 the BEGINNING, and containing five (5) acres, more  
35 or less.”

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## CHAPTER 157

(Com. Sub. for H. B. 2695—By Mr. Speaker, Mr. Chambers,  
and Delegate Murphy)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to repeal article twenty-four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter seventeen of said code by adding thereto a new article, designated article sixteen-b; and to amend and reenact section seven, article three, chapter twenty-four of said code, all relating to public port authority; creation; board of directors—members, officers, qualifications, terms, oath, compensation, quorum and delegation of power; executive director; appointment; powers and duties; compensation; purposes of authority; commerce; tourism; divisions; powers and duties of authority; special West Virginia public port authority operations fund; foreign trading zones; export trading company; division of tourist trains and transportation; disclaimer of any liability of the state of West Virginia; prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons; prohibition against certain financial interests; criminal penalties; permit to abandon services; certificate; hearing upon intervention by consumer advocate; alternative service; and repeal tourist train and transportation board.

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

That article twenty-four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter seventeen of said code be amended by adding thereto a new article, designated article sixteen-b; and that section seven, article three, chapter twenty-four of said code be amended and reenacted, all to read as follows:

**Chapter****17. Roads and highways.****24. Public Service Commission.****CHAPTER 17. ROADS AND HIGHWAYS.****ARTICLE 16B. PUBLIC PORT AUTHORITY.**

- §17-16B-1. Creation of authority.
- §17-16B-2. Board of directors—Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.
- §17-16B-3. Executive director; appointment; powers and duties; compensation.
- §17-16B-4. Purposes of authority; commerce; tourism.
- §17-16B-5. Divisions.
- §17-16B-6. Powers and duties of authority.
- §17-16B-7. Special West Virginia public port authority operations fund.
- §17-16B-8. Designation of local port authority districts, powers and duties; plan for development.
- §17-16B-9. Construction and operation of facilities by private enterprise; leasing of facilities by port authority.
- §17-16B-10. Foreign trade zones; free trade zones; ports of entry and customs zones.
- §17-16B-11. Study of feasibility of establishment of export trading company.
- §17-16B-12. Division of tourist trains and transportation; duties.
- §17-16B-13. Disclaimer of any liability of state of West Virginia.
- §17-16B-14. Prohibition on funds inuring to the benefit of or being distributable to directors, employees, officers or private persons; prohibition against certain financial interest; criminal penalties.

**§17-16B-1. Creation of authority.**

- 1 The West Virginia public port authority is hereby
- 2 created and shall be under the supervision of the
- 3 secretary of the department of transportation pursuant
- 4 to the provisions of chapter five-f of this code.

**§17-16B-2. Board of directors—Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.**

- 1 (a) The governing and administrative powers of the
- 2 authority shall be vested in a board of directors
- 3 consisting of nine members, six of whom shall be
- 4 appointed by the governor with the advice and consent
- 5 of the Senate.

6 All directors of the authority shall be residents of the  
7 state of West Virginia. The directors shall annually elect  
8 from the representatives of the private sector, as  
9 provided in subsection (b), one of their members as  
10 chairman. The directors shall annually elect one of their  
11 members as vice chairman, one as secretary and one as  
12 treasurer. The board may elect such other officers from  
13 its membership or from its staff as it deems proper and  
14 prescribe their powers and duties. Appointments to fill  
15 a vacancy of one of the appointed members shall be  
16 made in the same manner as the original appointment.

17 (b) Six members of the board shall be from the  
18 private sector, with one member of the board from each  
19 congressional district of the state as of the effective date  
20 of this article, and shall represent the public interest  
21 generally. At least one member may be appointed that  
22 has recognized ability and practical experience in  
23 transportation. At least one member may be appointed  
24 that has recognized ability and practical experience in  
25 banking and finance. At least one member may be  
26 appointed that has recognized ability and practical  
27 experience in international trade. At least one member  
28 may be appointed that has recognized ability and  
29 practical experience in business management or  
30 economics.

31 (c) The governor shall appoint two members of the  
32 board whose terms shall expire on the first day of July,  
33 one thousand nine hundred ninety; two members of the  
34 board whose term shall expire on the first day of July,  
35 one thousand nine hundred ninety-one; two members of  
36 the board whose term shall expire on the first day of  
37 July, one thousand nine hundred ninety-two. Their  
38 respective successors shall be appointed for terms of  
39 three years from the first day of July of the year of  
40 appointment. Each member shall serve until his  
41 successor is appointed and qualified.

42 One ex officio member of the board shall be the  
43 secretary of transportation or his designee.

44 One ex officio member of the board shall be the  
45 director of the department of commerce or his designee.



46 One ex officio member of the board shall be the  
47 director of the governor's office of community and  
48 industrial development or his designee.

49 (d) Each director, before entering upon his duties,  
50 shall take and subscribe to the oath or affirmation  
51 required by the West Virginia constitution. A record of  
52 each such oath or affirmation shall be filed in the office  
53 of the secretary of state.

54 (e) Members of the board shall not be entitled to  
55 compensation for their services but shall be reimbursed  
56 for all necessary expenses actually incurred in connec-  
57 tion with the performance of their duties as members.

58 (f) Five members of the board shall constitute a  
59 quorum and the affirmative vote of the majority of  
60 members present at a meeting of the board shall be  
61 necessary and sufficient for any action taken by the  
62 board, except that the affirmative vote of at least six  
63 members is required for the approval of any resolution  
64 authorizing the issuance of any bonds pursuant to this  
65 article.

66 (g) No vacancy in the membership of the board  
67 impairs the right of a quorum to exercise all rights and  
68 perform all duties of the board. Any action taken by the  
69 board may be authorized by resolution at any regular  
70 or special meeting and shall take effect upon the date  
71 the chairman certifies the action of the authority by  
72 affixing his signature to the resolution unless some other  
73 date is otherwise provided in the resolution.

74 (h) The board may delegate to one or more of its  
75 members or to its officials, agents or employees such  
76 powers and duties as it may deem proper.

**§17-16B-3. Executive director; appointment; powers and  
duties; compensation.**

1 (a) The board of directors shall appoint an executive  
2 director of the authority.

3 (b) The executive director shall be paid a salary to be  
4 determined by the board of directors. The executive  
5 director shall be responsible for managing and admin-

6 istering the daily functions of the authority and for  
7 performing any and all other functions necessary or  
8 helpful for the effective functioning of the authority,  
9 together with all other functions and powers as may be  
10 delegated to him by the board. The executive director  
11 may, with the authorization of the board of directors,  
12 employ support staff as deemed necessary to carry out  
13 the duties and responsibilities of the authority.

14 (c) The chairman of the board shall serve as tempor-  
15 ary director of the authority until appointment of the  
16 executive director pursuant to this section.

**§17-16B-4. Purposes of authority; commerce; tourism.**

1 (a) *Commercial activity.*—The Legislature finds that  
2 the state of West Virginia must look to new opportun-  
3 ities to expand and diversify its economy and the  
4 general welfare and well-being of its people. The  
5 Legislature further finds that if West Virginia is to keep  
6 and attract industry, it must provide for a modern and  
7 efficient transportation infrastructure that will allow  
8 and facilitate business to compete on a regional, national  
9 and international basis. The Legislature finds that West  
10 Virginia has the potential to establish an efficient and  
11 low cost system of intermodal transportation by linking  
12 together its abundant navigable waters and rivers, its  
13 rail systems, its interstate and modern highway system,  
14 and its airports into an intermodal transportation  
15 network connected and served by various intermodal  
16 ports, terminals and facilities located at strategic  
17 regional sites throughout the state.

18 The Legislature further finds that it would be the  
19 purpose of these intermodal ports and terminals, under  
20 the direction of the West Virginia public port authority,  
21 or local port authority districts, to negotiate, coordinate  
22 and supervise the shipment of products and natural  
23 resources from the producers in West Virginia to both  
24 domestic and international markets, including passage  
25 through other states and through the seaports of other  
26 states to the seaports of foreign countries.

27 The Legislature further finds that it is the corollary  
28 purpose of the public port authority to assist state

29 businesses to engage in export trade activities, both  
30 domestic and international, in furtherance of its powers  
31 and duties, including the formation of export trading  
32 companies and foreign trade zones.

33 (b) *Tourism*.—The Legislature finds that the same  
34 intermodal transportation network, as set forth in this  
35 section for commercial purposes, may also serve to  
36 enhance tourism in West Virginia by providing access  
37 and linkage to the various tourist and historic attrac-  
38 tions around the state through the utilization of  
39 railroads, waterways, highways, airways and other  
40 forms of transportation.

41 The Legislature further finds that it would be the  
42 purpose of the public port authority to negotiate and  
43 coordinate the movement of tourists and travelers  
44 through the state by assisting the tourist and travel  
45 industry, state agencies and other political subdivisions.

#### §17-16B-5. Divisions.

1 There shall be within the public port authority a  
2 division of commerce, a division of tourist trains and  
3 transportation, and such other divisions as are deemed  
4 necessary by the board of directors.

#### §17-16B-6. Powers and duties of authority.

1 (a) The authority is granted the following powers and  
2 duties:

3 (1) The authority shall initiate meetings with political  
4 subdivisions of the state to assess specific transportation  
5 needs and shall determine the needs of the state as a  
6 whole in terms of transportation, as well as consider  
7 feasibility studies for the purpose of determining the  
8 best site locations for transportation centers, terminals,  
9 ports and harbors, and foreign trade zones.

10 The authority shall give first consideration to selected  
11 high priority opportunities as set forth in the document  
12 entitled "Development of an Inland Port Authority," as  
13 submitted to the governor's office of community and  
14 industrial development on the second day of March, one  
15 thousand nine hundred eighty-nine.

16 (2) On or before the fifteenth day of January, one  
17 thousand nine hundred ninety, the authority shall  
18 prepare and file a comprehensive report with the  
19 governor and the Legislature setting forth the overall  
20 strategic plan both short term and long term for  
21 accomplishing the purposes set forth in this article.

22 (3) The public port authority shall coordinate with the  
23 West Virginia turnpike commission or other parkways  
24 authority, established pursuant to article sixteen-a,  
25 chapter seventeen of this code, in the exercise of its  
26 powers and duties hereunder and development of  
27 appropriate intermodal transportation within the state.

28 (b) The authority has the following additional powers  
29 and duties:

30 (1) The powers of a body corporate, including the  
31 power to sue and be sued, to make contracts, and to  
32 adopt and use a common seal and to alter the same as  
33 may be deemed expedient;

34 (2) Acquire, purchase, install, lease, construct, own,  
35 hold, operate, maintain, equip, use and control ports,  
36 terminals, buildings, roadways, rights-of-way, rails and  
37 such structures, equipment, facilities or improvements  
38 necessary to carry out the provisions of this article, and  
39 in connection therewith shall have the further right to  
40 lease, install, construct, acquire, own, maintain, control  
41 and use any and every kind or character of motive  
42 powers and conveyances or appliances necessary or  
43 proper to carry goods, wares and merchandise over,  
44 along, upon or through the railway, highway, waterway  
45 or airway or other conveyance of such transportation  
46 system, excluding pipelines;

47 (3) To apply for and accept loans, grants or gifts of  
48 money, property or service from any federal agency or  
49 the state of West Virginia or any political subdivision  
50 thereof or from any public or private sources available  
51 for any and all of the purposes authorized in this article,  
52 or imposed thereon by any such federal agency, the state  
53 of West Virginia, or any political subdivision thereof, or  
54 any public or private lender or donor, and to give such  
55 evidences of indebtedness as may be required;

- 56       (4) To act as agent for the United States of America,  
57 or any agency, department, corporation or instrumental-  
58 ity thereof, in any manner coming within the purposes  
59 or powers of the board;
- 60       (5) To initiate preservation of railroad, waterway,  
61 highway and airway facilities, to promote economic  
62 development and tourism of a specific nature in this  
63 state;
- 64       (6) To meet and cooperate with similar authorities or  
65 bodies of any of the several states contiguous with this  
66 state, whose purpose in their respective states is to  
67 establish an interstate or intermodal transportation  
68 network;
- 69       (7) To enter into agreements, contracts or other  
70 transactions with any federal, state, county, municipal  
71 agency or private entity;
- 72       (8) To report annually to the Legislature by the first  
73 day of January of each year on the status of projects,  
74 operations, financial condition and other necessary  
75 information relating to the statewide tourist intermodal  
76 transportation system and public port authority  
77 activities;
- 78       (9) To enter into agreements or contracts with the  
79 West Virginia railroad maintenance authority for the  
80 preservation, operation, and use of railroad lines;
- 81       (10) To assist and encourage the West Virginia  
82 railroad maintenance authority to purchase railroad  
83 tracks being abandoned by any common carrier, and to  
84 financially assist the railroad maintenance authority in  
85 making such purchase;
- 86       (11) To collect reasonable fees and charges in connec-  
87 tion with making and servicing loans, notes, bonds,  
88 obligations, commitments and other evidence of in-  
89 debtedness, and in connection with providing technical,  
90 consultive and project assistance services;
- 91       (12) To do any and all things necessary to carry out  
92 and accomplish the purposes of this article.
- 93       (c) Incidental to the development of a comprehensive

94 strategic plan for intermodal transportation, the  
95 executive director and staff of the authority shall  
96 analyze the shipment of products through the ports of  
97 the state for the purpose of expediting such shipments,  
98 and shall be authorized to collect and analyze such  
99 information, which is maintained in the ordinary course  
100 of business by the person, firm or corporation providing  
101 such information, pertaining to the transportation of  
102 products which has been moved by rail, water, highway  
103 or air to and from points within and without this state.

104 (1) Any such information and data supplied to the  
105 executive director of the authority shall be for exclusive  
106 use of the executive director and the staff of the  
107 authority. Such information is deemed confidential and  
108 is not subject to disclosure under the freedom of  
109 information act. Neither the executive director nor any  
110 staff member of the authority shall publicly disclose this  
111 information and data to any member of the board of the  
112 authority, nor to any person, firm, corporation or agent.  
113 It shall be unlawful for any officer or employee of this  
114 state to divulge or make known in any manner any  
115 information obtained pursuant to this subsection or  
116 disclose information concerning the personal or business  
117 affairs of any individual or the business of any single  
118 firm or corporation, or disclose any particulars set forth  
119 or disclosed in any report or other information provided  
120 to the authority.

121 (2) Any officer or employee (or former officer or  
122 employee) of this state who violates this subsection shall  
123 be guilty of a misdemeanor, and, upon conviction  
124 thereof, shall be fined not more than one thousand  
125 dollars or imprisoned for not more than one year, or  
126 both, together with costs of prosecution.

127 (3) In carrying out the functions theretofore des-  
128 cribed, the authority shall be deemed to be performing  
129 an essential governmental function as an instrumental-  
130 ity of the state of West Virginia.

**§17-16B-7. Special West Virginia public port authority  
operations fund.**

1 There is hereby established a special West Virginia

2 public port authority operations fund which shall  
3 operate as a special revolving fund. All proceeds and  
4 revenues of the authority shall be credited to the fund  
5 by the state treasurer on a monthly basis. At the end  
6 of each fiscal year, any unexpended funds in this  
7 account shall be reappropriated and available for  
8 expenditure for the subsequent fiscal year: *Provided,*  
9 That no funds shall be appropriated from the general  
10 revenue fund of the state of West Virginia for the  
11 operation of the authority.

**§17-16B-8. Designation of local port authority districts,  
powers and duties; plan for development.**

1 (a) Upon application by a local governmental entity,  
2 groups of local governmental entities, or joint venture  
3 of local government entity or entities and private  
4 industry, the board may grant authority for the creation  
5 of a local inland port authority district. In so authorizing  
6 such entities, political subdivisions of this state are  
7 authorized to join with other political subdivisions of  
8 this and sister states to form a local port authority. In  
9 deciding on a local port district designation, consider-  
10 ation shall be given to the following:

11 (1) Areas which have entered into a joint venture with  
12 private industry;

13 (2) Areas for which the political subdivi-  
14 sion(s) seeking designation has made or will make the  
15 greatest effort, both financially and otherwise, to  
16 encourage the establishment of facilities to enhance the  
17 efficiency and cost of the movement of goods and  
18 services to and from markets in West Virginia, or will  
19 make the greatest effort to encourage the construction  
20 and completion of infrastructure projects, including all  
21 types of transportation systems.

22 (b) A local port authority district provided for in this  
23 article has the authority to establish a local board of  
24 directors, and has powers only as provided for by the  
25 state board of directors. In no event shall the powers of  
26 a local port authority district supersede the powers of  
27 the state authority.

28 Any board of directors of a port authority district  
29 shall prepare or cause to be prepared a plan for the  
30 future development, construction and improvement of  
31 its services and facilities.

**§17-16B-9. Construction and operation of facilities by private enterprise; leasing of facilities by port authority.**

1 (a) The authority or local port authority districts shall  
2 foster and encourage the participation of private  
3 enterprise in the development of the port facilities to the  
4 fullest extent it deems practicable in the interest of  
5 limiting the necessity of construction and operation of  
6 such facilities by the port authority. In this respect, the  
7 authority or local port authority districts may upon its  
8 own motion or upon the written request of any other  
9 party, advertise and solicit for the construction, opera-  
10 tions and/or maintenance of any facility included in the  
11 development plan in accordance to plans, specifications  
12 and regulations therefor prepared by the board of  
13 directors.

14 (b) It is further provided that in the event the board  
15 of directors of the port authority or the local port  
16 authority districts deem it advisable and practicable,  
17 said board may cause certain facilities included in the  
18 development plan to be installed by private enterprise  
19 and leased back to the authority or local port authority  
20 districts on an installment contract or option to pur-  
21 chase: *Provided*, That any such lease bank arrangement  
22 must be financially feasible and any bonds or loans  
23 utilized to enter into such lease bank arrangement shall  
24 be repayable in full from the expected rentals to be  
25 generated by such facility.

**§17-16B-10. Foreign trade zones; free trade zones; ports of entry and customs zones.**

1 The authority is empowered and directed to develop,  
2 maintain and operate foreign trade zones, free trade  
3 zones, ports of entry and customs zones under such  
4 terms and conditions as are or may be prescribed by  
5 federal law, and to keep foreign trade zone status for,  
6 and to assist in the applications for foreign trade zone



7 status of political subdivisions and eligible private  
8 corporations under federal law.

**§17-16B-11. Study of feasibility of establishment of  
export trading company.**

1 (a) The authority may assist business in the formation  
2 of joint venture to function as an export trading  
3 company. The authority may conduct feasibility studies  
4 to ascertain the feasibility of such a joint venture.

5 (b) The authority shall study whether the formation  
6 of such an entity would aid and assist West Virginia  
7 businesses in the export of goods. In the event that such  
8 company is financially feasible, the authority is autho-  
9 rized to create a quasi-public corporation, under the  
10 authority's control, to perform such function. The  
11 authority may advance seed money to such corporation  
12 to get it established: *Provided*, That the obligations of  
13 such quasi-public corporation shall not be considered  
14 obligations of the authority.

15 (c) The authority is authorized to promulgate rules  
16 and regulations to establish the duties, powers and  
17 obligations of any export trading company to be  
18 established under this section.

**§17-16B-12. Division of tourist trains and transportation;  
duties.**

1 (a) The division of tourist trains and transportation  
2 shall develop a plan to assess the feasibility, financial  
3 and otherwise, of establishing a statewide intermodal  
4 network of tourist transportation, so as to coordinate,  
5 link and supervise the various means of transportation  
6 including highway, rail, waterway and air and such  
7 plan shall also include, if feasible, the development of  
8 a comprehensive strategy and state plan for tourist  
9 transportation.

10 (b) The division shall cooperate and assist the efforts  
11 of public and private groups, agencies and political  
12 subdivisions in establishing components of the tourist  
13 transportation plan.

14 (c) The division shall specifically work to establish a

15 pilot project for the purpose of creating a tourist train  
16 network in the area from Bluefield, West Virginia, to  
17 Bramwell, West Virginia, to Matoaka, West Virginia,  
18 and to Pocahontas, Virginia.

**§17-16B-13. Disclaimer of any liability of state of West Virginia.**

1 The state of West Virginia is not liable on notes or  
2 other evidences of indebtedness of the public port  
3 authority and such notes or other evidences of indebted-  
4 ness are not a debt of the state of West Virginia, and  
5 such notes or other evidences of indebtedness shall  
6 contain on the face thereof a statement to such effect.

**§17-16B-14. Prohibition on funds inuring to the benefit of or being distributable to directors, employees, officers or private persons; prohibition against certain financial interests; criminal penalties.**

1 (a) No part of the funds of the public port authority  
2 may inure to the benefit of or be distributable to its  
3 directors, employees, officers or other private persons  
4 except that the public port authority may pay reason-  
5 able compensation to its officers and employees for  
6 services rendered and to make loans and exercise its  
7 other powers as previously specified in furtherance of  
8 its corporate purposes: *Provided*, That no such loans  
9 may be made, and no property may be purchased or  
10 leased from, or sold, leased to or otherwise disposed of,  
11 to any director or officer of the public port authority.

12 (b) No officer, member or employee of the authority  
13 may be financially interested, directly or indirectly, in  
14 any contract of any person with the authority, or in the  
15 sale of any property, real or personal, to or from the  
16 authority during such person's employment with the  
17 authority or for a period of twelve months after  
18 termination of such person's employment with the  
19 authority. This section does not apply to contracts or  
20 purchases of property, real or personal, between the  
21 authority and any governmental agency. Any officer,  
22 member or employee of the authority who has such  
23 financial interest in a contract or sale of property

24 prohibited hereby is guilty of a misdemeanor, and, upon  
25 conviction thereof, shall be fined not more than one  
26 thousand dollars, or imprisoned in the county jail not  
27 more than one year, or both fined and imprisoned.

## CHAPTER 24. PUBLIC SERVICE COMMISSION.

### ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

#### §24-3-7. Permit to abandon service; certificate; hearing upon intervention by consumer advocate; alternative service.

1 (a) No railroad or other public utility shall abandon  
2 all or any portion of its service to the public or the  
3 operation of any of its lines which would affect the  
4 service it is rendering the public unless and until there  
5 shall first have been filed with the public service  
6 commission of this state an application for a permit to  
7 abandon service and obtained from the commission an  
8 order stating that the present and future public  
9 convenience and necessity permits such abandonment.

10 (b) The consumer advocate's office shall be notified of  
11 all notices to abandon rail service. Within five (5) days  
12 of the receipt of such notice the consumer advocate shall  
13 notify the West Virginia public port authority of such  
14 proposed abandonment. The public port authority shall  
15 advise the consumer advocate as to whether such  
16 abandonment is in the public interest or if such rail line  
17 or service is an integral part of the intermodal trans-  
18 portation system within West Virginia. If the public  
19 port authority deems such abandonment to be not in the  
20 public interest, then the consumer advocate shall  
21 intervene to block such abandonment before all approp-  
22 riate state and federal agencies or courts.

23 (c) The public service commissioner, to the extent  
24 permitted by federal law, shall promulgate rules and  
25 regulations to govern the abandonment of rail lines and  
26 rail service, including, but not limited to, the providing  
27 of a hearing for the presentation of evidence in cases  
28 where the consumer advocate seeks intervention pursu-  
29 ant to subsection (b).

30 (d) In the event the commission determines that an  
31 application to abandon gas service or any part thereof  
32 is in the public interest and required by the present and  
33 future public convenience and necessity, it shall include  
34 in its order, as a condition of releasing any such utility  
35 from its public service obligation to provide gas service,  
36 a provision requiring the utility, prior to discontinuing  
37 service, to pay the cost reasonably necessary to convert  
38 each customer to an alternate fuel source.

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## CHAPTER 158

(S. B. 297—By Senator Chafin)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fourteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; and probable cause determinations.

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

That section fourteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

**§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists;**

**investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.**

1 (a) The board may independently initiate disciplinary  
2 proceedings as well as initiate disciplinary proceedings  
3 based on information received from medical peer review  
4 committees, physicians, podiatrists, hospital administra-  
5 tors, professional societies and others.

6 The board may initiate investigations as to profes-  
7 sional incompetence or other reasons for which a  
8 licensed physician or podiatrist may be adjudged  
9 unqualified if the board receives notice that, within the  
10 most recent five-year period, five or more judgments or  
11 settlements in excess of fifty thousand dollars each  
12 arising from medical professional liability have been  
13 rendered or made against such physician or podiatrist.

14 (b) Upon request of the board, any medical peer  
15 review committee in this state shall report any informa-  
16 tion that may relate to the practice or performance of  
17 any physician or podiatrist known to that medical peer  
18 review committee. Copies of such requests for informa-  
19 tion from a medical peer review committee may be  
20 provided to the subject physician or podiatrist if, in the  
21 discretion of the board, the provision of such copies will  
22 not jeopardize the board's investigation. In the event  
23 that copies are so provided, the subject physician or  
24 podiatrist is allowed fifteen days to comment on the  
25 requested information and such comments must be  
26 considered by the board.

27 After the completion of the hospital's formal discipli-  
28 nary procedure and after any resulting legal action, the  
29 chief executive officer of such hospital shall report in  
30 writing to the board within sixty days the name of any  
31 member of the medical staff or any other physician or  
32 podiatrist practicing in the hospital whose hospital  
33 privileges have been revoked, restricted, reduced or  
34 terminated for any cause, including resignation, to-

35    gether with all pertinent information relating to such  
36    action. The chief executive officer shall also report any  
37    other formal disciplinary action taken against any  
38    physician or podiatrist by the hospital upon the recom-  
39    mendation of its medical staff relating to professional  
40    ethics, medical incompetence, medical malpractice,  
41    moral turpitude or drug or alcohol abuse. Temporary  
42    suspension for failure to maintain records on a timely  
43    basis or failure to attend staff or section meetings need  
44    not be reported.

45        Any professional society in this state comprised  
46    primarily of physicians or podiatrists which takes  
47    formal disciplinary action against a member relating to  
48    professional ethics, professional incompetence, profes-  
49    sional malpractice, moral turpitude or drug or alcohol  
50    abuse, shall report in writing to the board within sixty  
51    days of a final decision the name of such member,  
52    together with all pertinent information relating to such  
53    action.

54        Every person, partnership, corporation, association,  
55    insurance company, professional society or other  
56    organization providing professional liability insurance  
57    to a physician or podiatrist in this state shall submit to  
58    the board the following information within thirty days  
59    from any judgment, dismissal or settlement of a civil  
60    action or of any claim involving the insured: The date  
61    of any judgment, dismissal or settlement; whether any  
62    appeal has been taken on the judgment, and, if so, by  
63    which party; the amount of any settlement or judgment  
64    against the insured; and such other information as the  
65    board may require.

66        Within thirty days after a person known to be a  
67    physician or podiatrist licensed or otherwise lawfully  
68    practicing medicine and surgery or podiatry in this  
69    state or applying to be so licensed is convicted of a felony  
70    under the laws of this state, or of any crime under the  
71    laws of this state involving alcohol or drugs in any way,  
72    including any controlled substance under state or  
73    federal law, the clerk of the court of record in which  
74    the conviction was entered shall forward to the board  
75    a certified true and correct abstract of record of the

76 convicting court. The abstract shall include the name  
77 and address of such physician or podiatrist or applicant,  
78 the nature of the offense committed and the final  
79 judgment and sentence of the court.

80 Upon a determination of the board that there is  
81 probable cause to believe that any person, partnership,  
82 corporation, association, insurance company, profes-  
83 sional society or other organization has failed or refused  
84 to make a report required by this subsection, the board  
85 shall provide written notice to the alleged violator  
86 stating the nature of the alleged violation and the time  
87 and place at which the alleged violator shall appear to  
88 show good cause why a civil penalty should not be  
89 imposed. The hearing shall be conducted in accordance  
90 with the provisions of article five, chapter twenty-nine-  
91 a of this code. After reviewing the record of such  
92 hearing, if the board determines that a violation of this  
93 subsection has occurred, the board shall assess a civil  
94 penalty of not less than one thousand dollars nor more  
95 than ten thousand dollars against such violator. Anyone  
96 so assessed shall be notified of the assessment in writing  
97 and the notice shall specify the reasons for the assess-  
98 ment. If the violator fails to pay the amount of the  
99 assessment to the board within thirty days, the attorney  
100 general may institute a civil action in the circuit court  
101 of Kanawha County to recover the amount of the  
102 assessment. In any such civil action, the court's review  
103 of the board's action shall be conducted in accordance  
104 with the provisions of section four, article five, chapter  
105 twenty-nine-a of this code.

106 Any person may report to the board relevant facts  
107 about the conduct of any physician or podiatrist in this  
108 state which in the opinion of such person amounts to  
109 professional malpractice or professional incompetence.

110 The board shall provide forms for filing reports  
111 pursuant to this section. Reports submitted in other  
112 forms shall be accepted by the board.

113 The filing of a report with the board pursuant to any  
114 provision of this article, any investigation by the board  
115 or any disposition of a case by the board does not

116 preclude any action by a hospital, other health care  
117 facility or professional society comprised primarily of  
118 physicians or podiatrists to suspend, restrict or revoke  
119 the privileges or membership of such physician or  
120 podiatrist.

121 (c) The board may deny an application for license or  
122 other authorization to practice medicine and surgery or  
123 podiatry in this state and may discipline a physician or  
124 podiatrist licensed or otherwise lawfully practicing in  
125 this state who, after a hearing, has been adjudged by  
126 the board as unqualified due to any of the following  
127 reasons:

128 (1) Attempting to obtain, obtaining, renewing or  
129 attempting to renew a license to practice medicine and  
130 surgery or podiatry by bribery, fraudulent misrepres-  
131 entation or through known error of the board.

132 (2) Being found guilty of a crime in any jurisdiction,  
133 which offense is a felony, involves moral turpitude or  
134 directly relates to the practice of medicine. Any plea of  
135 nolo contendere is a conviction for the purposes of this  
136 subdivision.

137 (3) False or deceptive advertising.

138 (4) Aiding, assisting, procuring or advising any  
139 unauthorized person to practice medicine and surgery  
140 or podiatry contrary to law.

141 (5) Making or filing a report that the person knows  
142 to be false; intentionally or negligently failing to file a  
143 report or record required by state or federal law;  
144 willfully impeding or obstructing the filing of a report  
145 or record required by state or federal law; or inducing  
146 another person to do any of the foregoing. Such reports  
147 and records as are herein covered mean only those that  
148 are signed in the capacity as a licensed physician or  
149 podiatrist.

150 (6) Requesting, receiving or paying directly or  
151 indirectly a payment, rebate, refund, commission, credit  
152 or other form of profit or valuable consideration for the  
153 referral of patients to any person or entity in connection  
154 with providing medical or other health care services or



155 clinical laboratory services, supplies of any kind, drugs,  
156 medication or any other medical goods, services or  
157 devices used in connection with medical or other health  
158 care services.

159 (7) Unprofessional conduct by any physician or  
160 podiatrist in referring a patient to any clinical labora-  
161 tory or pharmacy in which the physician or podiatrist  
162 has a proprietary interest unless such physician or  
163 podiatrist discloses in writing such interest to the  
164 patient. Such written disclosure shall indicate that the  
165 patient may choose any clinical laboratory for purposes  
166 of having any laboratory work or assignment performed  
167 or any pharmacy for purposes of purchasing any  
168 prescribed drug or any other medical goods or devices  
169 used in connection with medical or other health care  
170 services.

171 As used herein, "proprietary interest" does not include  
172 an ownership interest in a building in which space is  
173 leased to a clinical laboratory or pharmacy at the  
174 prevailing rate under a lease arrangement that is not  
175 conditional upon the income or gross receipts of the  
176 clinical laboratory or pharmacy.

177 (8) Exercising influence within a patient-physician  
178 relationship for the purpose of engaging a patient in  
179 sexual activity.

180 (9) Making a deceptive, untrue or fraudulent repres-  
181 entation in the practice of medicine and surgery or  
182 podiatry.

183 (10) Soliciting patients, either personally or by an  
184 agent, through the use of fraud, intimidation or undue  
185 influence.

186 (11) Failing to keep written records justifying the  
187 course of treatment of a patient, such records to include,  
188 but not be limited to, patient histories, examination and  
189 test results and treatment rendered, if any.

190 (12) Exercising influence on a patient in such a way  
191 as to exploit the patient for financial gain of the  
192 physician or podiatrist or of a third party. Any such

193 influence includes, but is not limited to, the promotion  
194 or sale of services, goods, appliances or drugs.

195 (13) Prescribing, dispensing, administering, mixing  
196 or otherwise preparing a prescription drug, including  
197 any controlled substance under state or federal law,  
198 other than in good faith and in a therapeutic manner  
199 in accordance with accepted medical standards and in  
200 the course of the physician's or podiatrist's professional  
201 practice.

202 (14) Performing any procedure or prescribing any  
203 therapy that, by the accepted standards of medical  
204 practice in the community, would constitute experimen-  
205 tation on human subjects without first obtaining full,  
206 informed and written consent.

207 (15) Practicing or offering to practice beyond the  
208 scope permitted by law or accepting and performing  
209 professional responsibilities that the person knows or  
210 has reason to know he is not competent to perform.

211 (16) Delegating professional responsibilities to a  
212 person when the physician or podiatrist delegating such  
213 responsibilities knows or has reason to know that such  
214 person is not qualified by training, experience or  
215 licensure to perform them.

216 (17) Violating any provision of this article or a rule  
217 or order of the board, or failing to comply with a  
218 subpoena or subpoena duces tecum issued by the board.

219 (18) Conspiring with any other person to commit an  
220 act or committing an act that would tend to coerce,  
221 intimidate or preclude another physician or podiatrist  
222 from lawfully advertising his services.

223 (19) Gross negligence in the use and control of  
224 prescription forms.

225 (20) Professional incompetence.

226 (21) The inability to practice medicine and surgery or  
227 podiatry with reasonable skill and safety due to physical  
228 or mental disability, including deterioration through the  
229 aging process or loss of motor skill or abuse of drugs  
230 or alcohol. A physician or podiatrist adversely affected

231 under this subdivision shall be afforded an opportunity  
232 at reasonable intervals to demonstrate that he can  
233 resume the competent practice of medicine and surgery  
234 or podiatry with reasonable skill and safety to patients.  
235 In any proceeding under this subdivision, neither the  
236 record of proceedings nor any orders entered by the  
237 board shall be used against the physician or podiatrist  
238 in any other proceeding.

239 (d) The board shall deny any application for a license  
240 or other authorization to practice medicine and surgery  
241 or podiatry in this state to any applicant who, and shall  
242 revoke the license of any physician or podiatrist licensed  
243 or otherwise lawfully practicing within this state who,  
244 is found guilty by any court of competent jurisdiction  
245 of any felony involving prescribing, selling, administer-  
246 ing, dispensing, mixing or otherwise preparing any  
247 prescription drug, including any controlled substance  
248 under state or federal law, for other than generally  
249 accepted therapeutic purposes. Presentation to the  
250 board of a certified copy of the guilty verdict or plea  
251 rendered in the court is sufficient proof thereof for the  
252 purposes of this article. A plea of nolo contendere has  
253 the same effect as a verdict or plea of guilt.

254 (e) The board may refer any cases coming to its  
255 attention to an appropriate committee of an appropriate  
256 professional organization for investigation and report.  
257 Any such report shall contain recommendations for any  
258 necessary disciplinary measures and shall be filed with  
259 the board within ninety days of any such referral. The  
260 recommendations shall be considered by the board and  
261 the case may be further investigated by the board. The  
262 board after full investigation shall take whatever action  
263 it deems appropriate, as provided herein.

264 (f) The investigating body, as provided for in subsec-  
265 tion (e) of this section, may request and the board under  
266 any circumstances may require a physician or podiatrist  
267 or person applying for licensure or other authorization  
268 to practice medicine and surgery or podiatry in this  
269 state to submit to a physical or mental examination by  
270 a physician or physicians approved by the board. A  
271 physician or podiatrist submitting to any such exami-

272 nation has the right, at his expense, to designate another  
273 physician to be present at the examination and make an  
274 independent report to the investigating body or the  
275 board. The expense of the examination shall be paid by  
276 the board. Any individual who applies for or accepts the  
277 privilege of practicing medicine and surgery or podiatry  
278 in this state is deemed to have given his consent to  
279 submit to all such examinations when requested to do  
280 so in writing by the board and to have waived all  
281 objections to the admissibility of the testimony or  
282 examination report of any examining physician on the  
283 ground that the testimony or report is privileged  
284 communication. If a person fails or refuses to submit to  
285 any such examination under circumstances which the  
286 board finds are not beyond his control, such failure or  
287 refusal is prima facie evidence of his inability to  
288 practice medicine and surgery or podiatry competently  
289 and in compliance with the standards of acceptable and  
290 prevailing medical practice.

291 (g) In addition to any other investigators it employs,  
292 the board may appoint one or more licensed physicians  
293 to act for it in investigating the conduct or competence  
294 of a physician.

295 (h) In every disciplinary or licensure denial action,  
296 the board shall furnish the physician or podiatrist or  
297 applicant with written notice setting out with particu-  
298 larity the reasons for its action. Disciplinary and  
299 licensure denial hearings shall be conducted in accor-  
300 dance with the provisions of article five, chapter twenty-  
301 nine-a of this code. However, hearings shall be heard  
302 upon sworn testimony and the rules of evidence for trial  
303 courts of record in this state shall apply to all such  
304 hearings. A transcript of all hearings under this section  
305 shall be made, and the respondent may obtain a copy  
306 of the transcript at his expense. The physician or  
307 podiatrist has the right to defend against any such  
308 charge by the introduction of evidence, the right to be  
309 represented by counsel, the right to present and cross-  
310 examine witnesses and the right to have subpoenas and  
311 subpoenas duces tecum issued on his behalf for the  
312 attendance of witnesses and the production of docu-

313 ments. The board shall make all its final actions public.  
314 The order shall contain the terms of all action taken by  
315 the board.

316 (i) Whenever it finds any person unqualified because  
317 of any of the grounds set forth in subsection (c) of this  
318 section, the board may enter an order imposing one or  
319 more of the following:

320 (1) Deny his application for a license or other author-  
321 ization to practice medicine and surgery or podiatry;

322 (2) Administer a public reprimand;

323 (3) Suspend, limit or restrict his license or other  
324 authorization to practice medicine and surgery or  
325 podiatry for not more than five years, including limiting  
326 the practice of such person to, or by the exclusion of,  
327 one or more areas of practice, including limitations on  
328 practice privileges;

329 (4) Revoke his license or other authorization to  
330 practice medicine and surgery or podiatry or to  
331 prescribe or dispense controlled substances;

332 (5) Require him to submit to care, counseling or  
333 treatment designated by the board as a condition for  
334 initial or continued licensure or renewal of licensure or  
335 other authorization to practice medicine and surgery or  
336 podiatry;

337 (6) Require him to participate in a program of  
338 education prescribed by the board;

339 (7) Require him to practice under the direction of a  
340 physician or podiatrist designated by the board for a  
341 specified period of time; and

342 (8) Assess a civil fine of not less than one thousand  
343 dollars nor more than ten thousand dollars.

344 (j) Notwithstanding the provisions of section eight,  
345 article one, chapter thirty of this code, if the board  
346 determines the evidence in its possession indicates that  
347 a physician's or podiatrist's continuation in practice or  
348 unrestricted practice constitutes an immediate danger  
349 to the public, the board may take any of the actions

350 provided for in subsection (i) of this section on a  
351 temporary basis and without a hearing, if institution of  
352 proceedings for a hearing before the board are initiated  
353 simultaneously with the temporary action and begin  
354 within fifteen days of such action. The board shall  
355 render its decision within five days of the conclusion of  
356 a hearing under this subsection.

357 (k) Any person against whom disciplinary action is  
358 taken pursuant to the provisions of this article has the  
359 right to judicial review as provided in articles five and  
360 six, chapter twenty-nine-a of this code. Except with  
361 regard to an order of temporary suspension of a license  
362 for six months or less, a person shall not practice  
363 medicine and surgery or podiatry or deliver health care  
364 services in violation of any disciplinary order revoking  
365 or limiting his license while any such review is pending.  
366 Within sixty days, the board shall report its final action  
367 regarding restriction, limitation, suspension or revoca-  
368 tion of the license of a physician or podiatrist, limitation  
369 on practice privileges or other disciplinary action  
370 against any physician or podiatrist to all appropriate  
371 state agencies, appropriate licensed health facilities and  
372 hospitals, insurance companies or associations writing  
373 medical malpractice insurance in this state, the Amer-  
374 ican Medical Association, the American Podiatry  
375 Association, professional societies of physicians or  
376 podiatrists in the state and any entity responsible for the  
377 fiscal administration of medicare and medicaid.

378 (l) Any person against whom disciplinary action has  
379 been taken under the provisions of this article shall at  
380 reasonable intervals be afforded an opportunity to  
381 demonstrate that he can resume the practice of medicine  
382 and surgery or podiatry on a general or limited basis.  
383 At the conclusion of a suspension, limitation or restric-  
384 tion period, the physician or podiatrist has the right to  
385 resume practice pursuant to the orders of the board:  
386 *Provided*, That for a revocation pursuant to subsection  
387 (d) of this section a reapplication shall not be accepted  
388 for a period of at least five years.

389 (m) Any entity, organization or person, including the  
390 board, any member of the board, its agents or employees

391 and any entity or organization or its members referred  
392 to in this article, any insurer, its agents or employees,  
393 a medical peer review committee and a hospital  
394 governing board, its members or any committee ap-  
395 pointed by it acting without malice and without gross  
396 negligence in making any report or other information  
397 available to the board or a medical peer review  
398 committee pursuant to law and any person acting  
399 without malice and without gross negligence who assists  
400 in the organization, investigation or preparation of any  
401 such report or information or assists the board or a  
402 hospital governing body or any such committee in  
403 carrying out any of its duties or functions provided by  
404 law, is immune from civil or criminal liability, except  
405 that the unlawful disclosure of confidential information  
406 possessed by the board is a misdemeanor as provided for  
407 in this article.

408 (n) A physician or podiatrist may request in writing  
409 to the board a limitation on or the surrendering of his  
410 license to practice medicine and surgery or podiatry or  
411 other appropriate sanction as provided herein. The  
412 board may grant such request and, if it considers it  
413 appropriate, may waive the commencement or continua-  
414 tion of other proceedings under this section. A physician  
415 or podiatrist whose license is limited or surrendered or  
416 against whom other action is taken under this subsection  
417 has a right at reasonable intervals to petition for  
418 removal of any restriction or limitation on or for  
419 reinstatement of his license to practice medicine and  
420 surgery or podiatry.

421 (o) In every case considered by the board under this  
422 article regarding discipline or licensure, whether  
423 initiated by the board or upon complaint or information  
424 from any person or organization, the board shall make  
425 a preliminary determination as to whether probable  
426 cause exists to substantiate charges of disqualification  
427 due to any reason set forth in subsection (c) of this  
428 section. If such probable cause is found to exist, all  
429 proceedings on such charges shall be open to the public  
430 who shall be entitled to all reports, records, and  
431 nondeliberative materials introduced at such hearing,

432 including the record of the final action taken: *Provided,*  
 433 That any medical records, which were introduced at  
 434 such hearing and which pertain to a person who has not  
 435 expressly waived his right to the confidentiality of such  
 436 records, shall not be open to the public nor is the public  
 437 entitled to such records.

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## CHAPTER 159

(H. B. 2232—By Delegates Hatfield and Humphreys)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article four-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eligibility requirements for general anesthesia permits by eliminating person who employs or works in conjunction with a physician or osteopath who is qualified under this article.

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

That sections four and five, article four-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 4A. ADMINISTRATION OF GENERAL ANESTHESIA  
 AND PARENTERAL CONSCIOUS SEDATION BY  
 DENTISTS.**

§30-4A-4. Eligibility requirements for general anesthesia permit.

§30-4A-5. Eligibility requirements for permit to administer parenteral conscious sedation only.

**§30-4A-4. Eligibility requirements for general anesthesia permit.**

1 To receive a permit for the use of general anesthesia  
 2 and parenteral conscious sedation, a dentist shall:

3 (a) Be a dentist licensed by the West Virginia board  
 4 of dental examiners, hereinafter sometimes referred to  
 5 as the "board," or as "board of dental examiners" and  
 6 registered to practice dentistry in the state of West  
 7 Virginia;



8 (b) Apply to the West Virginia board of dental  
9 examiners on an application form prescribed by the  
10 board;

11 (c) Include with the application an application fee in  
12 the amount of three hundred dollars;

13 (d) Have a properly equipped facility for the admin-  
14 istration of general anesthesia, staffed with a supervised  
15 team of auxiliary personnel capable of reasonably  
16 handling procedures, problems, and emergencies inci-  
17 dent thereto as outlined in the office anesthesia evalua-  
18 tion manual as adopted and amended by the board of  
19 dental examiners;

20 (e) In the case of any dentist who treats children who  
21 applies for any permit under this section, such dentist  
22 must document his or her competency to administer  
23 general anesthesia and parenteral conscious sedation to  
24 children by demonstrating to the satisfaction of the  
25 board his or her familiarity with the "Guidelines for the  
26 elective use of conscious sedation, deep sedation and  
27 general anesthesia in pediatric patients" of American  
28 Academy of Pediatrics and the American Academy of  
29 Pediatric Dentistry; and

30 (f) Produce evidence showing at least one of the  
31 following:

32 (1) He or she has completed a minimum of one year  
33 of advanced training in an approved anesthesia  
34 residency;

35 (2) He or she is a diplomate of the American board  
36 of oral and maxillofacial surgery;

37 (3) He or she is eligible for an examination by the  
38 American board of oral and maxillofacial surgery  
39 (ABOMS);

40 (4) He or she is a fellow of the American association  
41 of oral and maxillofacial surgery (AAOMS);

42 (5) He or she has successfully completed an American  
43 dental association accredited oral and maxillofacial

44 surgery program as evidenced by a letter from the  
45 program director stating that said applicant is qualified  
46 to perform such anesthesia techniques;

47 (6) He or she is a fellow of the American dental  
48 society of anesthesiology.

**§30-4A-5. Eligibility requirements for permit to administer parenteral conscious sedation only.**

1 To receive a permit for use of parenteral conscious  
2 sedation only, the dentist shall:

3 (a) Be a dentist licensed by the West Virginia board  
4 of dental examiners and registered to practice dentistry  
5 in the state of West Virginia;

6 (b) Apply to the West Virginia board of dental  
7 examiners on an application form prescribed by the  
8 board for the use of parenteral conscious sedation only;

9 (c) Include with the application a fee in the amount  
10 of three hundred dollars;

11 (d) Maintain a properly equipped facility for the  
12 administration of parenteral conscious sedation, staffed  
13 with a supervised team of auxiliary personnel capable  
14 of reasonably handling procedures, problems, and  
15 emergencies incident thereto as outlined in the office  
16 anesthesia evaluation manual of the board of dental  
17 examiners;

18 (e) In the case of any dentist who treats children who  
19 applies for any permit under this section, such dentist  
20 must document his or her competency to administer  
21 parenteral conscious sedation to children by demonstrat-  
22 ing to the satisfaction of the board his or her familiarity  
23 with the "Guidelines for the elective use of conscious  
24 sedation, deep sedation and general anesthesia in  
25 pediatric patients" of the American Academy of  
26 Pediatrics and the American Academy of Pediatric  
27 Dentistry; and

28 (f) Produce evidence showing at least one of the  
29 following:

30 (1) He or she meets at least one of the criteria

31 described in subdivisions (1) through (6) of subsection  
32 (f) of section four of this article;

33 (2) He or she has satisfactorily completed at least one  
34 year of post-doctoral dental training in a dental  
35 residency or specialty program approved by the Amer-  
36 ican dental association or the American medical  
37 association which must include didactic studies and  
38 practical experience in the administration of general  
39 anesthesia and parenteral conscious sedation. A letter  
40 from the chief of the approved residency program  
41 verifying that said dentist has satisfactorily completed  
42 said training and is competent to administer parenteral  
43 conscious sedation may be deemed acceptable evidence  
44 thereof; or

45 (3) He or she has satisfactorily completed a continuing  
46 education course or program regarding the administra-  
47 tion of parenteral conscious sedation which meets or  
48 exceeds the American dental association council on  
49 dental education's current "Guidelines For Teaching  
50 The Comprehensive Control of Pain and Anxiety in  
51 Dentistry."

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## CHAPTER 160

(S. B. 177—By Senators Wiedebusch and Warner)

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[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to pharmacists; and requiring annual completion of accredited program of continuing professional education.

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

That article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-a, to read as follows:

**ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.****§30-5-3a. Legislative finding; continuing professional education required.**

1 The Legislature finds and declares that because of the  
2 continuous introduction of new therapeutic and diagnos-  
3 tic agents and the changing concepts in the delivery of  
4 health care services in the practice of pharmacy, it is  
5 essential that a pharmacist undertake a continuing  
6 education program in order to maintain his or her  
7 professional competency and improve his or her profes-  
8 sional skills. To assure the continued competency of the  
9 pharmacist and to maintain uniform qualifications and  
10 licensure in the profession of pharmacy for the protec-  
11 tion of the health and welfare of its citizens, the West  
12 Virginia Legislature deems it in the public interest to  
13 adopt a continuing professional education program for  
14 pharmacists.

15 Beginning the first day of July, one thousand nine  
16 hundred ninety, no annual renewal license may be  
17 issued to a pharmacist until such pharmacist has  
18 submitted proof to the board of pharmacy that he or she  
19 has satisfactorily completed an accredited program of  
20 continuing professional education during the previous  
21 year to help assure his or her continued competence to  
22 engage in the practice of pharmacy. The board shall  
23 from time to time determine the amount of continuing  
24 education to be required.

25 The board shall promulgate rules pursuant to the  
26 provisions of chapter twenty-nine-a of this code required  
27 to carry out the stated objectives and purpose of this  
28 section.

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## CHAPTER 161

(S. B. 137—By Senators J. Manchin, Tucker, Mr. President,  
Blatnik, Holliday, Felton, Harman, Pritt and Warner)

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[Passed February 27, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact section twelve-b, article five,

chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requirement that prescribing practitioner specify in his or her own handwriting "Brand Necessary" or "Brand Medically Necessary" or other designated language if generic drugs are not to be used to fill a prescription.

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

That section twelve-b, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.**

**§30-5-12b. Definitions; selection of generic drug products.**

1 (a) As used in this section:

2 (1) "Brand name" means the proprietary or trade  
3 name selected by the manufacturer and placed upon a  
4 drug or drug product, its container, label or wrapping  
5 at the time of packaging.

6 (2) "Generic name" means the official title of a drug  
7 or drug combination for which a new drug application,  
8 or an abbreviated new drug application, has been  
9 approved by the United States food and drug adminis-  
10 tration and is in effect.

11 (3) "Substitute" means to dispense without the pres-  
12 criber's express authorization a therapeutically equival-  
13 ent generic drug product in the place of the drug  
14 ordered or prescribed.

15 (4) "Equivalent" means drugs or drug products which  
16 are the same amounts of identical active ingredients and  
17 same dosage form, and which will provide essentially  
18 the same therapeutic efficacy and toxicity when admin-  
19 istered to an individual.

20 (5) "Practitioner" means a physician, an authorized  
21 Type A physician assistant at the direction of his or her  
22 supervising physician in accordance with the provisions  
23 of section sixteen, article three of this chapter, osteo-

24 path, dentist, veterinarian, podiatrist, optometrist or  
25 any other person duly licensed to practice and to  
26 prescribe drugs under the laws of this state.

27 (b) A pharmacist who receives a prescription for a  
28 brand name drug or drug product shall substitute a less  
29 expensive equivalent generic name drug or drug  
30 product unless in the exercise of his or her professional  
31 judgment the pharmacist believes that the less expen-  
32 sive drug is not suitable for the particular patient:  
33 *Provided*, That no substitution may be made by the  
34 pharmacist where the prescribing practitioner indicates  
35 that, in his or her professional judgment, a specific  
36 brand name drug is medically necessary for a particular  
37 patient. Every drug prescription order shall contain an  
38 instruction on whether or not an equivalent generic  
39 name drug or drug product may be substituted.

40 A written prescription order shall permit the pharma-  
41 cist to substitute an equivalent generic name drug or  
42 drug product except where the prescribing practitioner  
43 has indicated in his or her own handwriting the words  
44 "Brand Necessary" or "Brand Medically Necessary."  
45 The following sentence shall be printed on the prescrip-  
46 tion form: "This prescription may be filled with a  
47 generically equivalent drug product unless the words  
48 "Brand Necessary" or the words "Brand Medically  
49 Necessary" are written, in the practitioner's own  
50 handwriting, on this prescription form."

51 A verbal prescription order shall permit the pharma-  
52 cist to substitute an equivalent generic name drug or  
53 drug product except where the prescribing practitioner  
54 or his or her agent shall indicate to the pharmacist that  
55 the prescription is "Brand Necessary" or "Brand  
56 Medically Necessary." The pharmacist shall note the  
57 instructions on the file copy of the prescription or chart  
58 order form.

59 (c) No person may by trade rule, work rule, contract,  
60 or in any other way prohibit, restrict, limit or attempt  
61 to prohibit, restrict or limit the making of a generic  
62 name substitution under subsection (b) of this section.  
63 No employer or his or her agent may use coercion or

64 other means to interfere with the professional judgment  
65 of the pharmacist in deciding which generic name drugs  
66 or drug products shall be stocked or substituted:  
67 *Provided*, That this section shall not be construed to  
68 permit the pharmacist to generally refuse to substitute  
69 less expensive therapeutically equivalent generic drugs  
70 for brand name drugs, and that any pharmacist so  
71 refusing shall be subject to the penalties prescribed in  
72 section twenty-two, article five, chapter thirty of this  
73 code.

74 (d) A pharmacist may substitute a drug under  
75 subsection (b) of this section only where there will be  
76 a savings to the buyer. Where substitution is proper  
77 under subsection (b), or where the practitioner pres-  
78 cribes the drug by generic name, the pharmacist shall,  
79 consistent with his or her professional judgment,  
80 dispense the lowest retail cost, effective brand which is  
81 in stock.

82 (e) All savings in the retail price of the prescription  
83 shall be passed on to the purchaser; these savings shall  
84 be equal to the difference between the retail price of the  
85 brand name product and the customary and usual price  
86 of the generic product substituted therefor: *Provided*,  
87 That in no event shall such savings be less than the  
88 difference in acquisition cost of the brand name product  
89 prescribed and the acquisition cost of the substituted  
90 product.

91 (f) Each pharmacy shall maintain a record of any  
92 substitution of an equivalent generic name drug product  
93 for a prescribed brand name drug product on the file  
94 copy of a written or verbal prescription or chart order.  
95 Such record shall include the manufacturer and generic  
96 name of the drug product selected.

97 All drugs shall be labeled in accordance with the  
98 instructions of the practitioner.

99 Unless the practitioner directs otherwise, the pres-  
100 cription label on all drugs dispensed by the pharmacist  
101 shall indicate the generic name using abbreviations if  
102 necessary and the name of the manufacturer. The same

103 notation will be made on the original prescription  
104 retained by the pharmacist.

105 (g) A pharmacist may not dispense a product under  
106 the provisions of this section unless the manufacturer  
107 has shown that the drug has been manufactured with  
108 the following minimum good manufacturing standards  
109 and practices by:

110 (1) Labeling products with the name of the original  
111 manufacturer and control number;

112 (2) Maintaining quality control standards equal to or  
113 greater than those of the United States food and drug  
114 administration;

115 (3) Marking products with identification code or  
116 monogram; and

117 (4) Labeling products with an expiration date.

118 (h) The West Virginia board of pharmacy shall  
119 establish by rule a formulary of generic type and brand  
120 name drug products which are determined by the board  
121 to demonstrate significant biological or therapeutic  
122 inequivalence and which, if substituted, would pose a  
123 threat to the health and safety of patients receiving  
124 prescription medication. The formulary shall be promul-  
125 gated by the board within ninety days of the date of  
126 passage of this section, and may be amended in  
127 accordance with the provisions of chapter twenty-nine-  
128 a of this code.

129 (i) No pharmacist shall substitute a generic named  
130 therapeutically equivalent drug product for a pres-  
131 cribed brand name drug product if the brand name  
132 drug product or the generic drug type is listed on the  
133 formulary established by the West Virginia board of  
134 pharmacy pursuant to this article, or is found to be in  
135 violation of the requirements of the United States food  
136 and drug administration.

137 (j) Any pharmacist who substitutes any drug shall,  
138 either personally or through his or her agent, assistant  
139 or employee, notify the person presenting the prescrip-  
140 tion of such substitution. The person presenting the



141 prescription shall have the right to refuse the substitu-  
142 tion. Upon request the pharmacist shall relate the retail  
143 price difference between the brand name and the drug  
144 substituted for it.

145 (k) Every pharmacy shall post in a prominent place  
146 that is in clear and unobstructed public view, at or near  
147 the place where prescriptions are dispensed, a sign  
148 which shall read: "West Virginia law requires pharma-  
149 cists to substitute a less expensive generic named  
150 therapeutically equivalent drug for a brand name drug,  
151 if available, unless you or your physician direct  
152 otherwise." The sign shall be printed with lettering of  
153 at least one and one-half inches in height with appropri-  
154 ate margins and spacing as prescribed by the West  
155 Virginia board of pharmacy.

156 (l) The West Virginia board of pharmacy shall  
157 promulgate rules and regulations setting standards for  
158 substituted drug products, obtaining compliance with  
159 the provisions of this section and enforcing the provi-  
160 sions of this section. Any person shall have the right to  
161 file a complaint with the West Virginia board of  
162 pharmacy regarding any violation of the provisions of  
163 this article. Such complaints shall be investigated by the  
164 board of pharmacy.

165 Fifteen days after the board has notified, by regis-  
166 tered mail, a person, firm, corporation or copartnership  
167 that such person, firm, corporation or copartnership is  
168 suspected of being in violation of a provision of this  
169 section, the board shall hold a hearing on the matter.  
170 If, as a result of the hearing, the board determines that  
171 a person, firm, corporation or copartnership is violating  
172 any of the provisions of this section, it may, in addition  
173 to any penalties prescribed by section twenty-two of this  
174 article, suspend or revoke the permit of any person,  
175 firm, corporation or copartnership to operate a phar-  
176 macy or drugstore.

177 (m) No pharmacist complying with the provisions of  
178 this section shall be liable in any way for the dispensing  
179 of a generic named therapeutically equivalent drug,  
180 substituted under the provisions of this section, unless

181 the generic named therapeutically equivalent drug was  
182 incorrectly substituted.

183 In no event where the pharmacist substitutes a drug  
184 under the provisions of this section shall the prescribing  
185 physician be liable in any action for loss, damage, injury  
186 or death of any person occasioned by or arising from the  
187 use of the substitute drug unless the original drug was  
188 incorrectly prescribed.

189 Failure of a practitioner to specify that a specific  
190 brand name is necessary for a particular patient shall  
191 not constitute evidence of negligence unless the practi-  
192 tioner had reasonable cause to believe that the health of  
193 the patient required the use of a certain product and no  
194 other.

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## CHAPTER 162

(Com. Sub. for S. B. 254—By Senators Tucker, Mr. President, and Jackson)

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[Passed March 24, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the practice and regulation of public accounting; setting forth findings and declarations; providing definitions; continuing and reorganizing the state board of accountancy; providing for the appointment, terms, qualifications, removal and compensation of members thereof; providing for the funding of said board; enabling and directing said board to promulgate rules; providing for the certification of qualified persons in the practice of public accounting and the continuing regulation of those previously certified or registered as public accountants under prior law; providing for the annual licensure of certified persons and registrants and enabling the board to promulgate the requirements therefor; prohibiting and providing for the criminal punishment of those engaged in the uncertified, unlicensed or unregistered practice of public accounting and other unlawful acts; providing

for the enjoyment of such acts and evidence thereof for purposes of such injunctive relief; exempting certain activity from regulation; providing for the ownership of working papers; providing for the practice of accountancy by accounting corporations; providing for board revocation and suspension of certificates, registrations and licenses; and providing an effective date.

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

That article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

#### ARTICLE 9. ACCOUNTANTS.

- §30-9-1. Findings and statement of purpose.
- §30-9-2. Definitions.
- §30-9-3. Board of accountancy; appointment, terms, qualifications, removal and compensation of members; funds; rules and regulations.
- §30-9-4. Certification; applicability of article to previous holders of certificates.
- §30-9-5. Grant and renewal of license; rights of licensee.
- §30-9-6. Practice of public accounting restricted to licensees; prohibited acts.
- §30-9-7. Prohibitions and penalties.
- §30-9-8. Injunction against unlawful act; evidence.
- §30-9-9. Inapplicability of article.
- §30-9-10. Ownership of working papers.
- §30-9-11. Accounting corporations.
- §30-9-12. Revocation or suspension of certificate, license or registration.
- §30-9-13. Effective date.

##### §30-9-1. Findings and statement of purpose.

1 The Legislature hereby finds and declares that the  
 2 public interest requires the certification and licensure  
 3 of those persons engaged in the practice of public  
 4 accounting as herein defined in order to aid the citizens  
 5 of this state in determining the qualifications of such  
 6 persons; that this function is best served by a state board  
 7 of accountancy subject to legislative control; and that  
 8 this article is enacted to further the aforesaid public  
 interest.

##### §30-9-2. Definitions.

1 As used in this article, the following words and terms  
 2 shall have the following meanings, unless the context  
 3 clearly indicates otherwise:

4       “Assurance” means any act or action, whether written  
5 or oral, expressing an opinion or conclusion about the  
6 reliability of a financial statement or about its confor-  
7 mity with any financial accounting principles or  
8 standards.

9       “Board” means the state board of accountancy, known  
10 as the “West Virginia board of accountancy,” continued  
11 by the provisions of this article and established under  
12 prior law.

13       “Certificate” means a certificate as a certified public  
14 accountant issued by the board pursuant to this article  
15 or corresponding provisions of prior law or a corres-  
16 ponding certificate as a certified public accountant  
17 issued after examination under the laws of any other  
18 state.

19       “Financial statement” means a writing or other  
20 presentation, including accompanying notes, which  
21 presents, in whole or in part, historical or prospective  
22 financial position, results of operations or changes in  
23 financial position of any person, corporation, partner-  
24 ship or other entity.

25       “License” means a license to practice public account-  
26 ing issued annually under the provisions of this article  
27 and “licensee” means a person holding such license.

28       “Practice of public accountancy” or “public account-  
29 ing” means: (i) The giving of an assurance, in a report  
30 or otherwise, whether expressly or implicitly; or (ii) in  
31 the case of a person holding himself out as a certificate  
32 holder, the performance of or offering to perform any  
33 service involving the use of accounting or auditing skills,  
34 including, but not limited to, management advisory or  
35 consulting services, the preparation of tax returns, the  
36 rendering of tax services, the keeping of books of  
37 account and related accounting records and the prepara-  
38 tion of financial statements without the expression of  
39 an assurance: *Provided*, That an employee giving  
40 assurances to or performing such services for an  
41 employer shall not be deemed to be practicing public  
42 accountancy.

43 "Registered" or "registrant" refers to or means a  
44 person registered, but not certified, by the board under  
45 prior law as a public accountant before the first day of  
46 January, one thousand nine hundred sixty-seven, and  
47 "registration" means such registration.

48 "Report" or "reports" when used with reference to  
49 financial statements, means an opinion or disclaimer of  
50 opinion or other form of language or representation  
51 which states or implies any form of assurance or denial  
52 of assurance.

53 "State" means any state of the United States, the  
54 District of Columbia, Puerto Rico, the U. S. Virgin  
55 Islands or Guam.

56 As used in this article, the singular and plural and  
57 the masculine and feminine are interchangeable unless  
58 the context clearly indicates otherwise.

**§30-9-3. Board of accountancy; appointment, terms,  
qualifications, removal and compensation of  
members; funds; rules and regulations.**

1 The state board of accountancy, known as the "West  
2 Virginia board of accountancy," is hereby continued.  
3 The board consists of five members appointed by the  
4 governor with the advice and consent of the Senate for  
5 terms of three years. Any vacancy on the board  
6 occurring during a three-year term shall be filled by  
7 appointment of the governor for the remainder of the  
8 unexpired term. No member may serve more than two  
9 consecutive full terms, and any member having served  
10 two full terms may not be appointed or reappointed for  
11 one year after completion of his second full term.

12 The members composing the board on and after the  
13 effective date of this article shall be appointed by the  
14 governor to serve as follows: Two for a term of three  
15 years; two for a term of two years; and one for a term  
16 of one year. Thereafter, as the terms of office of the  
17 members respectively expire, the governor shall ap-  
18 point, to fill the vacancies so occasioned, members whose  
19 terms shall be for three years from the day on which  
20 that of their immediate predecessors expired.

21 Every member of the board shall hold a certificate:  
22 *Provided,* That the governor shall appoint as a member  
23 no more than one noncertificated, licensed registrant  
24 under prior law. At the time of any appointment at least  
25 three members of the board shall hold a certificate and  
26 a current license.

27 Notwithstanding the foregoing, for the first five years  
28 after the effective date of this article the board shall  
29 further consist of two additional members, and for the  
30 second five years after the effective date of this article  
31 the board shall further consist of one additional  
32 member, each of whom shall be a noncertificated,  
33 licensed registrant. One of such two additional members  
34 shall be appointed for an initial term of one year, and  
35 the second of such two additional members shall be  
36 appointed for an initial term of two years. Thereafter,  
37 and subject to the expiration of such five year periods,  
38 as the terms of office of such additional members  
39 respectively expire, the governor shall appoint, to fill the  
40 vacancies so occasioned, members of like qualification  
41 whose terms shall be for three years from the day on  
42 which that of their immediate predecessors expired.

43 The governor shall remove from the board any  
44 member who fails to attend, without just cause, three  
45 regularly scheduled board meetings. Any member of the  
46 board shall immediately and automatically forfeit his  
47 membership if he (i) has his certificate, registration or  
48 license suspended or revoked by the board; or (ii) is  
49 convicted of a felony under the laws of any state or the  
50 United States.

51 The board shall pay each member fifty dollars for  
52 each day or portion thereof spent in the discharge of his  
53 official duties and shall reimburse each member for his  
54 actual and necessary expenses incurred in the discharge  
55 of his official duties.

56 All fees and other moneys received by the board  
57 pursuant to the provisions of this article shall be kept  
58 by the board in a separate fund and expended solely for  
59 the purposes of this article. The board shall retain its  
60 funds from year to year, and no part of this special fund

61 shall revert to the general funds of this state. The  
62 compensation provided by this article and all expenses  
63 incurred under this article shall be paid from this  
64 special fund. No compensation or expense incurred  
65 under this article is a charge against the general funds  
66 of this state.

67 The board shall make and enforce all necessary rules,  
68 not inconsistent with this article, for the examination,  
69 certification and licensure of public accountants as set  
70 forth herein, and for the general practice of public  
71 accounting, including the collection of fees for examina-  
72 tion, certification and licensure. The board may promul-  
73 gate and amend rules of professional conduct approp-  
74 riate to establish and maintain a high standard of  
75 integrity in the profession of public accountancy, which  
76 rules are applicable to all licensees. No rule promul-  
77 gated by the board is effective unless promulgated  
78 pursuant to article three, chapter twenty-nine-a of this  
79 code: *Provided*, That all rules promulgated by the board  
80 under prior law shall remain in full force and effect  
81 unless modified or repealed in accordance with this  
82 section.

**§30-9-4. Certification; applicability of article to previous holders of certificates.**

1 The board shall grant a certificate to any applicant  
2 who, at the time of making application:

3 (1) Is over the age of eighteen years;

4 (2) Is of good moral character;

5 (3) Is, at the time of taking the examination provided  
6 for in subdivision (5), a resident of this state or employed  
7 in this state on a full-time basis: *Provided*, That the  
8 board may provide by rule for exceptions to this  
9 requirement;

10 (4) Has satisfied the following educational  
11 requirements:

12 (a) If application is made prior to the first day of July,  
13 two thousand, the obtainment of a baccalaureate or  
14 equivalent degree conferred by a college or university

15 acceptable to the board with a concentration in account-  
16 ing or its equivalent, as determined by the board by  
17 rule;

18 (b) If application is made on or after the first day of  
19 July, two thousand, the satisfactory completion of one  
20 hundred fifty semester hours or their equivalent at such  
21 accredited institutions, including the obtainment of the  
22 aforesaid degree.

23 (5) Has completed satisfactorily an examination to be  
24 given by the board at least twice each year in accounting  
25 theory, accounting practice, auditing, commercial law  
26 or such other appropriate subjects as determined by the  
27 board by rule. The board shall prescribe by rule for the  
28 retention of credit for the satisfactory completion of a  
29 portion of such examination in future examinations.

30 The board may, in its discretion, in lieu of the  
31 examination provided for in this section, issue a  
32 certificate to any person who possesses the other  
33 qualifications stated in this section, and who is the  
34 holder of a certificate issued under the laws of any state  
35 which extends similar privileges to certified public  
36 accountants of this state provided the requirements for  
37 such certificates in the state which has granted the  
38 certificate to such person, are, in the opinion of the  
39 board, equivalent to those herein required; or who is the  
40 holder of a certificate, or the equivalent thereof, granted  
41 under the authority of a foreign nation, if the require-  
42 ments for such certificates in the foreign nation, are, in  
43 the opinion of the board, equivalent to those herein  
44 required.

45 Persons who, on the effective date of this article, hold  
46 certificates theretofore issued by the board are not  
47 required to obtain additional certificates under this  
48 article, but are otherwise subject to all provisions of this  
49 article; and such certificates theretofore issued shall, for  
50 all purposes, be considered certificates issued under this  
51 article and subject to the provisions hereof.

**§30-9-5. Grant and renewal of license; rights of licensee.**

1 The board shall prescribe by rule for the issuance of



2 licenses on an annual basis. The board shall issue a  
3 license only to a person who holds a valid certificate or  
4 is registered under prior law. The board may establish  
5 by rule work experience, continuing education, and  
6 other qualifications for the licensure of certificate  
7 holders: *Provided*, That no such qualifications may be  
8 imposed on registrants under prior law.

9 Only a person who holds a valid license granted to him  
10 by the board may practice public accounting. Failure to  
11 obtain a license does not impair the right of a person  
12 to obtain a license in future years, but only removes that  
13 person from those licensed to practice during the year.

**§30-9-6. Practice of public accounting restricted to  
licensees; prohibited acts.**

1 (a) A person who does not hold a valid license issued  
2 by the board may not claim to hold one; nor may he or  
3 she practice or offer to practice public accountancy or  
4 public accounting; nor may he or she make any other  
5 claim of licensure or approval related to the preparation  
6 of financial statements or expression of assurances  
7 thereon which is false or misleading.

8 (b) Except as set forth in this subsection, a person who  
9 does not hold a valid certificate issued by the board may  
10 not claim to hold one or describe himself as or assume  
11 any of the following titles or designations: Certified  
12 public accountant, CPA, public accountant, PA, certi-  
13 fied accountant, CA, chartered accountant, licensed  
14 accountant, LA, registered accountant, RA, independent  
15 auditor, auditor, or similar designation: *Provided*, That  
16 registrants under prior law may use the titles public  
17 accountant or PA.

18 Partnerships practicing accountancy in this state may  
19 use the aforesaid designations, or practice as such, only  
20 if all the members thereof who practice in this state are  
21 so licensed.

22 (c) A person who does not hold a valid license issued  
23 by the board may not claim to have used "generally  
24 accepted accounting principles," "generally accepted

25 accounting standards," "public accountancy standards,"  
26 "public accountancy principles," "generally accepted  
27 auditing principles," or "generally accepted auditing  
28 standards," in connection with his preparation of any  
29 financial statement; nor may he or she use any of these  
30 terms in describing any complete or partial variation  
31 from such standards or principles or to imply complete  
32 or partial conformity with such standards or principles.

33 (d) A person who does not hold a valid license issued  
34 by the board may not use the words "audit," "audit  
35 report," "independent audit," "attest," "attestation,"  
36 "examine," "examination," "opinion," or "review" in a  
37 report on a financial statement.

38 (e) A person who does not hold a valid license issued  
39 by the board may neither state nor imply that he or she  
40 is tested, competent, qualified, or proficient in financial  
41 standards established by: (i) The American institute of  
42 certified public accountants or any agency thereof; (ii)  
43 the governmental accounting standards board or any  
44 agency thereof; (iii) the securities and exchange commis-  
45 sion or any agency thereof; (iv) the financial accounting  
46 standards board; or (v) any successor entity to an entity  
47 named in this subsection.

48 (f) No person who holds a valid license issued by the  
49 board may engage in the practice of public accounting  
50 under a professional or firm name or designation that  
51 contains a name or term other than past or present  
52 partners, officers or shareholders of the firm or of a  
53 predecessor firm; nor may any such person engage in  
54 the practice of public accounting under a professional  
55 or firm name which is deceptive or misleading.

#### **§30-9-7. Prohibitions and penalties.**

1 Any person who engages in any of the unauthorized  
2 acts listed in section six of this article is guilty of a  
3 misdemeanor, and, upon conviction thereof, shall be  
4 fined not more than one thousand dollars or imprisoned  
5 in the county jail not more than one year, or both fined  
6 and imprisoned.

#### **§30-9-8. Injunction against unlawful act; evidence.**

1 The board or any other interested person may apply  
2 to any court of competent jurisdiction for an order  
3 enjoining any of the acts listed in section six of this  
4 article. Upon a showing that any person has engaged,  
5 or is about to engage, in any such acts, an injunction,  
6 restraining order or such other order as may be  
7 appropriate shall be granted by such court without  
8 bond. The display or uttering by a person of any printed,  
9 engraved or written instrument, bearing the name of  
10 such person in conjunction with any of the claims, titles,  
11 words or phrases listed in section six of this article shall,  
12 for purposes of this section, be prima facie evidence that  
13 such person has engaged in such acts.

**§30-9-9. Inapplicability of article.**

1 (a) Nothing contained in this article may be construed  
2 to prevent any person from describing himself as an  
3 "accountant" or a "bookkeeper" or from stating that he  
4 practices accountancy or bookkeeping; nor, subject to  
5 the licensure requirements herein imposed on persons  
6 holding themselves out as certificate holders, may this  
7 article be construed to prevent any person from  
8 performing services involving the use of accounting  
9 skills, rendering tax services, management advisory or  
10 consulting services, or in the keeping of books of account  
11 and related accounting records, or from preparing  
12 financial statements without the expression of an  
13 assurance.

14 (b) Nothing contained in this article may be construed  
15 to prevent any person from stating that he has prepared,  
16 compiled, assembled or drafted a financial statement,  
17 provided he does not use any additional language which  
18 comprises an assurance.

19 (c) The prohibitions of section six and the other  
20 provisions of this article may not be construed to  
21 preclude the use of the following or substantially similar  
22 language: "I (We) have compiled the accompanying  
23 (financial statements) of (name of entity) as of (time  
24 period) for the (period) then ended. A compilation is  
25 limited to presenting in the form of financial statements  
26 information that is the representation of management

27 (owners). I (We) have not audited or reviewed the  
28 accompanying financial statements and, accordingly, do  
29 not express an opinion or any other form of assurance  
30 on them. Management has elected to omit substantially  
31 all (or certain) required disclosures (and the statement  
32 of changes in financial position). If omitted disclosures  
33 were included in the financial statements, they might  
34 influence the user's conclusions about the (entity's)  
35 financial position, results of operations and changes in  
36 financial position. Accordingly, these financial state-  
37 ments are not designed for those who are not informed  
38 about these matters."

39 (d) Nothing contained in this article may be construed  
40 to prohibit an employee from furnishing services to his  
41 employer.

**§30-9-10. Ownership of working papers.**

1 (a) All statements, records, schedules, working papers  
2 and memoranda prepared by a licensee, or a partner,  
3 shareholder, officer, director or employee of a licensee,  
4 incident to or in the course of rendering services to a  
5 client pursuant to the practice of public accountancy of  
6 a licensee, shall be and remain the property of the  
7 licensee in the absence of an express agreement between  
8 the licensee and the client to the contrary: *Provided,*  
9 That this subsection shall not apply to reports submitted  
10 to a client and statements, records, schedules, working  
11 papers and memoranda provided by a client to a  
12 licensee, or a partner, shareholder, officer, director or  
13 employee to a licensee. No such statement, record,  
14 schedule, working paper or memorandum may be sold,  
15 transferred or bequeathed, without the consent of the  
16 client or his personal representative, successor or  
17 assignee, to anyone other than one or more surviving  
18 partners or shareholders or new partners or share-  
19 holders of the licensee or any combined or merged firm  
20 or successor in interest to the licensee.

21 (b) In addition to any statements, records, schedules,  
22 working papers, memoranda or reports required to be  
23 furnished or returned to the client in accordance with  
24 subsection (a), a licensee shall furnish to his client or

25 former client, upon request made within a reasonable  
26 time after original issuance of the document in question:

27 (1) A copy of a tax return of the client.

28 (2) A copy of any report or other document issued by  
29 the licensee to or for such client and not formally  
30 withdrawn or disavowed by the licensee prior to the  
31 request.

32 (3) A copy of the licensee's working papers to the  
33 extent that such working papers include records that  
34 would ordinarily constitute part of the client's records  
35 and are not otherwise available to the client.

36 (4) Any accounting or other records belonging to, or  
37 obtained from or on behalf of, the client which the  
38 licensee removed from the client's premises or received  
39 for the client's account. The licensee may make and  
40 retain copies of such documents of the client whenever  
41 those documents form the basis for work done by him.

#### §30-9-11. Accounting corporations.

1 One or more individuals, each of whom is licensed  
2 within this state, may organize and become a share-  
3 holder or shareholders of an accounting corporation.  
4 Individuals who may be practicing public accountancy  
5 as an organization created otherwise than pursuant to  
6 the provisions of this section may incorporate under and  
7 pursuant to this section. This section is not intended to  
8 amend the statutory or common law as it relates to  
9 associations or partnerships, except to allow partner-  
10 ships of licensees to organize as an accounting  
11 corporation.

12 An accounting corporation may render public ac-  
13 counting services only through officers, employees and  
14 agents who are themselves duly licensed within this  
15 state. The term "employee" or "agent," as used in this  
16 section, does not include secretaries, clerks, typists or  
17 other individuals who are not usually and ordinarily  
18 considered by custom and practice to be rendering  
19 accounting services for which a license is required.

20 This section does not modify the law as it relates to

21 the relationship between a person furnishing accounting  
22 services and his client, nor does it modify the law as it  
23 relates to liability arising out of such a professional  
24 service relationship. Except for permitting an account-  
25 ing corporation, this section is not intended to modify  
26 any legal requirement or court rule relating to ethical  
27 standards of conduct required of persons providing  
28 public accounting services.

29 An accounting corporation may issue its capital stock  
30 only to persons who are duly certified or registered  
31 under prior law.

32 When not inconsistent with this section, the organiza-  
33 tion and procedures of accounting corporations shall  
34 conform to the requirements of article one, chapter  
35 thirty-one of this code.

36 The board may require that those persons subject to  
37 this article must obtain prior board authorization before  
38 beginning to act as an accounting corporation and may  
39 require by regulation a fee for each application for  
40 authorization to form an accounting corporation. The  
41 board may adopt rules: (1) To set reasonable standards  
42 for granting or refusing authorization to act as an  
43 accounting corporation, (2) to require appropriate  
44 information therefor from an accounting corporation  
45 applicant, and (3) to notify the secretary of state that  
46 certain persons have been given authorization by the  
47 board to act as an accounting corporation.

48 Upon notification by the board of its approval the  
49 secretary of state, upon compliance by the incorporators  
50 with this section and the applicable provisions of  
51 chapter thirty-one of this code, may issue to the  
52 incorporators a certificate of incorporation for the  
53 accounting corporation which then may engage in  
54 practice through duly licensed or otherwise legally  
55 authorized stockholders, employees and agents.

56 A shareholder of an accounting corporation may sell  
57 or transfer his shares of stock in such corporation only  
58 to (i) another individual who is duly licensed to practice  
59 public accountancy in this state or (ii) back to the  
60 corporation.

61 The corporate name of an accounting corporation shall  
62 contain the last name or names of one or more of its  
63 shareholders: *Provided*, That if the rules of the board so  
64 permit, the corporate name may contain or include the  
65 name or names of former shareholders or of persons who  
66 were associated with a predecessor partnership or other  
67 organization. The corporate name shall also contain the  
68 words "accounting corporation," or the abbreviation  
69 "A.C." The use of the word "company," "corporation" or  
70 "incorporated," or any other words or abbreviations in  
71 the name of an accounting corporation organized under  
72 this article which indicate that such corporation is a  
73 corporation, other than the words "accounting corpora-  
74 tion" or the abbreviation "A.C.," is specifically prohi-  
75 bited.

**§30-9-12. Revocation or suspension of certificate, license  
or registration.**

- 1 After notice and hearing, as provided in article one  
2 of this chapter, the board may revoke or suspend any  
3 certificate or registration and may refuse to issue, or  
4 refuse to renew, any license, for any one or combination  
5 of the following causes:
- 6 (a) Fraud or deceit in obtaining a certificate, regis-  
7 tration or license;
  - 8 (b) Dishonesty, fraud or gross negligence in the  
9 practice of public accounting;
  - 10 (c) Violation of a rule of professional conduct promul-  
11 gated by the board under the authority granted by this  
12 article;
  - 13 (d) Conviction of any felony, or any crime, an element  
14 of which is deceit or fraud, under the laws of any state  
15 or of the United States;
  - 16 (e) Cancellation, revocation, suspension or refusal to  
17 renew authority to practice public accountancy by any  
18 other state, for any cause other than failure to pay an  
19 annual license fee in such other state;
  - 20 (f) Habitual drunkenness, addiction to the use of habit-  
21 forming drugs, mental incompetence or gross immoral-  
22 ity; or

- 23 (g) Unlawful practice of law as defined by the  
24 supreme court of appeals or statutory law of this state.

**§30-9-13. Effective date.**

- 1 This article shall take effect on the first day of July,  
2 one thousand nine hundred eighty-nine.

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## CHAPTER 163

(Com. Sub. for H. B. 2275—By Delegates M. Burke and Givens)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections two, four, five, six, seven, eight and twelve, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the board of examiners of land surveyors and qualifications for the practice of land surveying; expanding the definition of the practice of land surveying to include surface mining surveying; increasing the experience requirement prior to licensure; allowing certain equivalent curricula; removing certain eligibilities for persons to obtain a license without examination; changing the license fee from seventy dollars to not to exceed two hundred dollars; providing lower fees for partial reexaminations; renewal fees; removing the exemption of certain persons from application of this article and including other persons; and providing for probation and fines as penalties to be imposed by the board as disciplinary actions.

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

That sections two, four, five, six, seven, eight and twelve, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 13A. LAND SURVEYORS.**

§30-13A-2. Definitions.

§30-13A-4. Powers and duties of board; funds.



- §30-13A-5. Qualifications of applicants for licenses; surveyor in training applications; fees; examinations.
- §30-13A-6. Issuance of license; notice of expiration; renewal; renewal fee; display.
- §30-13A-7. Exemption from regulation and licensing.
- §30-13A-8. Suspension or revocation of license.
- §30-13A-12. Duty of county clerks and public officials.

### §30-13A-2. Definitions.

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

3 (a) "Applicant" means any person making application  
4 for an original or renewal license under the provisions  
5 of this article;

6 (b) "Licensee" means any person holding a license  
7 issued under the provisions of this article;

8 (c) "Board" means the West Virginia state board of  
9 examiners of land surveyors created under the provi-  
10 sions of this article;

11 (d) "Practice of land surveying" means the rendering  
12 or offering to render for a fee, salary or other compen-  
13 sation, monetary or otherwise, for the public generally,  
14 any of the following services:

15 (1) The location, relocation, establishment, reestab-  
16 lishment or retracement of any property line or  
17 boundary of any parcel of land or of any road or utility  
18 right-of-way, easement or alignment;

19 (2) The performance of any survey for the division,  
20 subdivision or resubdivision of any tract of land;

21 (3) The determination of the position of any monu-  
22 ment or reference point which marks a property line  
23 boundary or corner, or setting, resetting or replacing  
24 any such monument or reference point, by the use of the  
25 principles of land surveying;

26 (4) The determination of the configuration or contour  
27 of the earth's surface or the position of fixed objects  
28 thereon or related thereto, by means of measuring lines  
29 and angles, and applying the principles of mathematics;

30 (5) The performance of cadastral surveying, under-

31 ground surveying, surface mine surveying or hydrogra-  
32 phic surveying;

33 (6) The preparation of subdivision maps; and

34 (7) The preparation of maps or drawings showing any  
35 of the above.

36 (e) "Professional surveyor" means any person who  
37 engages in the practice of land surveying.

38 (f) "Equivalent curriculum" includes, but is not  
39 limited to, degrees in related curricula such as engineer-  
40 ing, forestry, geology, mathematics, physics, computer  
41 science or other related fields.

**§30-13A-4. Powers and duties of board; funds.**

1 (a) The board shall have the power and duty to:

2 (1) Examine applicants and determine their eligibil-  
3 ity for a license to engage in the practice of land  
4 surveying;

5 (2) Prepare, conduct and grade an apt and proper  
6 written, oral or written and oral examination of  
7 applicants for a license and determine the satisfactory  
8 passing score thereon;

9 (3) Promulgate reasonable rules implementing the  
10 provisions of this article and the powers and duties  
11 conferred upon the board hereby, all of which reason-  
12 able rules shall be promulgated in accordance with the  
13 provisions of article three, chapter twenty-nine-a of this  
14 code;

15 (4) Issue, renew, deny, suspend or revoke licenses to  
16 engage in the practice of land surveying in accordance  
17 with the provisions of this article;

18 (5) Investigate alleged violations of the provisions of  
19 this article, reasonable rules promulgated hereunder  
20 and orders and final decisions of the board and take  
21 appropriate disciplinary action against any licensee for  
22 the violation thereof or institute appropriate legal action  
23 for the enforcement of the provisions of this article,  
24 reasonable rules promulgated hereunder and orders and  
25 final decisions of the board or take such disciplinary  
26 action and institute such legal action;

27 (6) Keep accurate and complete records of its proceed-  
28 ings, certify the same as may be appropriate, and  
29 prepare, from time to time, a list showing the names and  
30 addresses of all licensees;

31 (7) Take such other action as may be reasonably  
32 necessary or appropriate to effectuate the provisions of  
33 this article; and

34 (8) Establish standards to evaluate surveying or  
35 equivalent curricula as it relates to the practice of land  
36 surveying under the provisions of this article and to  
37 determine the amount of experience required under  
38 section five of this article which may be substituted for  
39 a particular curriculum.

40 (b) All moneys paid to the board shall be accepted by  
41 a person designated by the board and deposited by him  
42 with the treasurer of the state and credited to an  
43 account to be known as the "board of examiners of land  
44 surveyors fund." All of the reasonable compensation of  
45 the members of the board, the reimbursement of all  
46 reasonable and necessary expenses actually incurred by  
47 such members and all other costs and expenses incurred  
48 by the board in the administration of this article shall  
49 be paid from such fund, and no part of the state's  
50 general revenue fund shall be expended for this purpose.

**§30-13A-5. Qualifications of applicants for licenses;  
surveyor in training applications; fees;  
examinations.**

1 (a) To be eligible for a license to engage in the  
2 practice of land surveying, the applicant must:

3 (1) Be at least eighteen years of age;

4 (2) Be of good moral character;

5 (3) Have been a resident of the United States for one  
6 year immediately preceding the date of application;

7 (4) Not have been convicted of a crime involving  
8 moral turpitude;

9 (5) Have four years or more experience in the practice  
10 of land surveying under the supervision of a person

11 authorized to practice land surveying in this state, or a  
12 person authorized in another state or country to engage  
13 in the practice of land surveying; and each year of  
14 satisfactory study in a surveying or equivalent curric-  
15 ulum shall be substituted for one year of experience, but  
16 only two years of such experience requirement may be  
17 fulfilled by such study. On and after the first day of  
18 July, one thousand nine hundred ninety-one, six years  
19 or more of such experience under the supervision of a  
20 licensee or a person authorized in another state or  
21 country to engage in the practice of land surveying shall  
22 be required by those applicants who are graduates of a  
23 surveying or equivalent curriculum of two scholastic  
24 years or more. However, only three years of such  
25 experience may be fulfilled by such study, and eight  
26 years of such experience under the supervision of a  
27 person authorized to practice land surveying in this  
28 state, or a person authorized in another state or country  
29 to engage in the practice of land surveying, shall be  
30 required for those applicants who are not graduates of  
31 a surveying or equivalent curriculum; and

32 (6) Have passed the examination prescribed by the  
33 board, which examination shall cover the basic subject  
34 matter of land surveying and land surveying skills and  
35 techniques.

36 (b) Any applicant for any such license shall submit an  
37 application therefor on forms provided by the board.  
38 Such application shall be verified and shall contain a  
39 statement of the applicant's education and experience,  
40 the names of five persons for reference (at least three  
41 of whom shall be licensees or persons authorized in  
42 another state or country to engage in the practice of land  
43 surveying, who have knowledge of his work) and such  
44 other information as the board may from time to time  
45 by reasonable rule prescribe.

46 (c) An applicant shall pay to the board with his  
47 application an examination fee for the purpose of  
48 covering the cost of the examination not to exceed two  
49 hundred dollars as determined by the board by rule.

50 (d) Examinations shall be held at least once each year

51 at such time and place as the board shall determine. The  
52 scope of the examination and methods of procedure shall  
53 be determined by the board. An applicant who fails to  
54 pass all or any part of an examination may reapply at  
55 any time and shall furnish additional information as  
56 requested by the board. The cost of reexamination will  
57 be based on the cost of the examination as determined  
58 by the board by rule.

**§30-13A-6. Issuance of license; notice of expiration;  
renewal; renewal fee; display.**

1 Whenever the board finds that an applicant meets all  
2 of the requirements of this article for a license to engage  
3 in the practice of land surveying, it shall forthwith issue  
4 to such person such license; and otherwise the board  
5 shall deny the same. All licenses, whether original or  
6 renewal, shall expire on the thirtieth day of June  
7 following the date of issuance or renewal. The secretary-  
8 treasurer of the board shall mail to every licensee, at  
9 least thirty days prior to the expiration of such license,  
10 notice of the expiration date and the amount of the  
11 renewal fee. A license may be renewed without exam-  
12 ination upon application for a renewal on a form  
13 prescribed by the board and payment to the board of  
14 an annual renewal fee of forty dollars. If a license is not  
15 renewed when due, the fee shall increase one dollar per  
16 month for each month or fraction thereof that such  
17 renewal fee is not paid, up to a maximum of thirty-six  
18 months. No license shall be renewed after expiration of  
19 said period of thirty-six months, and the fact that a  
20 license cannot be renewed because of the expiration of  
21 said period of thirty-six months shall not prevent such  
22 person from making application for a new license. The  
23 board may deny any application for renewal for any  
24 reason which would justify the denial of an original  
25 application for a license. The board shall prescribe the  
26 form of licenses and each such license shall be conspic-  
27 uously displayed by the licensee at his or her principal  
28 place of practice. A duplicate license may be issued upon  
29 payment of a fee of ten dollars.

**§30-13A-7. Exemption from regulation and licensing.**

1 The following persons are exempt from regulation and  
2 licensing under the provisions of this article and any  
3 reasonable rules promulgated hereunder, and may  
4 engage in the practice of land surveying without a  
5 license issued under the provisions of this article and  
6 any such reasonable rules:

7 (a) Any professional engineer authorized to practice  
8 the profession of engineering as provided in article  
9 thirteen of this chapter;

10 (b) Any employee of a proprietorship, partnership,  
11 association, corporation or other business entity which  
12 is engaged in the practice of land surveying in this state  
13 or any employee of a proprietorship, partnership,  
14 association, corporation or other business entity exemp-  
15 ted from rules and licensing under subdivision (a) of this  
16 section: *Provided*, That the work of any such employee  
17 is done under the supervision of and certified by a  
18 licensed employee of the proprietorship, partnership,  
19 association, corporation or other business entity;

20 (c) Any employee of a person, firm, association or  
21 corporation, when such employee is engaged in the  
22 practice of land surveying exclusively for the person,  
23 firm, association or corporation by which employed, or,  
24 if a corporation, its parents, affiliates or subsidiaries,  
25 and such person, firm, association or corporation does  
26 not hold himself or itself out to the public as being  
27 engaged in the business of land surveying;

28 (d) Any employee or officer of the United States, this  
29 state or any political subdivision thereof, when such  
30 employee is engaged in the practice of land surveying  
31 exclusively for such governmental unit.

#### **§30-13A-8. Suspension or revocation of license.**

1 (a) The board may at any time upon its own motion  
2 and shall upon the verified written complaint of any  
3 person conduct an investigation to determine whether  
4 there are any grounds for disciplinary action against the  
5 holder of a license or the suspension or revocation of a  
6 license issued under the provisions of this article.

7 (b) The board shall suspend or revoke the license of

8 any licensee, put the holder of any such license on  
9 probation, or impose a fine not to exceed one thousand  
10 dollars on the holder of any such license when it finds  
11 the holder thereof has:

12 (1) Been convicted of a crime involving moral  
13 turpitude;

14 (2) Obtained a license by means of fraud or deceit;

15 (3) Been incompetent, grossly negligent, or guilty of  
16 fraud, deceit or other misconduct in the practice of land  
17 surveying as defined by the board by reasonable rules;  
18 or

19 (4) Failed or refused to comply with the provisions of  
20 this article or any order or final decision of the board.

21 (c) Any suspension of a license shall continue for the  
22 period specified in the order of suspension. Revocation  
23 of a license shall not preclude application for a new  
24 license, which application shall be processed in the same  
25 manner and the application approved or denied and the  
26 license issued or refused on the same grounds as any  
27 other application for a license is processed, considered  
28 and determined, except that any previous suspension  
29 and the revocation may be considered in deciding  
30 whether to approve or deny such application and issue  
31 or refuse to issue such license.

### §30-13A-12. Duty of county clerks and public officials.

1 No plat, report of survey or any survey related  
2 document shall be filed by any clerk of a county  
3 commission or accepted by any public official of this  
4 state unless the seal required by section eleven of this  
5 article has been affixed thereto, except that any  
6 document prepared by a person exempted from the  
7 regulation and licensing requirements of this article, as  
8 provided in section seven of this article, shall not be  
9 required to have the seal required by section eleven of  
10 this article affixed thereto. Nothing in this section shall  
11 prevent a document prepared prior to the twenty-fifth  
12 day of May, one thousand nine hundred sixty-nine, from  
13 being recorded without such seal. If a seal of such  
14 exempt person is not affixed to said document, a

15 certificate shall be placed thereon by the exempt person,  
16 stating upon what the exemption is claimed. Said  
17 certificate may be in a form similar to the following:

18 "I certify that I am engaged in surveying exclusively  
19 for \_\_\_\_\_ and believe

20 I am exempt from regulations and licensing under  
21 West Virginia Code 30-13A-7

22  
23

\_\_\_\_\_  
Signature"  
\_\_\_\_\_

## CHAPTER 164

(Com. Sub. for S. B. 174—By Senator Tucker, Mr. President, By Request)

\_\_\_\_\_  
[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]  
\_\_\_\_\_

AN ACT to amend and reenact section seven, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fee for renewal of a chiropractic license and to requirements for continuing chiropractic education.

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

That section seven, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 16. CHIROPRACTORS.

#### **§30-16-7. License; annual renewal fee; effect of failure to renew; reinstatement.**

1 All holders of certificates of license to practice chiro-  
2 practic in this state shall renew them annually on or  
3 before the first day of July of each year: (1) By pay-  
4 ing the board an annual renewal fee not exceeding one  
5 hundred dollars as determined by the board, and (2)  
6 by presenting to the board evidence of attendance of at  
7 least twelve classroom hours of continuing education  
8 each year. The West Virginia board of chiropractic



9 examiners shall approve the fulfillment of the continu-  
10 ing education requirement. The board shall notify each  
11 certificate holder by mail, at least thirty days prior to  
12 the first day of July of each year, of the necessity of  
13 renewing his or her certificate. The first annual renewal  
14 fee shall be due on the first day of July, one thousand  
15 nine hundred sixty-five.

16 The failure to renew a certificate of license to practice  
17 chiropractic shall operate as an automatic suspension of  
18 the rights and privileges granted by its issuance.

19 A certificate of license suspended by a failure to make  
20 an annual renewal may be reinstated by the board upon  
21 presentation of evidence of attendance of at least twelve  
22 classroom hours of continuing education for each year  
23 such license has been suspended; payment of all fees that  
24 would have been paid had the certificate holder  
25 maintained his certificate in good standing and the  
26 payment to the board of a reinstatement fee of not to  
27 exceed fifty dollars as determined by the board; but no  
28 certificate shall be reinstated after a lapse of three  
29 years. After a lapse of three years, license may be issued  
30 only after the former certificate holder subsequent to  
31 said lapse has passed the examination provided for in  
32 this article.

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## CHAPTER 165

(H. B. 2032—By Delegates Love and Leggett)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article thirty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia board of social work examiners; removing restriction on terms of board members; establishing roster of names and addresses of certain social workers; creating an administrative-clerical support staff position; and continuing the board.

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

That section three, article thirty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 30. SOCIAL WORKERS.**

**§30-30-3. Board of social work examiners.**

1 (a) For the purpose of carrying out the provisions of  
2 this article, there is hereby created a West Virginia  
3 board of social work examiners, consisting of seven  
4 members who shall be appointed by the governor,  
5 subject to the following requirements:

6 (1) No person may be excluded from serving on the  
7 board by reason of race, sex or national origin;

8 (2) Two members shall be certified social workers,  
9 two members shall be graduate social workers and two  
10 members shall be social workers. All such members  
11 must be licensed under the provisions of this article in  
12 accordance with their respective titles. In addition,  
13 there shall be one member of the board chosen from the  
14 general public: *Provided*, That those members who are  
15 appointed by the governor to serve as the first board  
16 after the effective date of this article shall be persons  
17 eligible for the licensing required under this article:  
18 *Provided, however*, That the member from the general  
19 public shall never be required to be eligible for  
20 licensing;

21 (3) The members of the first board to serve after the  
22 effective date of this article shall be appointed within  
23 ninety days thereof;

24 (4) The term of office for each member of the board  
25 shall be three years: *Provided*, That one of the members  
26 of the first board to serve after the effective date of this  
27 article shall serve a term of two years, three of them  
28 shall serve a term of three years and the remaining  
29 three shall serve a term of four years; and

30 (5) The governor shall, whenever there is a vacancy  
31 on the board due to circumstances other than the  
32 expiration of the term of a member, appoint another  
33 member with the same qualifications as the member

34 who has vacated to serve the duration of the unexpired  
35 term.

36 For the purpose of accepting nominations for the  
37 replacement of a member, the governor shall cause a  
38 notice of the vacancy to be published at least thirty days  
39 prior to an announcement of the replacement member,  
40 as a Class I-0 legal advertisement, in accordance with  
41 the provisions of section two, article three, chapter fifty-  
42 nine of this code. The publication area shall be  
43 statewide.

44 If the governor fails to make appointment in ninety  
45 days after expiration of any term, the board shall make  
46 the necessary appointment. Each member shall hold  
47 office until the expiration of the term for which such  
48 member is appointed and until a successor shall have  
49 been duly appointed and qualified.

50 (b) Any members of the board may be removed from  
51 office for cause, in accordance with procedures set forth  
52 in this code for the removal of public officials from  
53 office.

54 (c) Members of the board shall receive appropriate  
55 compensation, not to exceed the amount specified for  
56 attendance of similar board meetings as provided  
57 elsewhere in this code, for attending meetings of the  
58 board. In addition to such compensation, each member  
59 of the board shall be reimbursed out of moneys appro-  
60 priated for such purposes, reasonable expenses and all  
61 sums which he or she necessarily shall expend in the  
62 discharge of his or her duties as a member of the board,  
63 not to exceed the prevailing rate paid to employees of  
64 the state: *Provided*, That such compensation and such  
65 expenses shall not exceed the amount received by the  
66 board from licensing fees and penalties imposed under  
67 subdivision (4), subsection (e) of this section.

68 (d) The board shall hold an annual election for the  
69 purpose of electing a chairman, vice chairman and  
70 secretary. The requirements for meetings and manage-  
71 ment of the board shall be established in regulations  
72 promulgated by the board as required by this article.

73 (e) In addition to the duties set forth in other  
74 provisions of this article, the board shall:

75 (1) Recommend to the Legislature any proposed  
76 modifications to this article;

77 (2) Report to county prosecutors any suspected  
78 violations of this article: *Provided*, That no report shall  
79 be made until the board has given the suspected violator  
80 ninety days written notice of the suspected violation and  
81 the violator has, within such ninety day period, been  
82 afforded an opportunity to respond to the board with  
83 respect to the allegation;

84 (3) Publish an annual report and a roster listing the  
85 names and addresses of all persons who have been  
86 licensed in accordance with the provisions of this article  
87 as a certified social worker, graduate social worker or  
88 social worker;

89 (4) Establish a fee schedule for the initial examina-  
90 tion, license fee and the annual license renewal;

91 (5) Establish standards and requirements for contin-  
92 uing education. In establishing these requirements the  
93 board shall consult with professional groups and  
94 organizations representing all levels of practice pro-  
95 vided for in this article and the board shall consider  
96 recognized staff development programs, continuing  
97 education programs offered by colleges and universities  
98 having social work programs approved or accredited by  
99 the council on social work education, and continuing  
100 education programs offered by recognized state and  
101 national social work bodies: *Provided*, That such  
102 standards and requirements for continuing education  
103 shall not be construed to alter or affect in any way the  
104 standards and requirements for licensing as set forth  
105 elsewhere in this article;

106 (6) Conduct its proceedings in accordance with  
107 provisions of article nine-a, chapter six of this code; and

108 (7) Employ, direct and define the duties of an  
109 administrative clerical support staff person.

110 After having conducted a performance and fiscal

111 audit through its joint committee on government  
112 operations, pursuant to section nine, article ten, chapter  
113 four of this code, the Legislature hereby finds and  
114 declares that the board of social work examiners be  
115 continued and reestablished. Accordingly, notwithstand-  
116 ing the provisions of section four, article ten, chapter  
117 four of this code, the social work board of examiners  
118 shall continue to exist until the first day of July, one  
119 thousand nine hundred ninety-five.

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## CHAPTER 166

(Com. Sub. for H. B. 2131—By Delegates Phillips and Hatfield)

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[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to altering qualifications for the person appointed commissioner of banking.

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

That section two, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### CHAPTER 31A. BANKS AND BANKING.

#### ARTICLE 2. DEPARTMENT OF BANKING.

##### §31A-2-2. Commissioner's appointment, term, qualifications, salary, oath and bond.

1 The commissioner of banking shall be appointed by  
2 the governor, by and with the advice and consent of the  
3 Senate. He shall serve at the will and pleasure of the  
4 governor for the term for which the governor was  
5 elected and until his successor is appointed and quali-  
6 fied, unless earlier removed from office for cause as  
7 provided by law.

8 Any person appointed as commissioner shall have a  
9 college degree from an accredited institution, be of good

10 moral character, have knowledge of the theory and  
11 practice of banking and be at least twenty-five years of  
12 age.

13 Before entering upon the discharge of his duties as  
14 commissioner, he shall take and subscribe to the oath  
15 of office prescribed in section five, article four of the  
16 constitution of West Virginia and shall enter into a bond  
17 in the penal sum of one hundred thousand dollars, with  
18 a corporate surety authorized to engage in business in  
19 this state, conditioned upon the faithful discharge and  
20 performance of the duties of his office. The premium of  
21 such bond shall be payable from the state treasury out  
22 of funds allocated to the department of banking. The  
23 executed oath and bond shall be filed in the office of the  
24 secretary of state.

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## CHAPTER 167

(H. B. 2157—By Delegates Given and Faircloth)

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[Passed March 16, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to real estate licenses; requiring continuing education courses prior to license renewal.

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

That article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-a, to read as follows:

### ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESMEN.

#### §47-12-7a. Continuing education; license renewal.

1 In addition to other provisions of this article, begin-  
2 ning the first day of July, one thousand nine hundred

3 ninety, and every year thereafter, every real estate  
4 broker and salesperson shall complete seven actual  
5 hours of continuing education, with each hour equaling  
6 fifty minutes of instructions. The commission shall  
7 establish the continuing education program by rules and  
8 shall approve all courses, seminars and lectures:  
9 *Provided*, That continuing legal education courses  
10 approved by the West Virginia State Bar shall be  
11 approved by the commission. If approved in advance by  
12 the real estate commission, correspondence courses and  
13 audio or video tapes may be used to satisfy the contin-  
14 uing education requirement.

15 Upon application for renewal of a real estate license  
16 in each year following one thousand nine hundred  
17 ninety, such real estate broker or salesperson must  
18 furnish satisfactory evidence, as established by the  
19 commission, that he or she has completed the required  
20 number of continuing education hours: *Provided*, That  
21 a real estate broker or salesperson holding a license on  
22 the first day of July, one thousand nine hundred sixty-  
23 nine, and continuously thereafter, shall be exempt from  
24 continuing education requirements. When a real estate  
25 broker or salesperson in an inactive status reverts to an  
26 active status, he will obtain seven hours continuing  
27 education each year without being required to complete  
28 additional hours of education resulting from his inactive  
29 status.

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## CHAPTER 168

(S. B. 103—By Senators Harman, Holliday and Felton)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seven, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the housing of adult male criminal offenders and adult female criminal offenders at Pruntytown Correctional Center.

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

That section seven, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. ORGANIZATION AND INSTITUTIONS.**

**§25-1-7. Pruntytown Correctional Center established as a minimum security facility; limitations on type of residents therein.**

1       The commissioner of corrections is hereby authorized  
2       to house adult male criminal offenders and adult female  
3       criminal offenders as the commissioner deems necessary  
4       for the operation of a just, humane and efficient system  
5       of corrections at the facility located at Pruntytown, West  
6       Virginia, heretofore known as the West Virginia  
7       Industrial School for Boys. Henceforth, this facility shall  
8       be known as the Pruntytown Correctional Center and  
9       shall be operated according to rules and regulations  
10      promulgated by the commissioner pursuant to the  
11      provisions of section four, article thirteen, chapter sixty-  
12      two.

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## CHAPTER 169

(Com. Sub. for S. B. 231—By Senator Tucker, Mr. President)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a general revision of the law applicable to providing public legal services to indigents subjected to criminal or quasi-criminal proceedings.

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

That article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 21. PUBLIC DEFENDER SERVICES.**



- §29-21-1. Legislative findings; purpose.
- §29-21-2. Definitions.
- §29-21-3. Establishment of public defender services.
- §29-21-4. Purpose and duties of public defender services.
- §29-21-5. Executive director.
- §29-21-6. Powers, duties and limitations.
- §29-21-7. Criminal law research center established; functions.
- §29-21-8. Public defender corporations.
- §29-21-9. Panel attorneys.
- §29-21-10. Public defender corporation—Intent to apply for funding.
- §29-21-11. Public defender corporations—Funding applications; legal representation plans; review.
- §29-21-12. Public defender corporation funding applications.
- §29-21-13. Approval of public defender corporation funding applications; funding; compensation of corporations and panel attorneys; record keeping by public defender corporations.
- §29-21-14. Limitation on use of funds; exceptions.
- §29-21-15. Public defender corporations—Board of directors.
- §29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.
- §29-21-17. Private practice of law by public defenders.
- §29-21-18. Records and reports.
- §29-21-19. Audits.
- §29-21-20. Appointed counsel immune from liability.

**§29-21-1. Legislative findings; purpose.**

1       The Legislature finds and declares that in certain  
2       proceedings the state is required to provide high quality  
3       legal assistance to indigent persons who would be  
4       otherwise unable to afford adequate legal counsel; that  
5       providing legal representation to those who face an  
6       economic barrier to adequate legal counsel will serve the  
7       ends of justice in accordance with rights and privileges  
8       guaranteed to all citizens by the constitution of the  
9       United States of America and the constitution of the  
10      state of West Virginia; that the availability of quality  
11      legal assistance reaffirms the faith of our citizens in our  
12      government of laws; that the present system which  
13      utilizes appointed counsel is not operating satisfactorily  
14      in some areas of this state and the Legislature is  
15      presently unable to determine what system or systems  
16      will provide the most efficient means for providing legal  
17      representation; that there is a need to explore alterna-  
18      tive methods of delivering legal assistance, including the  
19      use of salaried public defenders complemented by

20 private panel attorneys; that innovative programs and  
21 pilot projects as well as a continuation of the present  
22 appointed counsel system are necessary in separate  
23 areas of the state to provide information and experience  
24 upon which to base future legislative action.

**§29-21-2. Definitions.**

1 As used in this article, the following words and  
2 phrases are hereby defined:

3 (1) "Eligible client": Any person who meets the  
4 requirements established by this article to receive  
5 publicly funded legal representation in an eligible  
6 proceeding as defined herein;

7 (2) "Eligible proceeding": Criminal charges which  
8 may result in incarceration, juvenile proceedings,  
9 proceedings to revoke parole or probation if the  
10 revocation may result in incarceration, contempts of  
11 court, child abuse and neglect proceedings which may  
12 result in a termination of parental rights, mental  
13 hygiene commitment proceedings, paternity proceed-  
14 ings, extradition proceedings, proceedings brought in  
15 aid of an eligible proceeding, and appeals from or post  
16 conviction challenges to the final judgment in an eligible  
17 proceeding. Legal representation provided pursuant to  
18 the provisions of this article shall be limited to the court  
19 system of the state of West Virginia;

20 (3) "Legal representation": The provision of any legal  
21 services or legal assistance consistent with the purposes  
22 and provisions of this article;

23 (4) "Private practice of law": The provision of legal  
24 representation by a public defender or assistant public  
25 defender to a client who is not entitled to receive legal  
26 representation under the provisions of this article, but  
27 does not include, among other activities, teaching;

28 (5) "Public defender": The staff attorney employed on  
29 a full-time basis by a public defender corporation who,  
30 in addition to providing direct representation to eligible  
31 clients, has administrative responsibility for the operation  
32 of the public defender corporation: *Provided*, That  
33 the public defender may be a part-time employee if the

34 board of directors of the public defender corporation  
35 finds efficient operation of the corporation does not  
36 require a full-time attorney, and the executive director  
37 approves such part-time employment;

38 (6) "Assistant public defender": A staff attorney  
39 providing direct representation to eligible clients whose  
40 salary and status as a full-time or part-time employee  
41 are fixed by the board of directors of the public defender  
42 corporation;

43 (7) "Public defender corporation": A corporation  
44 created under section eight of this article for the sole  
45 purpose of providing legal representation to eligible  
46 clients; and

47 (8) "Public defender office": An office operated by a  
48 public defender corporation to provide legal represen-  
49 tation under the provisions of this article.

**§29-21-3. Establishment of public defender services.**

1 There is hereby created an executive agency known  
2 as public defender services. The agency shall  
3 administer, coordinate and evaluate programs by which  
4 the state provides legal representation to indigent  
5 persons, monitor the progress of various delivery  
6 systems, and recommend improvements. The agency  
7 shall maintain its office at the state capital.

**§29-21-4. Purpose and duties of public defender services.**

1 The agency shall have as its principal purpose the  
2 development and improvement of programs by which  
3 the state provides legal representation to indigent  
4 persons.

**§29-21-5. Executive director.**

1 (a) The governor shall appoint, by and with the advice  
2 and consent of the Senate, on or before the first day of  
3 July, one thousand nine hundred eighty-nine, the  
4 executive director of public defender services, who shall  
5 serve at the will and pleasure of the governor. The  
6 executive director shall be a qualified administrator as  
7 determined by the governor, and shall be a member of  
8 the bar of the supreme court of appeals. In addition to

9 the executive director there shall be such other em-  
10 ployees as the executive director determines to be  
11 necessary. The executive director shall have the author-  
12 ity to promulgate rules, and shall have such other  
13 authority and perform such duties as may be required  
14 or necessary to effectuate this article. The executive  
15 director shall provide supervision and direction to the  
16 other agency employees in the performance of their  
17 duties.

18 (b) The executive director's annual salary shall be as  
19 determined by the governor.

**§29-21-6. Powers, duties and limitations.**

1 (a) Consistent with the provisions of this article, the  
2 agency is authorized to make loans and grants to and  
3 contracts with public defender corporations and with  
4 individuals, partnerships, firms, corporations and  
5 nonprofit organizations, for the purpose of providing  
6 legal representation under this article, and may make  
7 such other loans, grants and contracts as are necessary  
8 to carry out the purposes and provisions of this article.

9 (b) The agency is authorized to accept, and employ or  
10 dispose of in furtherance of the purposes of this article,  
11 any money or property, real, personal or mixed, tangible  
12 or intangible, received by gift, devise, bequest or  
13 otherwise.

14 (c) The agency shall establish and the executive  
15 director or his designate shall operate a criminal law  
16 research center as provided for in section seven of this  
17 article. This center shall undertake directly, or by grant  
18 or contract, to serve as a clearinghouse for information;  
19 to provide training and technical assistance relating to  
20 the delivery of legal representation; and to engage in  
21 research, except that broad general legal or policy  
22 research unrelated to direct representation of eligible  
23 clients may not be undertaken.

24 (d) The agency shall establish and the executive  
25 director or his designate shall operate an accounting and  
26 auditing division to require and monitor the compliance  
27 with this article by public defender corporations and

28 other persons or entities receiving funding or compen-  
29 sation from the agency. This division shall review all  
30 plans and proposals for loans, grants and contracts, and  
31 shall make a recommendation of approval or disappro-  
32 val to the executive director. The division shall prepare,  
33 or cause to be prepared, reports concerning the evalua-  
34 tion, inspection, or monitoring of public defender  
35 corporations and other grantees, contractors, persons or  
36 entities receiving financial assistance under this article,  
37 and shall further carry out the agency's responsibilities  
38 for records and reports as set forth in section eighteen  
39 of this article.

40 Upon the request of the executive director, the  
41 accounting and auditing division shall require each  
42 public defender corporation to annually report on  
43 nonbillable time of its professional employees, including  
44 time utilized in administration of the respective offices,  
45 so as to compare such time to similar time expended in  
46 nonpublic law offices for like activities.

47 (e) The accounting and auditing division shall provide  
48 to the executive director assistance in the fiscal  
49 administration of all of the agency's divisions. Such  
50 assistance shall include, but not be limited to, budget  
51 preparation and statistical analysis.

52 (f) The agency shall establish and the executive  
53 director or a person designated by the executive director  
54 shall operate an appellate advocacy division for the  
55 purpose of prosecuting litigation on behalf of eligible  
56 clients in the supreme court of appeals. The executive  
57 director or a person designated by the executive director  
58 shall be the director of the appellate advocacy division.  
59 The appellate advocacy division shall represent eligible  
60 clients upon appointment by the circuit courts, or by the  
61 supreme court of appeals. The division may, however,  
62 refuse such appointments due to a conflict of interest or  
63 if the executive director has determined the existing  
64 caseload cannot be increased without jeopardizing the  
65 appellate division's ability to provide effective represen-  
66 tation. In order to effectively and efficiently utilize the  
67 resources of the appellate division the executive director

68 may restrict the provision of appellate representation to  
69 certain types of cases.

70 The executive director is empowered to select and  
71 employ staff attorneys to perform the duties prescribed  
72 by this subsection. Within the appropriations to the  
73 agency, the appellate division shall have its own budget  
74 as determined to be appropriate by the executive  
75 director and shall maintain vouchers and records for  
76 representation of eligible clients, for record purposes  
77 only.

**§29-21-7. Criminal law research center established;  
functions.**

1 (a) Within the agency, there shall be a division known  
2 as the criminal law research center which may:

3 (1) Undertake research, studies and analyses and act  
4 as a central repository, clearinghouse and disseminator  
5 of research materials;

6 (2) Prepare and distribute a criminal law manual and  
7 other materials and establish and implement standard  
8 and specialized training programs for attorneys practic-  
9 ing criminal law;

10 (3) Provide and coordinate continuing legal education  
11 programs and services for attorneys practicing criminal  
12 law; and

13 (4) Prepare, supplement and disseminate indices and  
14 digests of decisions of the West Virginia supreme court  
15 of appeals and other courts, statutes and other legal  
16 authorities relating to criminal law.

17 (b) The services of the criminal law research center  
18 shall be offered at reasonable rates or by subscription,  
19 and such service shall be provided to prosecuting  
20 attorneys and their professional staffs, panel attorneys,  
21 and private attorneys engaged in the practice of  
22 criminal law on the same basis as such services are  
23 provided to public defender corporations, public defend-  
24 ers and assistant public defenders.

**§29-21-8. Public defender corporations.**

1 (a) In each judicial circuit of the state, there is hereby

2 created a "public defender corporation" of the circuit:  
3 *Provided*, That one such public defender corporation  
4 shall serve both the twenty-third and thirty-first judicial  
5 circuits. The purpose of such public defender corpora-  
6 tions is to provide legal representation in the respective  
7 circuits in accordance with the provisions of this article.

8 (b) The public defender corporations are hereby  
9 activated in the first, second, third, seventh, eighth,  
10 ninth, eleventh, twelfth, thirteenth, fourteenth, fifteenth,  
11 twenty-third and thirty-first combined, twenty-fifth,  
12 twenty-eighth and thirtieth judicial circuits. Public  
13 defender corporations in other circuits may be activated  
14 by the executive director if the judge of a single judge  
15 circuit, the chief judge of a multi-judge circuit or a  
16 majority of the active members of the bar in the circuit  
17 determine there is a need to activate the corporation and  
18 certify that fact in writing to the executive director.

19 (c) Public defender corporations may apply in writing  
20 to the executive director for permission to merge to form  
21 multi-circuit or regional public defender corporations.  
22 Applications for mergers shall be subject to the review  
23 procedures set forth in section eleven of this article.

#### §29-21-9. Panel attorneys.

1 (a) In each circuit of the state, the circuit court shall  
2 establish and maintain regional and local panels of  
3 private attorneys-at-law who shall be available to serve  
4 as counsel for eligible clients.

5 (b) An attorney-at-law may become a panel attorney  
6 and be enrolled on the regional or local panel, or both,  
7 to serve as counsel for eligible clients, by informing the  
8 court. A prospective panel attorney shall inform the  
9 court in writing, on forms provided by the executive  
10 director, of a desire to accept appointments generally,  
11 or of the specific types of cases in which he or she will  
12 accept appointments. The attorney shall also indicate  
13 whether or not he or she will accept appointments in  
14 adjoining circuits and, if so, in which circuits. An  
15 agreement to accept cases generally or certain types of  
16 cases particularly shall not prevent a panel attorney  
17 from declining an appointment in a specific case.

18 (c) In all cases where an attorney-at-law is required  
19 to be appointed for an eligible client, the appointment  
20 shall be made by the circuit judge. In circuits where a  
21 public defender office is in operation, the judge shall  
22 appoint the public defender office unless such appoint-  
23 ment is not appropriate due to a conflict of interest or  
24 unless the public defender corporation board of direc-  
25 tors has notified the court that the existing caseload  
26 cannot be increased without jeopardizing the ability of  
27 defenders to provide effective representation. If the  
28 public defender office is not available for appointment,  
29 the court shall appoint one or more panel attorneys from  
30 the local panel. If there is no local panel attorney  
31 available, the judge shall appoint one or more panel  
32 attorneys from the regional panel. If there is no regional  
33 panel attorney available, the judge may appoint a public  
34 defender office from an adjoining circuit if such public  
35 defender office agrees to the appointment. In circuits  
36 where no public defender office is in operation, the  
37 judge shall first refer to the local panel and then to the  
38 regional panel in making appointments, and if an  
39 appointment cannot be made from the panel attorneys,  
40 the judge may appoint the public defender office of an  
41 adjoining circuit if such public defender office agrees to  
42 the appointment. In any circuit, when there is no public  
43 defender, or assistant public defender, local panel  
44 attorney or regional panel attorney available, the judge  
45 may appoint one or more qualified private attorneys to  
46 provide representation, and such private attorney or  
47 attorneys shall be treated as panel attorneys for that  
48 specific case. In any given case, the appointing judge  
49 may alter the order in which attorneys are appointed if  
50 the case requires particular knowledge or experience on  
51 the part of the attorney to be appointed.

**§29-21-10. Public defender corporation — Intent to apply  
for funding.**

1 (a) Any public defender corporation established by  
2 section eight of this article applying to public defender  
3 services for financial assistance to establish a program  
4 to provide legal representation consistent with this  
5 article and any public defender corporation proposing



6 a major substantive modification to an existing program  
7 shall notify the executive director and the circuit judges  
8 in the area in which the program will deliver legal  
9 representation of the intent to apply for such assistance  
10 or modification. Such notice shall be given at least thirty  
11 days prior to the filing of an application or a proposal  
12 for modification.

13 (b) Notifications shall include a summary description  
14 of the proposed program. The summary description  
15 shall contain the following information:

16 (1) The identity of the applicant;

17 (2) The geographical area to be served by the pro-  
18 posed program;

19 (3) A brief description of the proposed program,  
20 general size or scale, estimated cost, or other character-  
21 istics which will enable the circuit court to determine  
22 how the system for representation of indigents within  
23 the circuit may be affected by the proposed program;  
24 and

25 (4) The estimated date the public defender corpora-  
26 tion expects to formally file an application or modifica-  
27 tion proposal.

**§29-21-11. Public defender corporations — Funding applications; legal representation plans; review.**

1 (a) Any public defender corporation established by  
2 section eight of this article or any other entity wishing  
3 to take advantage of state financial assistance through  
4 the agency must submit a funding application to the  
5 executive director.

6 (b) The funding application, which is to be submitted  
7 in a form prescribed by the executive director, shall  
8 contain a general description of the plans and policies  
9 the applicant intends to utilize in providing legal  
10 representation, and such other information prescribed  
11 by the executive director.

12 (c) All applications for financial assistance from  
13 public defender services under the provisions of this

14 article must be submitted to the circuit judges of the  
15 circuit for review prior to their submission to public  
16 defender services.

17 (d) Completed applications shall include:

18 (1) All comments and recommendations made by the  
19 circuit judges, along with a statement that such  
20 comments have been considered prior to submission of  
21 the application; or

22 (2) If no comments have been received from circuit  
23 judges, a statement that the procedures outlined in this  
24 section have been followed and that no comments or  
25 recommendations have been received.

26 (e) Reviews required under this section shall be  
27 completed by circuit judges within fifteen days after  
28 receipt. If the public defender corporation or other  
29 applicant has not received a response within the fifteen-  
30 day period, the public defender corporation may  
31 consider the judge to have waived his opportunity to  
32 review and comment on the proposed program or  
33 program modification and may submit the application  
34 to public defender services.

**§29-21-12. Public defender corporation funding applications.**

1 (a) If an application does not carry evidence that  
2 appropriate circuit judges have been given an opportu-  
3 nity to review the application, the application shall be  
4 returned with instructions to fulfill the requirements of  
5 section eleven of this article.

6 (b) The executive director shall within seven working  
7 days after taking any major action on an application  
8 notify the circuit judges who have reviewed the appli-  
9 cation of the action taken. Major actions will include  
10 program approvals, rejections, returns for amendment,  
11 deferrals or withdrawals.

12 (c) If a judge has recommended against approval, or  
13 has recommended approval only with specific and major  
14 substantive changes, and the executive director ap-  
15 proves the application substantially as submitted, the

16 executive director shall provide the judge with an  
17 explanation of the approval of the application.

**§29-21-13. Approval of public defender corporation  
funding applications; funding; compensa-  
tion of corporations and panel attorneys;  
record keeping by public defender  
corporations.**

1 (a) The accounting and auditing division shall review  
2 all funding applications and prepare recommendations  
3 for an operating plan and budget. The executive  
4 director shall review the funding applications and the  
5 accounting and auditing recommendations and shall, in  
6 consultation with the applicants, prepare a plan for  
7 providing legal services to the area which is the subject  
8 of the funding application.

9 (b) Upon final approval of a funding application by  
10 the executive director, the approved budget shall be set  
11 forth in an approval notice. The total cost to the agency  
12 shall not exceed the amount set forth in the approval  
13 notice and the agency shall not be obligated to reim-  
14 burse the recipient for costs incurred in excess of such  
15 amount unless and until a program modification has  
16 been approved in accordance with the provisions of this  
17 article, revising the total costs of the program.

18 (c) Funding of public defender corporations or other  
19 programs or entities providing legal representation  
20 under the provisions of this article shall be by annual  
21 grants disbursed in such periodic allotments as the  
22 executive director shall deem appropriate.

23 (d) All recipients of funding under this article shall  
24 maintain such records as required by the executive  
25 director.

26 (e) All panel attorneys shall maintain detailed and  
27 accurate records of the time expended and expenses  
28 incurred on behalf of eligible clients, and upon comple-  
29 tion of each case, exclusive of appeal, shall submit to the  
30 appointing court a voucher for services. Claims for fees  
31 and expense reimbursements shall be submitted to the  
32 appointing court on forms approved by the executive

33 director and shall meet the requirements of subsection  
34 (i) of this section. The appointing court shall review the  
35 voucher to determine if the time and expense claims are  
36 reasonable, necessary and valid and shall forward such  
37 voucher to the agency, with an order approving payment  
38 of the claimed amount or of such lesser sum the court  
39 considers appropriate: *Provided*, That notwithstanding  
40 any other provision of this section, public defender  
41 services may pay by direct bill, prior to the completion  
42 of the case, litigation expenses incurred by attorneys  
43 appointed under this article.

44 (f) In each case in which a panel attorney provides  
45 legal representation under this article, and in each  
46 appeal after conviction in circuit court, the panel  
47 attorney shall be compensated at the following rates for  
48 actual and necessary time expended:

49 (1) For work performed out of court, compensation  
50 shall be at the rate of twenty dollars per hour. Out-of-  
51 court work shall include, but not be limited to, travel,  
52 interviews of clients or witnesses, preparation of  
53 pleadings, and prehearing or pretrial research.

54 (2) For work performed in court, compensation shall  
55 be at the rate of twenty-five dollars per hour. In-court  
56 work shall include, but not be limited to, all time spent  
57 awaiting hearing or trial if the presence of the attorney  
58 is required at the time.

59 (3) The maximum amount of compensation for out-of-  
60 court and in-court work under this subsection is one  
61 thousand dollars: *Provided*, That if the eligible client is  
62 charged with a felony for which a penalty of life  
63 imprisonment may be imposed, the court may approve  
64 additional compensation for further work at one half the  
65 rates provided in this subsection.

66 (g) Actual and necessary expenses incurred in provid-  
67 ing legal representation, including, but not limited to,  
68 expenses for travel, transcripts, salaried or contracted  
69 investigative services, and expert witnesses shall be  
70 reimbursed to a maximum of five hundred dollars  
71 unless the court, for good cause shown, gives advance  
72 approval to incur expenses for a larger sum. Expense

73 vouchers shall specifically set forth the nature, amount  
74 and purpose of expenses incurred and shall provide such  
75 receipts, invoices or other documentation required by  
76 the executive director.

77 (h) For purposes of compensation under this section,  
78 an appeal to the supreme court of appeals from a final  
79 order of the circuit court shall be considered a separate  
80 case.

81 (i) Vouchers submitted under this section shall  
82 specifically set forth the nature of the service rendered,  
83 the stage of proceeding or type of hearing involved, the  
84 date and place the service was rendered and the amount  
85 of time expended in each instance. All time claimed on  
86 the vouchers shall be itemized to the nearest tenth of an  
87 hour. If the charge against the eligible client for which  
88 services were rendered is one of several charges  
89 involving multiple warrants or indictments, the voucher  
90 shall indicate such fact and sufficiently identify the  
91 several charges so as to enable the court to avoid a  
92 duplication of compensation for services rendered. The  
93 voucher shall indicate whether the services were  
94 rendered by a local panel attorney, a regional panel  
95 attorney, or such other private attorney as may have  
96 been appointed. The executive director shall refuse to  
97 requisition payment for any voucher which is not in  
98 conformity with the record keeping, compensation or  
99 other provisions of this article and in such circumstance  
100 shall return the voucher to the court for further review.

**§29-21-14. Limitation on use of funds; exceptions.**

1 (a) Funds made available by the agency to public  
2 defender corporations or other entities under this  
3 article, either by loan, grant or contract, and funds used  
4 for payments to panel attorneys shall be used only to  
5 provide legal representation for eligible clients involved  
6 in proceedings defined by this article as eligible  
7 proceedings.

8 (b) Funds received from any source other than the  
9 agency shall not be used by a public defender corpora-  
10 tion for purposes prohibited by this article.

**§29-21-15. Public defender corporations—Board of directors.**

1 (a) The governing body of each public defender  
2 corporation shall be a board of directors consisting of  
3 persons who are residents of the area to be served by  
4 the public defender corporation.

5 (1) In multi-county circuits, and in the case of multi-  
6 circuit or regional corporations, the county commission  
7 of each county within the area served shall appoint a  
8 director, who shall not be an attorney-at-law. The  
9 president of each county bar association within the area  
10 served shall appoint a director, who shall be an attorney-  
11 at-law: *Provided*, That in a county where there is not an  
12 organized and active bar association, the circuit court  
13 shall convene a meeting of the members of the bar of  
14 the court resident within the county and such members  
15 of the bar shall elect one of their number as a director.  
16 The governor shall appoint one director, who shall serve  
17 as chairman, who may, but need not, be an attorney-at-  
18 law, unless such appointment would result in there  
19 being an even number of directors, in which event the  
20 governor shall appoint two directors, one of whom may  
21 be an attorney-at-law.

22 (2) In single-county circuits, the manner of selecting  
23 directors shall be the same as that described in  
24 subdivision (1) of this subsection, except that the county  
25 commission shall appoint two directors rather than one,  
26 and the bar shall appoint two directors rather than one.

27 (b) The board of directors shall have at least four  
28 meetings a year. Timely and effective prior public notice  
29 of all meetings shall be given, and all meetings shall be  
30 public except for those concerned with matters properly  
31 discussed in executive session.

32 (c) The board of directors shall establish and enforce  
33 broad policies governing the operation of the public  
34 defender corporation but shall not interfere with any  
35 attorney's professional responsibilities to clients. The  
36 duties of the board of directors shall include, but not be  
37 limited to, the following:

38 (1) Appointment of the public defender and any  
39 assistant public defenders as may be necessary to enable  
40 the public defender corporation to provide legal repres-  
41 entation to eligible clients; and

42 (2) Approval of the public defender corporation's  
43 budget and the fixing of professional salaries; and

44 (3) Renewal of the employment contract of the public  
45 defender on an annual basis except where such renewal  
46 is denied for cause: *Provided*, That the board of directors  
47 shall have the power at any time to remove the public  
48 defender for misfeasance, malfeasance or nonfeasance.

49 (d) To the extent that the provisions of chapter thirty-  
50 one of this code regarding nonprofit corporations are not  
51 inconsistent with this article, the provisions of such  
52 chapter shall be applicable to the board of directors of  
53 the public defender corporation.

54 (e) While serving on the board of directors, no  
55 member may receive compensation from the public  
56 defender corporation, but a member may receive  
57 payment for normal travel and other out-of-pocket  
58 expenses required for fulfillment of the obligations of  
59 membership.

**§29-21-16. Determination of maximum income levels;  
eligibility guidelines; use of form affidavit;  
inquiry by court; denial of services; repay-  
ment; limitation on remedies against  
affiant.**

1 (a) The agency shall establish, and periodically review  
2 and update financial guidelines for determining eligibil-  
3 ity for legal representation made available under the  
4 provisions of this article. The agency shall adopt a  
5 financial affidavit form for use by persons seeking legal  
6 representation made available under the provisions of  
7 this article.

8 (b) All persons seeking legal representation made  
9 available under the provisions of this article shall  
10 complete the agency's financial affidavit form, which  
11 shall be considered as an application for the provision  
12 of publicly funded legal representation.

13 Any juvenile shall have the right to be effectively  
14 represented by counsel at all stages of proceedings  
15 brought under the provisions of article five, chapter  
16 forty-nine of this code. If the child advises the court of  
17 his or her inability to pay for counsel, the court shall  
18 require the child's parent or custodian to execute a  
19 financial affidavit. If the financial affidavit demon-  
20 strates that neither of the child's parents, or, if  
21 applicable, the child's custodian, has sufficient assets to  
22 pay for counsel, the court shall appoint counsel for the  
23 child. If the financial affidavit demonstrates that either  
24 of the child's parents, or, if applicable, the child's  
25 custodian, does have sufficient assets to pay for counsel,  
26 the court shall order the parent, or, if applicable, the  
27 custodian, to provide, by paying for, legal representation  
28 for the child in the proceedings: *Provided*, That the  
29 court may disregard the assets of the child's parents or  
30 custodian and appoint counsel for the child, as provided  
31 above, if the court concludes, as a matter of law, that  
32 the child and the parent or custodian have a conflict of  
33 interest that would adversely affect the child's right to  
34 effective representation of counsel, or concludes, as a  
35 matter of law, that requiring the child's parent or  
36 custodian to provide legal representation for the child  
37 would otherwise jeopardize the best interests of the  
38 child.

39 (c) In circuits in which no public defender office is in  
40 operation, circuit judges shall make all determinations  
41 of eligibility. In circuits in which a public defender  
42 office is in operation, all determinations of indigency  
43 shall be made by a public defender office employee  
44 designated by the executive director. Such determina-  
45 tions shall be made after a careful review of the  
46 financial affidavit submitted by the person seeking  
47 representation. The review of the affidavit shall be  
48 conducted in accord with the financial eligibility  
49 guidelines established by the agency pursuant to  
50 subsection (a) of this section. In addition to the financial  
51 eligibility guidelines, the person determining eligibility  
52 shall consider other relevant factors, including, but not  
53 limited to, those set forth in subdivisions (1) through  
54 (8) of subsection (d) of this section. If there is substan-



55 tial reason to doubt the accuracy of information in the  
56 financial affidavit, the person determining eligibility  
57 may make such inquiries as are necessary to determine  
58 whether the affiant has truthfully and completely  
59 disclosed the required financial information. After  
60 reviewing all pertinent matters the person determining  
61 eligibility may find the affiant to be eligible to have the  
62 total cost of legal representation provided by the state,  
63 or may find that the total cost of providing representa-  
64 tion shall be apportioned between the state and the  
65 eligible person. A person whose annual income exceeds  
66 the maximum annual income level allowed for eligibility  
67 may receive all or part of the necessary legal represen-  
68 tation, or a person whose income falls below the  
69 maximum annual income level for eligibility may be  
70 denied all or part of the necessary legal representation  
71 if the person determining eligibility finds the person's  
72 particular circumstances require that eligibility be  
73 allowed or disallowed, as the case may be, on the basis  
74 of one or more of the eight factors set forth in subsection  
75 (d) of this section. If legal representation is made  
76 available to a person whose income exceeds the maxi-  
77 mum annual income level for eligibility, or if legal  
78 representation is denied to a person whose income falls  
79 below the maximum annual income level for eligibility,  
80 the person determining eligibility shall make a written  
81 statement of the reasons for the action and shall  
82 specifically relate those reasons to one or more of the  
83 factors set forth in subsection (d) of this section.

84 (d) The following factors shall be considered in  
85 determining eligibility for legal representation made  
86 available under the provisions of this article:

87 (1) Current income prospects, taking into account  
88 seasonal variations in income;

89 (2) Liquid assets, assets which may provide collateral  
90 to obtain funds to employ private counsel and other  
91 assets which may be liquidated to provide funds to  
92 employ private counsel;

93 (3) Fixed debts and obligations, including federal,  
94 state and local taxes and medical expenses;

95 (4) Child care, transportation and other expenses  
96 necessary for employment;

97 (5) Age or physical infirmity of resident family  
98 members;

99 (6) Whether the person seeking publicly funded legal  
100 representation has made reasonable and diligent efforts  
101 to obtain private legal representation, and the results of  
102 those efforts;

103 (7) The cost of obtaining private legal representation  
104 with respect to the particular matter in which assistance  
105 is sought; and

106 (8) The consequences for the individual if legal  
107 assistance is denied.

108 (e) Legal representation requested by the affiant may  
109 not be denied in whole or part unless the affiant can  
110 obtain legal representation without undue financial  
111 hardship. Persons determined to be eligible by public  
112 defender personnel may have the initial determination  
113 reviewed by a local circuit judge who may amend,  
114 modify or rewrite the initial determination. At any stage  
115 of the proceedings a circuit court may determine a prior  
116 finding of eligibility was incorrect or has become  
117 incorrect as the result of the affiant's changed financial  
118 circumstances, and may revoke any prior order provid-  
119 ing legal representation. In such event any attorney  
120 previously appointed shall be entitled to compensation  
121 under the provisions of law applicable to such appoint-  
122 ment for services already rendered.

123 (f) In the circumstances and manner set forth below,  
124 circuit judges may order repayment to the state,  
125 through the office of the clerk of the circuit court having  
126 jurisdiction over the proceedings, of the costs of  
127 representation provided under this article:

128 (1) In every case in which services are provided to an  
129 indigent person and an adverse judgment has been  
130 rendered against such person, the court may require  
131 that person, and in juvenile cases, may require the  
132 juvenile's parents or custodian, to pay as costs the  
133 compensation of appointed counsel, the expenses of the

134 defense and such other fees and costs as authorized by  
135 statute.

136 (2) The court shall not order a person to pay costs  
137 unless the person is able to pay without undue hardship.  
138 In determining the amount and method of repayment of  
139 costs, the court shall take account of the financial  
140 resources of the person, the person's ability to pay and  
141 the nature of the burden that payment of costs will  
142 impose. The fact that the court initially determines, at  
143 the time of a case's conclusion, that it is not proper to  
144 order the repayment of costs does not preclude the court  
145 from subsequently ordering repayment should the  
146 person's financial circumstances change.

147 (3) When a person is ordered to repay costs, the court  
148 may order payment to be made forthwith or within a  
149 specified period of time or in specified installments. If  
150 a person is sentenced to a term of imprisonment, an  
151 order for repayment of costs is not enforceable during  
152 the period of imprisonment unless the court expressly  
153 finds, at the time of sentencing, that the person has  
154 sufficient assets to pay the amounts ordered to be paid  
155 or finds there is a reasonable likelihood the person will  
156 acquire the necessary assets in the foreseeable future.

157 (4) A person who has been ordered to repay costs, and  
158 who is not in contumacious default in the payment  
159 thereof, may at any time petition the sentencing court  
160 for modification of the repayment order. If it appears  
161 to the satisfaction of the court that continued payment  
162 of the amount ordered will impose undue hardship on  
163 the person or the person's dependents, the court may  
164 modify the method or amount of payment.

165 (5) When a person ordered to pay costs is also placed  
166 on probation or imposition or execution of sentence is  
167 suspended, the court may make the repayment of costs  
168 a condition of probation or suspension of sentence.

169 (g) Circuit clerks shall keep a record of repaid counsel  
170 fees and defense expenses collected pursuant to this  
171 section and shall, quarterly, pay the moneys to the state  
172 auditor who shall deposit the funds in the general  
173 revenue fund of the state.

174 (h) The making of an affidavit subject to inquiry  
175 under this section shall not in any event give rise to  
176 criminal remedies against the affiant nor occasion any  
177 civil action against the affiant except for the recovery  
178 of costs as in any other case where costs may be  
179 recovered. A person who has made an affidavit knowing  
180 the contents thereof to be false may be prosecuted for  
181 false swearing as provided by law.

**§29-21-17. Private practice of law by public defenders.**

1 (a) No full-time public defender or full-time assistant  
2 public defender may engage in any private practice of  
3 law except as provided in this section.

4 (b) A board of directors may permit a newly em-  
5 ployed full-time public defender or full-time assistant  
6 public defender to engage in the private practice of law  
7 for compensation for the sole purpose of expeditiously  
8 closing and withdrawing from existing private cases  
9 from a prior private practice. In no event shall any  
10 person employed for more than ninety days as a full-  
11 time public defender or full-time assistant public  
12 defender be engaged in any other private practice of law  
13 for compensation.

14 (c) A board of directors may permit a full-time public  
15 defender or full-time assistant public defender to engage  
16 in private practice for compensation if the defender is  
17 acting pursuant to an appointment made under a court  
18 rule or practice of equal applicability to all attorneys in  
19 the jurisdiction and if the defender remits to the public  
20 defender corporation all compensation received.

21 (d) A board of directors may permit a full-time public  
22 defender or full-time assistant public defender to engage  
23 in uncompensated private practice of law if the public  
24 defender or assistant public defender is acting:

25 (1) Pursuant to an appointment made under a court  
26 rule or practice of equal applicability to all attorneys in  
27 the jurisdiction; or

28 (2) On behalf of a close friend or family member; or

29 (3) On behalf of a religious, community or charitable  
30 group.

31 (e) Violation of the requirements of this section is  
32 sufficient grounds for immediate summary dismissal.

**§29-21-18. Records and reports.**

1 (a) The agency is authorized to require such reports  
2 as it deems necessary from any public defender corpo-  
3 ration or other entity or person receiving funding under  
4 this article regarding activities carried out pursuant to  
5 this article.

6 (b) The agency is authorized to prescribe the keeping  
7 of records with respect to the activities of public  
8 defender corporations and other grantees, contractors,  
9 persons or entities receiving financial assistance under  
10 this article and shall have access to such records at all  
11 reasonable times for the purpose of ensuring compliance  
12 with the terms and conditions upon which financial  
13 assistance was provided.

14 (c) Copies of all reports pertinent to the evaluation,  
15 inspection, or monitoring of any public defender  
16 corporation, other grantee, contractor, person or entity  
17 receiving financial assistance under this article shall be  
18 maintained by the agency for a period of at least five  
19 years subsequent to such evaluation, inspection, or  
20 monitoring. Such reports shall be available for public  
21 inspection during regular business hours, and copies  
22 shall be furnished, upon request, to interested parties  
23 upon payment of such reasonable fees as the agency may  
24 establish.

**§29-21-19. Audits.**

1 (a) The accounts of each public defender corporation  
2 shall be audited annually. Such audits shall be con-  
3 ducted in accordance with generally accepted auditing  
4 standards by the state tax commissioner.

5 (b) The audits shall be conducted at the place or  
6 places where the accounts of the public defender  
7 corporation are normally kept. All books, accounts,  
8 financial records, reports, files, and other papers or  
9 property belonging to or in use by the public defender  
10 corporation and necessary to facilitate the audits shall

11 be made available to the person or persons conducting  
12 the audits; and full facilities for verifying transactions  
13 with the balances and securities held by depositories,  
14 fiscal agents, and custodians shall be afforded to any  
15 such person.

16 (c) The report of the annual audit shall be filed with  
17 the agency and shall be available for public inspection  
18 during business hours at the principal office of the  
19 public defender corporation. The report of each such  
20 audit shall be maintained for a period of at least five  
21 years at the office of the agency.

**§29-21-20. Appointed counsel immune from liability.**

1 Any attorney who provides legal representation under  
2 the provisions of this article under appointment by a  
3 circuit court or by the supreme court of appeals, and  
4 whose only compensation therefor is paid under the  
5 provisions of this article, shall be immune from liability  
6 arising from that representation in the same manner  
7 and to the same extent that prosecuting attorneys are  
8 immune from liability.

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## CHAPTER 170

(Com. Sub. for S. B. 233—By Senators Rundle and Lucht)

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[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section eighteen, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to penalties for accepting money or other things of value for performing or failing to perform duties; contracting for the providing of extraordinary police or security services by the department; procedures; assignment of personnel, equipment or facilities by the superintendent; reimbursement therefor; payment of officer or member; contract to contain provisions relating to public disaster or emergency and reassignment of personnel; requiring provision for indemnity; and authorizing the superintendent to promulgate rules and regulations.

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

That section eighteen, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.**

**§15-2-18. Officers or members performing duties for private persons; general penalty; providing extraordinary police or security services by contract.**

1 (a) Any officer or member of the department of public  
2 safety who hires himself or herself to any person, firm  
3 or corporation to guard private property, or who  
4 demands or receives from any person, firm or corpora-  
5 tion any money or other thing of value as a consideration  
6 for the performance of, or the failure to perform, his or  
7 her duties under the regulations of the superintendent  
8 and the provisions of this article, shall be guilty of a  
9 felony, and, upon conviction thereof, shall be confined in  
10 the penitentiary for not less than one nor more than five  
11 years, and any such officer or member of the depart-  
12 ment of public safety who violates any other provisions  
13 of this article, for which no other penalty is expressly  
14 provided, shall be guilty of a misdemeanor, and, upon  
15 conviction thereof, shall be fined not less than twenty-  
16 five dollars nor more than two hundred dollars, or  
17 imprisoned in the county jail for not more than four  
18 months, or both fined and imprisoned.

19 (b) Notwithstanding any other provision of this  
20 article, the superintendent may contract with public,  
21 quasi-public, military or private entities to provide  
22 extraordinary police or security services by the depart-  
23 ment when it is determined by the superintendent to be  
24 in the public interest. The superintendent shall assign  
25 such personnel, equipment or facilities as is deemed  
26 necessary and the department shall be reimbursed for  
27 the wages, overtime wages, benefits and costs of  
28 providing the contract services as negotiated between  
29 the parties. The compensation paid to public safety  
30 personnel by virtue of contracts provided for in this  
31 section shall be paid from a special account and shall  
32 be excluded from any formulation used to calculate an

33 employee's benefits. All requests for obtaining extraor-  
34 dinary police or security services shall be made to the  
35 superintendent in writing and shall explain the funding  
36 source and the authority for making such a request. No  
37 officer or member of the department shall be required  
38 to accept any assignment made pursuant to this  
39 subsection. Every officer or member assigned to duty  
40 hereunder shall be paid according to the hours and  
41 overtime hours actually worked notwithstanding that  
42 officer's or member's status as exempt personnel under  
43 the Federal Labor Standards Act or applicable state  
44 statutes. Every contract entered into under this subsec-  
45 tion shall contain the provision that in the event of  
46 public disaster or emergency where the reassignment to  
47 official duty of all officers and members is required,  
48 neither the department nor any of its officers or  
49 members shall be liable for any damages incurred as the  
50 result of the reassignment. Further, any entity contract-  
51 ing with the department of public safety under this  
52 section shall also agree as part of that contract to hold  
53 harmless and indemnify the state, department of public  
54 safety and its personnel from any liability arising out  
55 of employment under the contract. The superintendent  
56 is authorized to promulgate legislative rules and  
57 regulations in accordance with chapter twenty-nine-a of  
58 this code relating to the implementation of any contracts  
59 made under this subsection: *Provided*, That said  
60 regulations shall expressly prohibit private employment  
61 of officers or members in circumstances involving labor  
62 disputes.

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## CHAPTER 171

(Com. Sub. for H. B. 2382—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to repeal article thirty-one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter fifteen of said code by adding thereto a new article, designated



article five-a, relating to the West Virginia Emergency Response And Community Right-to-Know Act; setting forth purpose; creating the West Virginia Emergency Response Commission; setting forth responsibilities; providing definitions; referencing certain federal legislation; setting forth composition, organization, qualifications, terms, removal, compensation and meeting requirements for the State Emergency Response Commission; setting forth powers and duties of the commissions; providing for procedural rules; providing for certain fees; setting forth powers and duties of the office of emergency services; providing for the establishment of emergency planning districts and committees; relating to facility fees and a special account to receive such fees; providing for a local grant program; setting forth a mechanism to collect and disseminate information to the public on certain hazardous chemicals and toxic chemicals and to assure that state and local authorities and the public are adequately prepared to respond to releases of hazardous chemicals and toxic chemicals into the environment; providing commission standards and requirements more stringent than federal law; providing for penalties; authorizing the commission to utilize the attorney general in initiating legal actions and penalties; and authorizing the commission to comply with the obligations of the state under federal law.

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

That article thirty-one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter fifteen of said code be amended by adding thereto a new article, designated article five-a, to read as follows:

**ARTICLE 5A. WEST VIRGINIA EMERGENCY RESPONSE AND COMMUNITY RIGHT-TO-KNOW ACT.**

- §15-5A-1. Declaration of purpose.
- §15-5A-2. Jurisdiction of West Virginia emergency response commission.
- §15-5A-3. Definitions.
- §15-5A-4. State emergency response commission created; composition and organization, qualifications, terms, removal, compensation, meetings.
- §15-5A-5. Powers and duties of the commission.

§15-5A-6. Powers and duties of the office of emergency services.

§15-5A-7. Establishment of emergency planning districts and committees; composition, organization, duties.

§15-5A-8. Severability.

**§15-5A-1. Declaration of purpose.**

1 The Legislature recognizes that Title III of the  
2 Superfund Amendments and Reauthorization Act of  
3 1986: The Emergency Planning and Community Right-  
4 to-Know Act of 1986, P.L. 99-499, enacted by the United  
5 States congress and signed into law on the seventeenth  
6 day of October, one thousand nine hundred eighty-six,  
7 has two primary objectives, i.e., to require states and  
8 local communities to develop comprehensive emergency  
9 response plans, and to establish a program for the  
10 collection and dissemination to the public of information  
11 on certain hazardous chemicals and toxic chemicals in  
12 their communities.

13 The purpose of this article is to enable and authorize  
14 this state to fulfill its obligations under the federal  
15 statute.

**§15-5A-2. Jurisdiction of West Virginia emergency response commission.**

1 The state emergency response commission shall have  
2 within its jurisdiction and supervision the preparation  
3 and implementation of comprehensive emergency  
4 response plans for each designated emergency planning  
5 district within the state so as to comply with the  
6 requirements of 42 U.S.C. §11001, et seq. The commis-  
7 sion, through the office of emergency services, shall also  
8 be responsible for providing the citizens of this state  
9 with information in accordance with the requirements  
10 of 42 U.S.C. §11001, et seq., and this article. All state  
11 agencies shall cooperate with and assist the commission  
12 in all commission duties and responsibilities.

**§15-5A-3. Definitions.**

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

3 (a) "Best management practices" means any practices  
4 made applicable to a facility pursuant to section 304(e)

5 of the Clean Water Act and the federal regulations  
6 promulgated thereunder.

7 (b) "Clean Water Act" means the Federal Water  
8 Pollution Control Act, P.L. 92-500, enacted on the  
9 eighteenth day of October, one thousand nine hundred  
10 seventy-two, and all subsequent amendments to that act.

11 (c) "Code" means the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended.

13 (d) "Commission" means the state emergency response  
14 commission.

15 (e) "Committee" means a local emergency planning  
16 committee.

17 (f) "Emergency planning district" means a geogra-  
18 phic area designated by the commission as requiring its  
19 own comprehensive emergency response plan. The  
20 commission may designate existing political subdivi-  
21 sions or multijurisdictional planning organizations as  
22 such districts.

23 (g) "Facility" means a facility subject to the provisions  
24 of 42 U.S.C. §11001, et seq., and this article, pursuant  
25 to the provisions of 42 U.S.C. §11002.

26 (h) "Local emergency planning committee" means  
27 that group of persons, for each emergency planning  
28 district, who are appointed by the state emergency  
29 response commission in accordance with the provisions  
30 of section seven of this article.

31 (i) "Resource Conservation and Recovery Act" means  
32 P.L. 94-580, enacted on the twenty-first day of October,  
33 one thousand nine hundred seventy-six, and all subse-  
34 quent amendments to that act.

35 (j) "Spill prevention control and countermeasure  
36 plan" means any plan developed pursuant to section  
37 112.3 of title 40 of the code of federal regulations.

38 (k) "Title III" means the Emergency Planning and  
39 Community Right-to-Know Act of 1986, P.L. 99-499.

**§15-5A-4. State emergency response commission created; composition and organization, qualifications, terms, removal, compensation, meetings.**

1 (a) There is hereby created the state emergency  
2 response commission.

3 (b) The state emergency response commission shall  
4 consist of eleven members, including the director of the  
5 department of natural resources, the director of the  
6 health department, the director of the air pollution  
7 control commission, the director of the office of emer-  
8 gency services, the superintendent of the department of  
9 public safety, the commissioner of the department of  
10 highways; one designee of the public service commission  
11 and one designee of the state fire marshal, all of whom  
12 shall be members ex officio. A representative from the  
13 chemical industry, a representative of a municipal or  
14 volunteer fire department and a representative of the  
15 public who shall be knowledgeable in the area of  
16 emergency response shall be appointed by the governor  
17 as public members of the state emergency response  
18 commission. The director of the office of emergency  
19 services shall serve as the chairman of the commission  
20 and shall cast a vote only in the event of a tie vote.  
21 Members shall serve without compensation, but shall be  
22 reimbursed for all reasonable and necessary expenses  
23 actually incurred in the performance of their duties  
24 under this article. The initial public members appointed  
25 by the governor shall serve for a term ending on the first  
26 day of July, one thousand nine hundred ninety-one. A  
27 successor to a public member of the commission shall  
28 be appointed in the same manner as the original public  
29 members and shall have a term of office expiring two  
30 years from the date of the expiration of the term for  
31 which his predecessor was appointed. In cases of any  
32 vacancy among the public members, such vacancy shall  
33 be filled by appointment by the governor. Any member  
34 appointed to fill a vacancy on the commission occurring  
35 prior to the expiration of the term for which his  
36 predecessor was appointed shall be appointed for the  
37 remainder of such term. Members appointed by the  
38 governor may be removed by the governor in case of

39 incompetency, neglect of duty, gross immorality or  
40 malfeasance in office.

41 (c) The commission shall elect from its membership  
42 a vice chairman and appoint a secretary. The secretary  
43 need not be a member of the commission. The vice  
44 chairman shall preside over the meetings and hearings  
45 of the commission in the absence of the chairman. The  
46 commission may appoint and employ such personnel as  
47 may be required, whose duties shall be defined by the  
48 commission and whose compensation, to be fixed by the  
49 commission, shall be paid out of the state treasury, upon  
50 the requisition of the commission, from moneys approp-  
51 riated for such purposes.

52 (d) The commission may establish procedural rules in  
53 accordance with chapter twenty-nine-a of the code for  
54 the regulation of its affairs and the conduct of all  
55 proceedings before it. All proceedings of the commission  
56 shall be entered in a permanently bound record book,  
57 properly indexed, and the same shall be carefully  
58 preserved and attested by the secretary of the commis-  
59 sion. The commission shall meet at such times and  
60 places as may be agreed upon by the commissioners, or  
61 upon the call of the chairman of the commission or any  
62 two members of the commission, all of which meetings  
63 shall be general meetings for the consideration of any  
64 and all matters which may properly come before the  
65 commission. A majority of the commission shall consti-  
66 tute a quorum for the transaction of business.

#### §15-5A-5. Powers and duties of the commission.

1 The commission shall have and may exercise the  
2 following powers and authority and shall perform the  
3 following duties:

4 (a) Designate emergency planning districts;

5 (b) Appoint local emergency planning committees for  
6 each emergency planning district and supervise and  
7 coordinate the activities of such committees;

8 (c) Revise any designations and appointments made  
9 under subsections (a) and (b) of this section as it deems  
10 appropriate: *Provided*, That any interested person may

11 petition the state emergency response commission to  
12 modify the membership of a local emergency planning  
13 commission;

14 (d) Designate, if necessary, additional facilities which  
15 shall be subject to the requirements of this article,  
16 provided such designation is made after public notice  
17 and opportunity for comment as provided under article  
18 three, chapter twenty-nine-a of the code;

19 (e) Review the emergency response plans submitted  
20 by the local emergency planning committees and make  
21 recommendations to the local committees on revisions of  
22 the plan that may be necessary to ensure coordination  
23 of such plan with the plans of other emergency planning  
24 districts and other existing state and local emergency  
25 response plans;

26 (f) Enter into cooperative agreements with other state  
27 agencies designating specific responsibilities to be  
28 performed by such state agencies to implement the  
29 provisions of this article;

30 (g) Promulgate procedural rules in accordance with  
31 the provisions of article three, chapter twenty-nine-a of  
32 this code, establishing rules of practice before the  
33 commission;

34 (h) Promulgate procedural rules in accordance with  
35 the provisions of article three, chapter twenty-nine-a of  
36 this code, establishing procedures for receiving and  
37 processing requests from the public for information in  
38 accordance with the provisions of 42 U.S.C. §11001, et  
39 seq., and this article, and prescribing forms and  
40 instructions for requesting such information;

41 (i) Promulgate procedural rules in accordance with  
42 the provisions of article three, chapter twenty-nine-a of  
43 this code, prescribing forms and instructions for the  
44 submission and receipt of confidential information;

45 (j) Promulgate rules establishing the following fees  
46 which shall be deposited in a special account for the  
47 administration of this act and which shall be reasonably  
48 calculated to recover the necessary expenses incurred by

49 the office of emergency services in the administration  
50 of this article:

51 (1) An emergency planning notification fee not to  
52 exceed one hundred dollars to be paid by a facility when  
53 it makes the emergency planning notification required  
54 under SARA, Title III, sections 301 through 303;

55 (2) An inventory form fee not to exceed one hundred  
56 dollars to be paid annually by a facility when it submits  
57 the emergency and hazardous chemical inventory forms  
58 or material safety data sheet required under SARA,  
59 Title III, sections 311 and 312; and

60 (3) A surcharge fee not to exceed twenty percent of  
61 the fee otherwise payable to be paid by facilities which  
62 fail to pay the fees in paragraphs (1) and (2) in a timely  
63 manner;

64 (k) Establish an emergency planning grant program  
65 to be administered by the commission. The grant  
66 programs will be funded by fees collected to administer  
67 this act pursuant to subdivision (j) of this section. The  
68 commission shall promulgate rules which establish the  
69 method of awarding such grants to local emergency  
70 planning committees to assist them in performing their  
71 responsibilities under this article; and

72 (l) Promulgate legislative rules in accordance with  
73 the provisions of article three, chapter twenty-nine-a of  
74 this code necessary to implement the provisions of this  
75 article.

76 (m) The chairman of the commission may order a  
77 facility owner or operator to comply with the require-  
78 ments of applicable federal law, this article and any  
79 rules or regulations promulgated thereunder. When the  
80 chairman has reasonable cause to believe that there  
81 exists a failure to comply with the provisions of  
82 applicable federal law, this article or any rule or  
83 regulation promulgated thereunder or any order  
84 entered by the chairman, he may request the attorney  
85 general to commence an action for civil penalties,  
86 injunctive relief or other appropriate relief to enforce  
87 such provisions, rules and regulations or order. Such

88 action may be brought in any federal district court  
89 having jurisdiction, or in the circuit court of Kanawha  
90 county or the county where the facility or a major  
91 portion thereof is located.

**§15-5A-6. Powers and duties of the office of emergency services.**

1 The office of emergency services, as created by article  
2 five, chapter fifteen of the code of West Virginia, shall  
3 perform the administrative duties of the state emer-  
4 gency response commission. The administrative duties  
5 to be performed by the office of emergency services shall  
6 include, but shall not be limited to, the following:

7 (a) Receive, catalogue and organize information  
8 required to be submitted to the commission;

9 (b) Utilize existing state response organizations, plans  
10 and facilities to the extent possible;

11 (c) Upon concurrence of the commission, enter into  
12 training exercise agreements with federal response  
13 agencies;

14 (d) Coordinate with other state agencies on training  
15 for first responders and emergency service personnel;

16 (e) Respond to requests to the commission from the  
17 public for information pursuant to this act;

18 (f) Perform such preliminary analysis and collect  
19 such information as may be required to enable the  
20 commission to fully review local emergency response  
21 plans; and

22 (g) The director may employ such clerical and  
23 technical personnel and acquire data management and  
24 other equipment and office space as may be necessary  
25 to carry out the provisions of this act.

**§15-5A-7. Establishment of emergency planning districts and committees; composition, organization, duties.**

1 (a) The state emergency response commission shall  
2 designate emergency planning districts in order to  
3 facilitate preparation and implementation of emergency



4 plans. After designating emergency planning districts,  
5 the state emergency response commission shall appoint  
6 members of a local emergency planning committee for  
7 each emergency planning district. Each committee shall  
8 include representatives from each of the following  
9 groups or organizations: (1) Elected state and local  
10 officials; (2) law enforcement, civil defense, fire fighting,  
11 first aid, health, local environmental, hospital and  
12 transportation personnel; (3) broadcast and print media;  
13 (4) community groups; and (5) owners and operators of  
14 facilities subject to the requirements of this article. In  
15 addition to the above members, each county commission  
16 president from every county within the district, or a  
17 member of the county commission designated by the  
18 president, shall be appointed as a member of the  
19 committee and such appointment may fulfill the  
20 requirement to appoint elected local officials.

21 (b) Each local committee shall appoint a chairperson  
22 and establish procedural rules by which the committee  
23 shall function. Such rules shall include provisions for  
24 public notification of committee activities, public  
25 meetings to discuss the emergency plan, public com-  
26 ments, response to such comments by the committee and  
27 distribution of the emergency plan.

28 (c) The local committees shall submit their proposed  
29 procedural rules to the state emergency response  
30 commission for review and comment no later than the  
31 first day of January, one thousand nine hundred ninety.  
32 If any local committees fail to submit proposed proced-  
33 ural rules, the state emergency response commission  
34 shall itself promulgate rules applicable to such local  
35 committees.

36 (d) The local emergency planning committee shall  
37 have and may exercise the following powers and  
38 authority and shall perform the following duties:

39 (1) Establish procedures for receiving and processing  
40 requests from the public for information regarding any  
41 emergency response plan, material safety data sheet,  
42 emergency, first aid and medical treatment procedures,  
43 list described in 42 U.S.C. §11021(a)(2), inventory form,

44 toxic chemical release form, or followup emergency  
45 notice, including tier II information under 42 U.S.C.  
46 §11022;

47 (2) Designate an official to serve as coordinator for  
48 information for processing requests for information  
49 from the public;

50 (3) Develop and implement a comprehensive emer-  
51 gency response plan in accordance with 42 U.S.C.  
52 §11003, and review such plan once a year, or more  
53 frequently as changed circumstances in the community  
54 or at any facility may require: *Provided*, That such  
55 comprehensive emergency response plans may not  
56 require a covered facility to revise, modify or otherwise  
57 alter any emergency release response or release preven-  
58 tion plan that has been prepared pursuant to any other  
59 state or federal statute or regulation including, but not  
60 limited to, contingency plans developed under the  
61 Resource Conservation and Recovery Act, Spill Preven-  
62 tion and Countermeasure Plans, or Best Management  
63 Practices Plans developed under the Clean Water Act;

64 (4) Prior to implementation, submit a copy of the  
65 prepared emergency response plan to the state emer-  
66 gency response commission for review and  
67 recommendation;

68 (5) Publish annually a notice in local newspapers that  
69 the emergency response plan is available for review, as  
70 are those material safety data sheets, emergency, first  
71 aid and medical treatment procedures, inventory forms  
72 and followup emergency notices which have been  
73 submitted to the committee. The notice shall also state  
74 that members of the public who wish to review any such  
75 plan, sheet, form or followup notice may do so at a  
76 designated location;

77 (6) Establish deadlines for responding to information  
78 requests from the public; and

79 (7) Receive, catalogue and organize information  
80 required to be submitted to the committee under the  
81 provisions of 42 U.S.C. §11001, et seq.

**§15-5A-8. Severability.**

1 The provisions of this article are severable and if any  
2 provision, section or part thereof shall be held invalid,  
3 unconstitutional or inapplicable to any person or  
4 circumstance, such invalidity, unconstitutionality or  
5 inapplicability shall not affect or impair any of the  
6 remaining provisions, sections or parts of the article or  
7 their application to him or to other persons and  
8 circumstances. It is hereby declared to be the legislative  
9 intent that this article would have been adopted if such  
10 invalid or unconstitutional provisions, section or part  
11 had not been included therein.

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**CHAPTER 172**

(Com. Sub. for H. B. 2621—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections one-d and one-e, all relating to future electric generating capacity requirements of electric utilities in West Virginia and rate recovery for construction of electric transmission facilities.

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

That article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections one-d and one-e, all to read as follows:

**CHAPTER 24. PUBLIC SERVICE COMMISSION.****ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

§24-2-1d. Future electric generating capacity requirements.

§24-2-1e. Rate recovery for construction of electric transmission facilities.

**§24-2-1d. Future electric generating capacity requirements.**

1 (a) In order to maximize the use of electricity

2 generated within the state by using coal or natural gas  
3 produced within the state, the public service commission  
4 shall by order, no later than the thirty-first day of  
5 December, one thousand nine hundred eighty-nine,  
6 establish the schedule and amount of future electric  
7 generating capacity additions required by each West  
8 Virginia electric utility, for the next ten years, taking  
9 into account: (i) Projected load growth; (ii) existing  
10 generating capacity; (iii) existing contractual commit-  
11 ments to sell or purchase capacity; (iv) planned retire-  
12 ment and life extensions of existing capacity; (v) planned  
13 construction of capacity; (vi) availability of capacity  
14 from generating units of affiliated companies; and (vii)  
15 such other reasonable factors as the commission may  
16 deem relevant and appropriate to consider.

17 (b) If the commission determines after considering all  
18 such named and other relevant and appropriate factors  
19 that a utility will be required to purchase electric  
20 generating capacity beyond those agreements approved  
21 by the Federal Energy Regulatory Commission or the  
22 West Virginia public service commission in order to  
23 serve its West Virginia customers, the amount of such  
24 required additional purchased capacity so identified by  
25 the commission will for purposes of this section be  
26 referred to as the utility's "projected deficient capacity":  
27 *Provided*, That this subsection shall not include power  
28 generating facilities whose total production of electricity  
29 is sold outside the state of West Virginia.

30 (c) In the interests of: Keeping utility rates of  
31 residential customers as low as possible; keeping utility  
32 rates for commercial and industrial customers competi-  
33 tive with those of other states; attracting new industry  
34 for which electric power costs are a major factor in  
35 location determinations; and of not placing any greater  
36 cost burden on government than is absolutely necessary  
37 for its electric power needs, each utility shall acquire,  
38 if reasonable, its projected deficient capacity from  
39 electric generation situate in West Virginia which burns  
40 coal or gas produced in West Virginia and which will  
41 provide the most reliable supply of capacity and energy  
42 at the least cost to those customers of the utility who will  
43 be served by such electric generation: *Provided*, That all

44 power purchase contracts executed prior to the effective  
45 date of this section which satisfy the following require-  
46 ments, regardless of location, shall be considered, for the  
47 purposes of this subsection, as electric generation situate  
48 in West Virginia: (1) Said contracts were negotiated in  
49 accordance with procedures and priced according to  
50 methodologies of other contracts which the commission  
51 has ordered approved; (2) said contracts either guaran-  
52 tee or are substantially amended to guarantee for the  
53 life of the contract the use of an amount of West  
54 Virginia fuel which equals or exceeds the amount which  
55 would be required, on a percentage of output basis, to  
56 produce the amount of electric power to be consumed  
57 in West Virginia; and (3) said contracts meet the  
58 requirements for a qualifying facility established by the  
59 Federal Energy Regulatory Commission pursuant to the  
60 Public Utility Regulatory Policies Act of 1978.

**§24-2-1e. Rate recovery for construction of electric transmission facilities.**

1 In order to encourage the construction of transmission  
2 facilities necessary to transmit electric power from  
3 generating facilities located in this state to areas where  
4 such power can be economically marketed, the commis-  
5 sion may allow an electric utility accelerated rate  
6 recovery for transmission facilities constructed or  
7 upgraded for the purpose of increasing the capacity to  
8 transmit electric power to areas outside the utility's  
9 service territory where such power can be economically  
10 marketed. In allowing accelerated rate recovery, the  
11 commission shall include the impact of the investment  
12 in transmission facilities on any investment equalization  
13 agreement in which the utilities participate.

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## CHAPTER 173

(H. B. 2608—By Mr. Speaker, Mr. Chambers, and Delegate Murensky)

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[Passed April 4, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to telemetry systems on railroads; providing definitions; requiring telemetry systems on certain railroad trains in lieu of cabooses; prohibiting retaliation for reporting violations; and requiring the telemetry system to be capable of emergency braking, beginning the first day of July, one thousand nine hundred ninety-one.

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

That article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-a, to read as follows:

**ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES  
SUBJECT TO REGULATIONS OF COMMISSION.**

**§24-3-1a. Definitions; telemetry systems required.**

1 (a) As used in this article:

2 (1) "Head end device" means a device located on the  
3 lead locomotive of a railroad train designed to receive  
4 information from the rear end device. It may also be  
5 used to transmit information to the rear end device;

6 (2) "Mainline" means a railroad track extending  
7 through railroad yards and between stations which must  
8 not be occupied without authority or protection;

9 (3) "Rear end device" means a device located on the  
10 rear car of a railroad train designed to transmit  
11 information to the head end device and equipped with  
12 a rear marker light, red in color, and at least one  
13 hundred, but not more than one thousand, candela. It  
14 may also be used to receive information from the head  
15 end device;

16 (4) "Telemetry system" means a radio transmitter and  
17 receiver system between a front end device and a rear  
18 end device which indicates through a display at the head  
19 end device the following:

- 20 (i) Brake pipe pressure at the rear of the train,  
21 displayed in increments of one pound per square inch;
- 22 (ii) Rear car movement;
- 23 (iii) Whether the rear marker light is operating;
- 24 (iv) Remaining battery life powering the system;
- 25 (v) Any interruption in radio transmission as estab-  
26 lished by a distance measuring device at the rear end  
27 device; and
- 28 (vi) The location of the rear of the train as established  
29 by a distance measuring device at the rear end device.
- 30 (b) It is unlawful to operate a railroad train over one  
31 thousand five hundred feet in length on any mainline  
32 track within any railroad yard, without an occupied  
33 caboose as the rear car of such train unless it is  
34 equipped with an operable telemetry system.
- 35 (c) No train may depart any crew change point or its  
36 point of origin unless the train is equipped with  
37 telemetry system as required by this article. Any  
38 inoperable system shall be repaired or replaced before  
39 leaving the point of origin or at crew change point.
- 40 (d) The rear marker light required by this article  
41 shall be flashing during the period from one hour before  
42 sunset until one hour after sunrise.
- 43 (e) Beginning the first day of July, one thousand nine  
44 hundred ninety-one, all telemetry devices shall be  
45 equipped so that an emergency application of the brakes  
46 of the train can be initiated at the rear car of the train  
47 either by the engineer in the lead or controlling  
48 locomotive or by a crew member riding on the rear car.
- 49 It is unlawful to institute any disciplinary action or  
50 other adverse administrative or employment action  
51 against any person who reports a violation or acts to  
52 enforce the provisions of this article. Such person's  
53 remedies under this chapter shall be in addition to any  
54 other remedies that might be available to such person.

## CHAPTER 174

(H. B. 2108—By Delegates Phillips and Roop)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and thirteen, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public service districts; requiring certain information in applications for service; requiring security deposits from new applicants; requiring certain notices of delinquency and termination of service; specifying certain conditions and procedures for termination of service; and adjusting the interest rate and interest cost of the proceeds on public service district revenue bonds.

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

That sections nine and thirteen, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-9. Rules and regulations; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

§16-13A-13. Revenue bonds.

#### §16-13A-9. Rules and regulations; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

1 The board may make, enact and enforce all needful  
2 rules and regulations in connection with the acquisition,  
3 construction, improvement, extension, management,  
4 maintenance, operation, care, protection and the use of  
5 any public service properties owned or controlled by the  
6 district, and the board shall establish rates and charges  
7 for the services and facilities it furnishes, which shall  
8 be sufficient at all times, notwithstanding the provisions



9 of any other law or laws, to pay the cost of maintenance,  
10 operation and depreciation of such public service  
11 properties and principal of and interest on all bonds  
12 issued, other obligations incurred under the provisions  
13 of this article and all reserve or other payments  
14 provided for in the proceedings which authorized the  
15 issuance of any bonds hereunder. The schedule of such  
16 rates and charges may be based upon either (a) the  
17 consumption of water or gas on premises connected with  
18 such facilities, taking into consideration domestic,  
19 commercial, industrial and public use of water and gas;  
20 or (b) the number and kind of fixtures connected with  
21 such facilities located on the various premises; or (c) the  
22 number of persons served by such facilities; or (d) any  
23 combination thereof; or (e) may be determined on any  
24 other basis or classification which the board may  
25 determine to be fair and reasonable, taking into  
26 consideration the location of the premises served and the  
27 nature and extent of the services and facilities fur-  
28 nished. Where water, sewer and gas services are all  
29 furnished to any premises, the schedule of charges may  
30 be billed as a single amount for the aggregate thereof.  
31 The board shall require all users of services and  
32 facilities furnished by the district to designate on every  
33 application for service whether the applicant is a tenant  
34 or an owner of the premises to be served. If the  
35 applicant is a tenant, he shall state the name and  
36 address of the owner or owners of the premises to be  
37 served by the district. All new applicants for service  
38 shall deposit a minimum of fifty dollars with the district  
39 to secure the payment of service rates and charges in  
40 the event they become delinquent as provided in this  
41 section. In any case where a deposit is forfeited to pay  
42 service rates and charges which were delinquent at the  
43 time of disconnection or termination of service, no  
44 reconnection or reinstatement of service may be made  
45 by the district until another minimum deposit of fifty  
46 dollars has been remitted to the district. Whenever any  
47 rates, rentals or charges for services or facilities  
48 furnished remain unpaid for a period of thirty days  
49 after the same become due and payable, the property  
50 and the owner thereof, as well as the user of the services

51 and facilities provided shall be delinquent and the  
52 owner, user and property shall be held liable at law  
53 until such time as all such rates and charges are fully  
54 paid: *Provided*, That the property owner shall be given  
55 notice of any said delinquency by certified mail, return  
56 receipt requested. The board may, under reasonable  
57 rules and regulations promulgated by the public service  
58 commission, shut off and discontinue water or gas  
59 services to all delinquent users of either water or gas  
60 facilities, or both: *Provided, however*, That upon written  
61 request of the owner or owners of the premises, the  
62 board shall shut off and discontinue water and gas  
63 services where any rates, rentals, or charges for services  
64 or facilities remain unpaid by the user of the premises  
65 for a period of sixty days after the same became due and  
66 payable.

67 In the event that any publicly or privately owned  
68 utility, city, incorporated town, other municipal corpo-  
69 ration or other public service district included within  
70 the district owns and operates separately either water  
71 facilities or sewer facilities, and the district owns and  
72 operates the other kind of facilities, either water or  
73 sewer, as the case may be, then the district and such  
74 publicly or privately owned utility, city, incorporated  
75 town or other municipal corporation or other public  
76 service district shall covenant and contract with each  
77 other to shut off and discontinue the supplying of water  
78 service for the nonpayment of sewer service fees and  
79 charges: *Provided*, That any contracts entered into by  
80 a public service district pursuant to this section shall be  
81 submitted to the public service commission for approval.  
82 Any public service district providing water and sewer  
83 service to its customers shall have the right to terminate  
84 water service for delinquency in payment of either  
85 water or sewer bills. Where one public service district  
86 is providing sewer service and another public service  
87 district or a municipality included within the boundar-  
88 ies of the sewer district is providing water service, and  
89 the district providing sewer service experiences a  
90 delinquency in payment, the district or the municipality  
91 included within the boundaries of the sewer district that  
92 is providing water service, upon the request of the

93 district providing sewer service to the delinquent  
94 account, shall terminate its water service to the  
95 customer having the delinquent sewer account:  
96 *Provided, however,* That any termination of water  
97 service must comply with all rules, regulations and  
98 orders of the public service commission.

99 Any district furnishing sewer facilities within the  
100 district may require, or may by petition to the circuit  
101 court of the county in which the property is located,  
102 compel or may require the department of health to  
103 compel all owners, tenants or occupants of any houses,  
104 dwellings and buildings located near any such sewer  
105 facilities, where sewage will flow by gravity or be  
106 transported by such other methods approved by the  
107 department of health including, but not limited to,  
108 vacuum and pressure systems, approved under the  
109 provisions of section nine, article one, chapter sixteen of  
110 this code, from such houses, dwellings or buildings into  
111 such sewer facilities, to connect with and use such sewer  
112 facilities, and to cease the use of all other means for the  
113 collection, treatment and disposal of sewage and waste  
114 matters from such houses, dwellings and buildings  
115 where there is such gravity flow or transportation by  
116 such other methods approved by the department of  
117 health including, but not limited to, vacuum and  
118 pressure systems, approved under the provisions of  
119 section nine, article one, chapter sixteen of this code, and  
120 such houses, dwellings and buildings can be adequately  
121 served by the sewer facilities of the district, and it is  
122 hereby found, determined and declared that the man-  
123 datory use of such sewer facilities provided for in this  
124 paragraph is necessary and essential for the health and  
125 welfare of the inhabitants and residents of such districts  
126 and of the state: *Provided,* That if the public service  
127 district determines that the property owner must  
128 connect with the sewer facilities even when sewage from  
129 such dwellings may not flow to the main line by gravity  
130 and the property owner must incur costs for any  
131 changes in the existing dwellings' exterior plumbing in  
132 order to connect to the main sewer line, the public  
133 service district board shall authorize the district to pay  
134 all reasonable costs for such changes in the exterior

135 plumbing, including, but not limited to, installation,  
136 operation, maintenance and purchase of a pump, or any  
137 other method approved by the department of health;  
138 maintenance and operation costs for such extra instal-  
139 lation should be reflected in the users charge for  
140 approval of the public service commission. The circuit  
141 court shall adjudicate the merits of such petition by  
142 summary hearing to be held not later than thirty days  
143 after service of petition to the appropriate owners,  
144 tenants or occupants.

145 Whenever any district has made available sewer  
146 facilities to any owner, tenant or occupant of any house,  
147 dwelling or building located near such sewer facility,  
148 and the engineer for the district has certified that such  
149 sewer facilities are available to and are adequate to  
150 serve such owner, tenant or occupant, and sewage will  
151 flow by gravity or be transported by such other methods  
152 approved by the department of health from such house,  
153 dwelling or building into such sewer facilities, the  
154 district may charge, and such owner, tenant or occupant  
155 shall pay the rates and charges for services established  
156 under this article only after thirty-day notice of the  
157 availability of the facilities has been received by the  
158 owner.

159 All delinquent fees, rates and charges of the district  
160 for either water facilities, sewer facilities or gas  
161 facilities are liens on the premises served of equal  
162 dignity, rank and priority with the lien on such premises  
163 of state, county, school and municipal taxes. In addition  
164 to the other remedies provided in this section, public  
165 service districts are hereby granted a deferral of filing  
166 fees or other fees and costs incidental to the bringing  
167 and maintenance of an action in magistrate court for the  
168 collection of delinquent water, sewer or gas bills. If the  
169 district collects the delinquent account, plus reasonable  
170 costs, from its customer or other responsible party, the  
171 district shall pay to the magistrate the normal filing fee  
172 and reasonable costs which were previously deferred. In  
173 addition, each public service district may exchange with  
174 other public service districts a list of delinquent  
175 accounts.

176 Anything in this section to the contrary notwithstanding,  
177 ing, any establishment, as defined in section two, article  
178 five-a, chapter twenty, now or hereafter operating its  
179 own sewage disposal system pursuant to a permit issued  
180 by the department of natural resources, as prescribed  
181 by section seven, article five-a, chapter twenty of this  
182 code, is exempt from the provisions of this section.

### §16-13A-13. Revenue bonds.

1 For constructing or acquiring any public service  
2 properties for the authorized purposes of the district, or  
3 necessary or incidental thereto, and for constructing  
4 improvements and extensions thereto, and also for  
5 reimbursing or paying the costs and expenses of  
6 creating the district, the board of any such district is  
7 hereby authorized to borrow money from time to time  
8 and in evidence thereof issue the bonds of such district,  
9 payable solely from the revenues derived from the  
10 operation of the public service properties under control  
11 of the district. Such bonds may be issued in one or more  
12 series, may bear such date or dates, may mature at such  
13 time or times not exceeding forty years from their  
14 respective dates, may bear interest at such rate or rates  
15 not exceeding eighteen percent per annum payable at  
16 such times, may be in such form, may carry such  
17 registration privileges, may be executed in such  
18 manner, may be payable at such place or places, may  
19 be subject to such terms of redemption with or without  
20 premium, may be declared or become due before  
21 maturity date thereof, may be authenticated in any  
22 manner, and upon compliance with such conditions, and  
23 may contain such terms and covenants as may be  
24 provided by resolution or resolutions of the board.  
25 Notwithstanding the form or tenor thereof, and in the  
26 absence of any express recital on the face thereof, that  
27 the bond is nonnegotiable, all such bonds shall be, and  
28 shall be treated as, negotiable instruments for all  
29 purposes. Bonds bearing the signatures of officers in  
30 office on the date of the signing thereof shall be valid  
31 and binding for all purposes notwithstanding that  
32 before the delivery thereof any or all of the persons  
33 whose signatures appear thereon shall have ceased to be

34 such officers. Notwithstanding the requirements or  
35 provisions of any other law, any such bonds may be  
36 negotiated or sold in such manner and at such time or  
37 times as is found by the board to be most advantageous,  
38 and all such bonds may be sold at such price that the  
39 interest cost of the proceeds therefrom does not exceed  
40 nineteen percent per annum, based on the average  
41 maturity of such bonds and computed according to  
42 standard tables of bond values. Any resolution or  
43 resolutions providing for the issuance of such bonds may  
44 contain such covenants and restrictions upon the  
45 issuance of additional bonds thereafter as may be  
46 deemed necessary or advisable for the assurance of the  
47 payment of the bonds thereby authorized.

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## CHAPTER 175

(Com. Sub. for S. B. 389—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to repeal section five-b, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article three, chapter seven of said code; to amend and reenact sections one, two, three, four, five, five-a, six, seven, eight, nine, ten, nineteen, twenty-two, twenty-four and twenty-five, article twenty, chapter thirty-one of said code; and to further amend said article twenty by adding thereto two new sections, designated sections one-a and twenty-six, all relating to the West Virginia Regional Jail and Correctional Facility Authority generally; providing that no county commission is required to provide and maintain jails or holding facilities unless it is determined to be necessary; setting forth certain legislative findings and purposes; changing the reference to "prison" throughout article twenty, chapter thirty-one of the code to "correctional facility"; renaming a special fund; providing that the chairman and secretary of the board of the Regional Jail

and Correctional Facility Authority are to be elected by the members of the board every two years; changing the number and composition of the board; specifying quarterly meetings of the board unless a special meeting or meetings are called by the chairman; requiring the board to review and approve the budget of the authority annually; specifying that the executive director of the authority is its chief executive officer; providing for the nomination and appointment of the executive director by the governor with the advice and consent of the Senate, to serve at the will and pleasure of the governor; specifying certain duties of the executive director; providing that the authority may enter into certain types of contracts; specifying that the authority shall provide the Jail and Correctional Facility Standards Commission with secretarial and other necessary services; creating the regional jail and correctional facility development fund; and creating a legislative oversight committee.

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

That section five-b, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article three, chapter seven of said code be amended and reenacted; that sections one, two, three, four, five, five-a, six, seven, eight, nine, ten, nineteen, twenty-two, twenty-four and twenty-five, article twenty, chapter thirty-one of said code be amended and reenacted; and that said article twenty be further amended by adding thereto two new sections, designated sections one-a and twenty-six, all to read as follows:

#### **Chapter**

**7. County Commissions and Officers.**

**31. Corporations.**

### **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

#### **ARTICLE 3. COUNTY PROPERTY.**

##### **§7-3-2. Courthouse, jail and offices.**

- 1 The county commission of every county, at the expense
- 2 of the county, shall provide at the county seat thereof

3 a suitable courthouse and jail, together with suitable  
4 offices for the judge of the circuit court and judges of  
5 courts of limited jurisdiction, clerks of circuit courts,  
6 courts of limited jurisdiction and of the county commis-  
7 sion, assessor, sheriff, prosecuting attorney, county  
8 superintendent of schools, and surveyor, and all other  
9 offices as are or may be required by law: *Provided*, That  
10 the courthouse, including any annex or other facility  
11 housing the courts and offices herein set out (excepting  
12 all facilities that are on a twenty-four-hour basis), shall  
13 be open to the public Monday through Friday during the  
14 hours prescribed by the county commission by an order  
15 duly recorded in the order book of the commission. The  
16 county commission in such order may, in its discretion,  
17 provide that the courthouse, including any annex or  
18 other facility housing the courts and offices herein set  
19 out, be open on Saturday and prescribe the hours during  
20 which it shall be open. In no case may the county  
21 commission provide that the courthouse, including any  
22 annex or other facility housing the courts and offices  
23 herein set out, be open for business on Sundays or  
24 national or state holidays: *Provided, however*, That the  
25 county commission of every county having a population  
26 in excess of two hundred thousand may provide at the  
27 county seat or elsewhere in the county, as the county  
28 commission shall determine, a suitable jail or jails:  
29 *Provided further*, That the county commission of any  
30 county, regardless of population, may, as provided in  
31 article twenty-three, chapter eight of the code of West  
32 Virginia, contract with the county commissions of one  
33 or more other counties within this state for the erection,  
34 construction, equipment, leasing and renting of a  
35 regional correctional center for either adult or youth  
36 offenders, at a location mutually agreeable to the  
37 contracting parties and not necessarily at the county  
38 seat, which will serve each county entering into the  
39 contract. The county commission shall keep the court-  
40 house, jail and other offices in constant and adequate  
41 repair, and supplied with the necessary heat, light,  
42 furniture, record books, and janitor service, and, except  
43 as to the office for the judge of the circuit court, with  
44 the necessary stationery and postage, and other things



45 as shall be necessary; but all of the public records, books  
46 and papers belonging or appertaining to the county  
47 surveyor's office shall be delivered to the clerk of the  
48 county commission and retained by him in his official  
49 possession and under his control and shall constitute a  
50 part of the public records, books and papers of his office.  
51 All courthouses, jails and offices hereafter erected shall  
52 be built of stone and brick, or stone or brick, or other  
53 equally fireproof materials, and the offices shall be  
54 fireproof or be furnished with fireproof vaults or safes.  
55 The jails shall be well secured, and sufficient for the  
56 convenient accommodation of those who may be confined  
57 therein. The county commission may also provide other  
58 necessary offices and buildings, and may, by purchase  
59 or otherwise, acquire as much land as may be requisite  
60 or desirable for county purposes, and may suitably  
61 enclose, improve and embellish the lands so acquired.

62 Subject to the conditions hereinabove set forth with  
63 respect to the site of the courthouse, jail, and other  
64 offices, the commission may, from time to time, as may  
65 seem to it proper, provide, at the expense of the county,  
66 a new or other building or buildings to be used for the  
67 courthouse and jail, or for either, together with suitable  
68 offices, as aforesaid, and for that purpose may acquire,  
69 by purchase or otherwise, and hold any lands, or lands  
70 and buildings, which may be necessary, and may  
71 enclose, improve and embellish the same. When any new  
72 or other building or buildings shall be ready for  
73 occupancy, the county commission shall make an order  
74 declaring that, on a day to be therein named, the new  
75 or other building or buildings shall become the court-  
76 house, or jail, or both the courthouse and jail of the  
77 county, and shall cause copies of the order to be posted  
78 at the front door of the new as well as of the old  
79 courthouse, at least twenty days before the day named  
80 in the order; and on and after the day named the new  
81 or other building or buildings shall become, respec-  
82 tively, the courthouse, or jail, or both the courthouse and  
83 jail of the county in all respects and for all purposes.  
84 After the change shall have been made the county  
85 commission may sell or otherwise dispose of, as may  
86 seem to it proper, the building or buildings previously

87 used as a courthouse and jail, or either, and the land on  
 88 which they are, or either is, situated, and of the interest  
 89 of the county therein.

90 Notwithstanding any other provision of this code to  
 91 the contrary, any county commission providing and  
 92 maintaining a jail on the effective date of this article  
 93 shall not be required to provide and maintain a jail after  
 94 a regional jail becomes available pursuant to the  
 95 provisions of article twenty, chapter thirty-one of this  
 96 code, unless the county commission determines that such  
 97 a facility is necessary: *Provided*, That such county  
 98 commission may provide and maintain a holding facility  
 99 which complies with the standards set forth for such  
 100 holding facilities in legislative rules promulgated by the  
 101 jail and correctional facility standards commission or its  
 102 predecessor, the jail and prison standards commission.

## CHAPTER 31. CORPORATIONS.

### ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

- §31-20-1. Short title.
- §31-20-1a. Legislative findings and purposes.
- §31-20-2. Definitions.
- §31-20-3. West Virginia regional jail and correctional facility authority; composition; appointment; terms; compensation and expenses.
- §31-20-4. Governing body; organization and meetings; quorum; administrative expenses.
- §31-20-5. Powers and duties of the authority; bidding procedures.
- §31-20-5a. Bidding procedures.
- §31-20-6. Regional jail commissions; composition; appointment; terms; compensation and expenses.
- §31-20-7. General powers of the commission.
- §31-20-8. Jail and correctional facility standards commission; appointment; compensation; vacancies; quorum.
- §31-20-9. Purpose, powers and duties.
- §31-20-10. Regional jail and correctional facility development fund.
- §31-20-19. Tax exemption.
- §31-20-22. Money of the authority.
- §31-20-24. Agreement with federal agencies not to alter or limit powers of authority.
- §31-20-25. Further duties of the authority.
- §31-20-26. Legislative oversight committee.

#### §31-20-1. Short title.

1 This article shall be known and may be cited as "The

2 West Virginia Regional Jail and Correctional Facility  
3 Authority Act.”

**§31-20-1a. Legislative findings and purposes.**

1 (a) The Legislature finds as follows:

2 (1) That existing jails and correctional facilities in  
3 this state serve neither the best interests of the inmate  
4 population of such jails and facilities nor the citizens of  
5 West Virginia;

6 (2) That due to time constraints established and  
7 imposed by judicial decisions, it is imperative that the  
8 Legislature give immediate and diligent attention to the  
9 improvement of existing facilities and the construction  
10 and maintenance of new facilities, as well as to the  
11 development and implementation of new, innovative and  
12 effective programs dealing with incarcerated persons;

13 (3) That the physical condition of most existing jails  
14 and correctional facilities contribute to a frustration of  
15 efforts to provide rehabilitation, education, vocational  
16 training, and social and psychological adjustment and  
17 improvement for incarcerated persons, to the end that  
18 such existing facilities are utilized largely for the  
19 limited purposes of confinement;

20 (4) That there is a need to examine, understand and  
21 implement various new and innovative trends which are  
22 being advanced in the area of correctional institution  
23 design, and to explore the developing alternatives to  
24 incarceration which are being experimented with in  
25 other jurisdictions; and

26 (5) That the revenues of this state, insofar as they are  
27 currently used to maintain a traditional penal system,  
28 are not efficiently utilized to provide facilities or  
29 produce programs which could direct an inmate's time  
30 and effort to prepare him for life outside of confinement;  
31 nor do such revenues provide corrections officials with  
32 the resources necessary to address the issues and  
33 problems with which they are confronted.

34 (b) The purposes of this article are as follows:

35 (1) To provide a cost-efficient system within this state

36 for the construction, maintenance and operation of jails  
37 and correctional facilities;

38 (2) To develop and implement plans for the renovation  
39 and improvement of existing facilities and the design  
40 and construction of new facilities to better serve the  
41 inmate population and the citizens of this state;

42 (3) To provide an environment in which new and  
43 innovative corrections programs may be considered and  
44 undertaken, and in which opportunities may be offered  
45 to inmates to overcome personal deficiencies which are  
46 educational, vocational, social or psychological in nature;

47 (4) To investigate the feasibility of individualizing  
48 and classifying inmates according to their psychological  
49 and physical conditions at the time they are incarcer-  
50 ated, and the feasibility of designing for each such  
51 inmate a plan for self-improvement and rehabilitation.

#### §31-20-2. Definitions.

1 Unless the context indicates clearly otherwise, as used  
2 in this article:

3 (a) "Authority" or "West Virginia Regional Jail  
4 Authority" means the West Virginia regional jail and  
5 correctional facility authority created by this article.

6 (b) "Board" means the governing body of the  
7 authority.

8 (c) "Bonds" means bonds of the authority issued under  
9 this article.

10 (d) "Cost of construction or renovation of a local jail  
11 facility or regional jail facility" means the cost of all  
12 lands, water areas, property rights and easements,  
13 financing charges, interest prior to and during construc-  
14 tion and for a period not exceeding six months following  
15 the completion of construction, equipment, engineering  
16 and legal services, plans, specifications and surveys,  
17 estimates of costs and other expenses necessary or  
18 incidental to determining the feasibility or practicabil-  
19 ity of any such project, together with such other  
20 expenses as may be necessary or incidental to the  
21 financing and the construction or renovation of such  
22 facilities and the placing of same in operation.

- 23 (e) "County" means any county of this state.
- 24 (f) "Federal agency" means the United States of  
25 America and any department, corporation, agency or  
26 instrumentality created, designated or established by  
27 the United States of America.
- 28 (g) "Fund" means the regional jail and correctional  
29 facility development fund provided in section ten of this  
30 article.
- 31 (h) "Government" means state and federal govern-  
32 ment, and any political subdivision, agency or instru-  
33 mentality thereof, corporate or otherwise.
- 34 (i) "Inmate" means any person properly committed to  
35 a local or regional jail facility or a correctional facility.
- 36 (j) "Local jail facility" means any county facility for  
37 the confinement, custody, supervision or control of  
38 persons convicted of misdemeanors, awaiting trial or  
39 awaiting transportation to a state correctional facility.
- 40 (k) "Municipality" means any city, town or village in  
41 this state.
- 42 (l) "Notes" means any notes as defined in section one  
43 hundred four, article three, chapter forty-six of this code  
44 issued under this article by the authority.
- 45 (m) "Correctional facility" means any correctional  
46 facility, penitentiary, detention center or other correc-  
47 tional institution operated by the department of  
48 corrections.
- 49 (n) "Regional jail facility" or "regional jail" means any  
50 facility operated by the authority and used jointly by  
51 two or more counties for the confinement, custody,  
52 supervision or control of persons convicted of misdemea-  
53 nors or awaiting trial or awaiting transportation to a  
54 state correctional facility.
- 55 (o) "Regional jail commission" means the commission  
56 established in section eight of this article.
- 57 (p) "Revenues" means all fees, charges, moneys,  
58 profits, payments of principal of, or interest on, loans

59 and other investments, grants, contributions and all  
60 other income received by the authority.

61 (q) "Security interest" means an interest in the loan  
62 portfolio of the authority which interest is secured by  
63 an underlying loan or loans and is evidenced by a note  
64 issued by the authority.

65 (r) "Work farm" shall have the same meaning as that  
66 term is used in section twelve, article eight, chapter  
67 seven of this code authorizing work farms for individual  
68 counties.

**§31-20-3. West Virginia regional jail and correctional  
facility authority; composition; appointment;  
terms; compensation and expenses.**

1 There is hereby created the West Virginia regional  
2 jail and correctional facility authority which shall be a  
3 body corporate and a government instrumentality. The  
4 authority shall have and is hereby granted all of the  
5 powers and authority and shall perform all of the  
6 functions and services heretofore vested in and per-  
7 formed by the West Virginia regional jail and prison  
8 authority. The West Virginia regional jail and prison  
9 authority is hereby abolished. The terms of members  
10 currently serving on the board of the West Virginia  
11 regional jail and prison authority shall expire on the  
12 thirtieth day of June, one thousand nine hundred eighty-  
13 nine. Wherever in this chapter and elsewhere in law  
14 reference is made to the West Virginia regional jail and  
15 prison authority, such reference shall henceforth be  
16 construed and understood to mean the West Virginia  
17 regional jail and correctional facility authority.

18 The authority shall be governed by a board of seven  
19 members, consisting of the commissioner of the depart-  
20 ment of corrections; the commissioner of the department  
21 of finance and administration or his designated repre-  
22 sentative; three county officials appointed by the  
23 governor, no more than two of which may be of the same  
24 political party; and two citizens appointed by the  
25 governor to represent the areas of law and medicine.  
26 Members of the Legislature are not eligible to serve on  
27 the board.

28 The governor shall nominate and, by and with the  
29 advice and consent of the Senate, appoint five members  
30 of the authority for staggered terms of four years  
31 beginning the first day of July, one thousand nine  
32 hundred eighty-nine. Of the members of the board first  
33 appointed, one shall be appointed for a term ending the  
34 thirtieth day of June, one thousand nine hundred ninety-  
35 one, two shall be appointed for terms ending the  
36 thirtieth day of June, one thousand nine hundred ninety-  
37 two, and two shall be appointed for terms ending the  
38 thirtieth day of June, one thousand nine hundred ninety-  
39 three. As these original appointments expire, each  
40 subsequent appointment shall be for a full four-year  
41 term.

42 Any appointed member whose term has expired shall  
43 serve until his successor has been duly appointed and  
44 qualified. Any person appointed to fill a vacancy shall  
45 serve only for the unexpired term. Any appointed  
46 member is eligible for reappointment. Members of the  
47 authority are not entitled to compensation for services  
48 performed as members but are entitled to reimburse-  
49 ment for all reasonable and necessary expenses actually  
50 incurred in the performance of their duties.

51 All members of the board of the authority shall  
52 execute an official bond in a penalty of ten thousand  
53 dollars, conditioned as required by law. Premiums on  
54 such bond shall be paid from funds accruing to the  
55 authority. Such bond shall be approved as to form by  
56 the attorney general and as to sufficiency by the  
57 governor and, when fully executed and approved, shall  
58 be filed in the office of the secretary of state.

**§31-20-4. Governing body; organization and meetings;  
quorum; administrative expenses.**

1 The governing body of the authority shall consist of  
2 the members of the board as provided for in section  
3 three of this article and shall exercise all the powers  
4 given to the authority in this article. On the second  
5 Monday of July of each odd-numbered year, the board  
6 shall meet to elect a chairman and a secretary from  
7 among its own members. The commissioner of finance

8 and administration or his designated representative  
9 shall serve as treasurer of the board. The board shall  
10 otherwise meet quarterly, unless a special meeting is  
11 called by its chairman.

12 A majority of the members of the board constitute a  
13 quorum, and a quorum must be present for the board  
14 to conduct business. Unless the bylaws require a larger  
15 number, action may be taken by majority vote of the  
16 members present.

17 The board shall prescribe, amend and repeal bylaws  
18 and rules governing the manner in which the business  
19 of the authority is conducted and shall review and  
20 approve the budget prepared by the executive director  
21 annually.

22 The governor shall, with the advice and consent of the  
23 Senate, appoint an executive director to act as its chief  
24 executive officer, to serve at the will and pleasure of the  
25 governor. The executive director is empowered to  
26 employ any other personnel he determines necessary  
27 and may appoint counsel and legal staff for the  
28 authority and retain such temporary engineering,  
29 financial and other consultants or technicians as may be  
30 required for any special study or survey consistent with  
31 the provisions of this article. The executive director is  
32 further empowered to engage in negotiations and carry  
33 out plans to implement the provisions of this article and  
34 to exercise those powers listed in section five of this  
35 article on behalf of the authority. The executive director  
36 shall prepare annually a budget to be submitted to the  
37 board for its review and approval.

38 All costs incidental to the administration of the  
39 authority including office expense, personal services  
40 expense and current expense, shall be paid from the  
41 regional jail and correctional facility development fund  
42 in accordance with guidelines issued by the board of the  
43 authority.

**§31-20-5. Powers and duties of the authority; bidding  
procedures.**

1 The regional jail and correctional facility authority



2 shall complete a comprehensive study of all correctional  
3 facilities and jail facilities in the state of West Virginia  
4 no later than the first day of July, one thousand nine  
5 hundred eighty-six. This study shall include an assess-  
6 ment of the physical conditions of confinement within  
7 the institutions and the relative need for the institutions  
8 when considering other available institutions of confine-  
9 ment located within the state.

10 After completing this study, the authority shall  
11 submit a plan to the governor on the establishment of  
12 regional jails in this state and the acquisition, construc-  
13 tion or renovation of facilities for correctional facilities.  
14 The authority shall specify groups of counties within the  
15 state to be formed into regions for the establishment of  
16 such regional jails. Within each region a local jail  
17 commission shall be established and have the powers  
18 and duties as set forth in section six of this article.

19 The authority shall consider, but not be limited to, the  
20 following when creating the plan establishing regions:

21 (1) The relative physical condition of the correctional  
22 facilities and jail facilities located within the state;

23 (2) The transportation costs associated with the  
24 establishment of centralized jail services including, but  
25 not limited to, the costs of transporting persons incar-  
26 cerated in regional jails to court appearances, to  
27 interviews with their attorneys, and to have visitation  
28 with their families and friends, all in any county seat  
29 of a county served by the regional facility: *Provided,*  
30 That consideration of such costs in the creation of the  
31 plan shall not be construed to require the transportation  
32 of inmates to interviews with their attorneys or to have  
33 visitation with their families and friends when visitation  
34 facilities and schedules are established in regional jails;

35 (3) The availability of medical services and educa-  
36 tional and recreational opportunities;

37 (4) Information received from public hearings;

38 (5) The relative efficiency in the cost of jail services  
39 caused by establishment of regional jail facilities;

40 (6) Available facilities which may be used as regional

41 jails or correctional facilities including, but not limited  
42 to, existing county and state owned properties: *Provided,*  
43 That if the authority determines that an existing facility  
44 meets the standards or could reasonably be made to  
45 meet the standards for a regional jail or other correc-  
46 tional facility, the authority may proceed to acquire such  
47 existing facility and compensate the owner thereof in an  
48 amount not less than any local share expended by the  
49 owner as matching moneys for the receipt of federal  
50 funds: *Provided, however,* That if the authority deter-  
51 mines that an existing facility does not meet the  
52 standards or could not reasonably be made to meet the  
53 standards for a regional jail or other correctional  
54 facility, the authority shall provide the owner with a  
55 written statement setting forth the reasons supporting  
56 such determination;

57 (7) The cost of acquiring, constructing, renovating,  
58 operating and maintaining local jail facilities for use as  
59 local holding facilities in each county and regional jail  
60 facilities for each county and the financing provided by  
61 this article;

62 (8) The leasing of any available portion of any  
63 regional jail space and the leasing of available facilities  
64 of any regional jail to the West Virginia department of  
65 corrections for the keeping and detaining of prisoners  
66 sentenced to serve terms of incarceration under the  
67 custody of the West Virginia department of corrections  
68 for nonviolent crimes and to contract with the depart-  
69 ment of corrections for the providing of food, clothing,  
70 shelter and any and all incidental costs in the care,  
71 control and maintenance of such prisoners: *Provided,*  
72 That such leasing does not restrict space or facilities  
73 needed for the detention of county prisoners;

74 (9) The advisability and cost effectiveness of acquir-  
75 ing, constructing, renovating, operating and maintain-  
76 ing work farms serving one or more counties or regions;  
77 and

78 (10) The proximity of possible sites for the regional  
79 jail facilities to residential areas, schools, churches and  
80 other public buildings and facilities.

81 Public hearings pursuant to this section shall be held  
82 by the authority in convenient locations throughout the  
83 state. No less than ten public hearings shall be held for  
84 public comment on the establishment of regional jails.  
85 The authority shall cause to be published at least two  
86 weeks in advance of a hearing a Class II-0 legal  
87 advertisement, as provided in section two, article three,  
88 chapter fifty-nine of this code, setting forth the reason  
89 for the hearing and the time, place and date thereof. The  
90 publication area shall be each county which may be  
91 included in a region for the purposes of a regional jail  
92 with the county in which the public hearing is held.

93 In addition to the hearing requirements above, before  
94 beginning construction of a new facility for use as a  
95 regional jail or correctional facility or before beginning  
96 renovation or acquisition of an existing facility for use  
97 as a regional jail facility, which existing facility is not  
98 already a jail, correctional facility or secure facility for  
99 the detention of juveniles or persons otherwise involun-  
100 tarily committed or confined, the authority shall hold a  
101 hearing for comment by all members of the public on  
102 all aspects relating to the advisability of the use of the  
103 site for that regional jail facility. The authority shall  
104 promulgate legislative rules pursuant to chapter twenty-  
105 nine-a of this code for the requirements for notice and  
106 other procedures of said public hearings, which require-  
107 ments shall be as similar as practicable to those  
108 hearings conducted regarding the construction of  
109 bridges by the West Virginia department of highways.

110 The authority, as a public corporation and governmen-  
111 tal instrumentality exercising public powers of the state,  
112 may exercise all powers necessary or appropriate to  
113 carry out the purposes of this article, including, but not  
114 limited to, the power:

115 (a) To acquire, own, hold and dispose of property, real  
116 and personal, tangible and intangible.

117 (b) To lease property, whether as lessee or lessor.

118 (c) To mortgage or otherwise grant security interests  
119 in its property.

120 (d) To conduct examinations and investigations and to  
121 hear testimony and take proof, under oath or affirma-  
122 tion at public or private hearings, on any matter  
123 relevant to this article and necessary for information on  
124 the construction or renovation of any correctional  
125 facility or the establishment of any correctional facility  
126 industries project.

127 (e) To issue subpoenas requiring the attendance of  
128 witnesses and the production of books and papers  
129 relevant to any hearing before such authority or one or  
130 more members appointed by it to conduct any hearing.

131 (f) To apply to the circuit court having venue of such  
132 offense to have punished for contempt any witness who  
133 refuses to obey a subpoena, refuses to be sworn or  
134 affirmed, or refuses to testify, or who commits any  
135 contempt after being summoned to appear.

136 (g) To sue and be sued, implead and be impleaded,  
137 and complain and defend in any court.

138 (h) To adopt, use and alter at will a corporate seal.

139 (i) To make bylaws for the management and regula-  
140 tion of its affairs pursuant to article three, chapter  
141 twenty-nine-a of this code.

142 (j) To appoint officers, agents and employees.

143 (k) To make contracts of every kind and nature and  
144 to execute all instruments necessary or convenient for  
145 carrying on its business, including contracts with any  
146 other governmental agency of this state or of the federal  
147 government or with any person, individual, partnership  
148 or corporation to effect any or all of the purposes of this  
149 article.

150 (l) Without in any way limiting any other subdivision  
151 of this section, to accept grants from and enter into  
152 contracts and other transactions with any federal  
153 agency.

154 (m) To borrow money and to issue its negotiable  
155 bonds, security interests or notes and to provide for and

156 secure the payment thereof, and to provide for the rights  
157 of the holders thereof, and to purchase, hold and dispose  
158 of any of its bonds, security interests or notes: *Provided,*  
159 That no bond or other obligation may be issued or  
160 incurred unless and until the Legislature by concurrent  
161 resolution has approved the purpose and amount of each  
162 project for which proceeds from the issuance of such  
163 bond or other obligation will be used.

164 (n) To sell, at public or private sale, any bond or other  
165 negotiable instrument, security interest or obligation of  
166 the authority in such manner and upon such terms as  
167 the authority considers would best serve the purposes of  
168 this article.

169 (o) To issue its bonds, security interests and notes  
170 payable solely from the revenues or other funds  
171 available to the authority therefor; and the authority  
172 may issue its bonds, security interests or notes in such  
173 principal amounts as it considers necessary to provide  
174 funds for any purposes under this article, including:

175 (1) The payment, funding or refunding of the princi-  
176 pal of, interest on or redemption premiums on, any  
177 bonds, security interests or notes issued by it whether  
178 the bonds, security interests, notes or interest to be  
179 funded or refunded have or have not become due.

180 (2) The establishment or increase of reserves to secure  
181 or to pay bonds, security interests, notes or the interest  
182 thereon and all other costs or expenses of the authority  
183 incident to and necessary or convenient to carry out its  
184 corporate purposes and powers. Any bonds, security  
185 interests or notes may be additionally secured by a  
186 pledge of any revenues, funds, assets or moneys of the  
187 authority from any source whatsoever.

188 (p) To issue renewal notes or security interests, to  
189 issue bonds to pay notes or security interests and,  
190 whenever it considers refunding expedient, to refund  
191 any bonds by the issuance of new bonds, whether the  
192 bonds to be refunded have or have not matured except  
193 that no such renewal notes shall be issued to mature  
194 more than ten years from date of issuance of the notes  
195 renewed and no such refunding bonds may be issued to

196 mature more than twenty-five years from the date of  
197 issuance.

198 (q) To apply the proceeds from the sale of renewal  
199 notes, security interests or refunding bonds to the  
200 purchase, redemption or payment of the notes, security  
201 interests or bonds to be refunded.

202 (r) To accept gifts or grants of property, funds,  
203 security interests, money, materials, labor, supplies or  
204 services from the United States of America or from any  
205 governmental unit or any person, firm or corporation,  
206 and to carry out the terms or provisions of, or make  
207 agreements with respect to, or pledge, any gifts or  
208 grants, and to do any and all things necessary, useful,  
209 desirable or convenient in connection with the procur-  
210 ing, acceptance or disposition of gifts or grants.

211 (s) To the extent permitted under its contracts with  
212 the holders of bonds, security interests or notes of the  
213 authority, to consent to any modification of the rate of  
214 interest, time of payment of any installment of principal  
215 or interest, security or any other term of any bond,  
216 security interest, note or contract or agreement of any  
217 kind to which the authority is a party.

218 (t) To sell security interests in the loan portfolio of the  
219 authority. Such security interests shall be evidenced by  
220 instruments issued by the authority. Proceeds from the  
221 sale of security interests may be issued in the same  
222 manner and for the same purposes as bond and note  
223 revenues.

224 (u) To promulgate rules and regulations, in accor-  
225 dance with the provisions of chapter twenty-nine-a of  
226 this code, to implement and make effective the powers,  
227 duties and responsibilities invested in the authority by  
228 the provisions of this article and otherwise by law.

229 (v) To assume the responsibility for operation and  
230 management of regional jail facilities under the juris-  
231 diction of the state regional jail and correctional facility  
232 authority. The authority shall provide for the transpor-  
233 tation of inmates between the regional jails and local  
234 holding facilities for court appearances.

235 (w) To exercise all power and authority provided in  
236 this article necessary and convenient to plan, finance,  
237 construct, renovate, maintain and operate or oversee the  
238 operation of regional jails and correctional facilities.

239 Notwithstanding any other provision of this section,  
240 the regional jail and correctional facility authority shall  
241 no later than the first day of November, one thousand  
242 nine hundred eighty-nine, submit a plan to the joint  
243 committee on government and finance of the Legislature  
244 detailing the means by which the authority will comply  
245 with the mandates of the supreme court of appeals as  
246 to the structural and internal conditions and programs  
247 of the correctional facilities in this state. In preparing  
248 such plan, the authority is to allow for and consider any  
249 input from the public.

**§31-20-5a. Bidding procedures.**

1 When the cost under any contract or agreement  
2 entered into by the authority other than compensation  
3 for personal services involves an expenditure of more  
4 than two thousand dollars, the authority shall make a  
5 written contract with the lowest responsible bidder after  
6 public notice published as a Class II legal advertisement  
7 in compliance with the provisions of article three,  
8 chapter fifty-nine of this code, the publication area for  
9 such publication to be the county or counties wherein the  
10 work is to be performed or which is affected by the  
11 contract, which notice shall state the general character  
12 of the work and general character of the materials to  
13 be furnished, the place where plans and specifications  
14 therefor may be examined and the time and place of  
15 receiving bids, but a contract for lease of a correctional  
16 facility or regional or county jail project constructed and  
17 owned by the authority is not subject to the foregoing  
18 requirements and the authority may enter into such  
19 contract for lease pursuant to negotiation upon such  
20 terms and conditions and for such period as it finds to  
21 be reasonable and proper under the circumstances and  
22 in the best interests of proper operation or efficient  
23 acquisition or construction of such projects. The  
24 authority may reject any and all bids. A bond with good  
25 and sufficient surety, approved by the authority, shall

26 be required of all contractors in an amount equal to at  
27 least fifty percent of the contract price, conditioned upon  
28 faithful performance of the contract.

**§31-20-6. Regional jail commissions; composition; appointment; terms; compensation and expenses.**

1 Upon the formation of specific regions by the regional  
2 jail and correctional facility authority for the establish-  
3 ment of regional jails as provided in section five of this  
4 article, there shall be created in each region a regional  
5 jail commission composed of the following members:  
6 The sheriff from each county in the region or his  
7 designated representative; a member of the county  
8 commission from each county in the region chosen by  
9 the commission or a designated representative; one  
10 mayor from each county in the region to be appointed  
11 by the regional jail and correctional facility authority  
12 from a list of names submitted by the West Virginia  
13 municipal league, or his designated representative; and  
14 three persons from the region who are representative of  
15 the areas of law, medicine and education to be appointed  
16 by the regional jail and correctional facility authority  
17 and who shall serve for a term of three years: *Provided,*  
18 That any local regional jail authority or commission  
19 established prior to the effective date of this article shall  
20 be recognized as meeting the requirements of this  
21 section, at the option of the local regional jail authority  
22 or commission.

23 Any appointed member whose term has expired shall  
24 serve until his successor has been duly appointed and  
25 qualified. Any person appointed to fill a vacancy shall  
26 serve only for the unexpired term. Any appointed  
27 member is eligible for reappointment. Members of the  
28 commission are not entitled to compensation for services  
29 performed as members but are entitled to reimburse-  
30 ment for all reasonable and necessary expenses actually  
31 incurred in the performance of their duties. The county  
32 commission from each county in the region shall provide  
33 the commission with secretarial and other necessary  
34 services.



**§31-20-7. General powers of the commission.**

1 Each regional jail commission shall prepare and  
2 submit such plans, suggestions and recommendations to  
3 the regional jail and correctional facility authority  
4 which will define the needs for its region as to the  
5 construction, renovation and general operation of a  
6 regional jail facility. The report may include, but is not  
7 limited to, recommendations for conforming its jail  
8 facility to the jail standards promulgated by the jail and  
9 correctional facility standards commission, upgrading  
10 the recreational and educational opportunities for  
11 inmates confined in the region's facility, development of  
12 programs in cooperation with community medical and  
13 mental health centers in the region to provide adequate  
14 medical and drug and alcohol addiction services within  
15 the facility and information concerning the costs  
16 incurred in the operation of the facility.

**§31-20-8. Jail and correctional facility standards commission; appointment; compensation; vacancies; quorum.**

1 A jail and correctional facility standards commission  
2 of eleven members is hereby created. The governor shall  
3 appoint two county sheriffs, to be chosen from a list of  
4 three names provided by the president of the West  
5 Virginia sheriff's association, and three county commis-  
6 sioners, to be chosen from a list of five names provided  
7 by the president of the West Virginia county commis-  
8 sioner's association. The chief justice of the state  
9 supreme court of appeals shall appoint a representative  
10 from the juvenile facilities review panel. Each of the  
11 members so appointed shall serve for a term of three  
12 years and be eligible for reappointment. The commis-  
13 sioner of the department of corrections, the director of  
14 the department of health, the state fire marshal, the  
15 commissioner of the department of human services and  
16 the director of the division of vocational education of the  
17 state department of education or their designees shall  
18 be members ex officio in an advisory capacity.

19 Members of the commission shall serve without  
20 compensation, but may be reimbursed for reasonable

21 and necessary expenses incurred in the performance of  
22 their duties. The regional jail and correctional facility  
23 authority shall provide the commission with secretarial  
24 and other necessary services.

25 A vacancy among the appointed members of the  
26 commission shall be filled, within thirty days, in the  
27 same manner as the original appointment. A quorum  
28 consists of four of the six voting members. Members of  
29 the commission shall select a chairman.

**§31-20-9. Purpose, powers and duties.**

1 The purpose of the commission is to assure that proper  
2 minimum standards and procedures are developed for  
3 jail, work farm and correctional facility operation,  
4 maintenance and management of inmates for correc-  
5 tional facilities, regional jails and local jail facilities  
6 used as temporary holding facilities. In order to  
7 accomplish this purpose, the commission shall:

8 (1) Prescribe standards for the maintenance and  
9 operation of correctional facilities, county and regional  
10 jails. Such standards shall include, but not be limited  
11 to, requirements assuring adequate space, lighting and  
12 ventilation; fire protection equipment and procedures;  
13 provision of specific personal hygiene articles; bedding,  
14 furnishings and clothing; food services; appropriate  
15 staffing and training; sanitation, safety and hygiene;  
16 isolation and suicide prevention; appropriate medical,  
17 dental and other health services; indoor and outdoor  
18 exercise; appropriate vocational and educational oppor-  
19 tunities; classification; inmate rules and discipline;  
20 inmate money and property; religious services; inmate  
21 work programs; library services; visitation, mail and  
22 telephone privileges; and other standards necessary to  
23 assure proper operation.

24 (2) Promulgate such rules pursuant to the provisions  
25 of chapter twenty-nine-a of this code as are necessary  
26 to implement the provisions of this article, including,  
27 without limitation, minimum jail, work farm and  
28 correctional facility standards which shall be promul-  
29 gated on or before the first day of July, one thousand  
30 nine hundred eighty-six.

31 (3) Develop a process for reviewing and updating the  
32 jail, work farm and correctional facility standards  
33 pursuant to the provisions of chapter twenty-nine-a of  
34 this code as may be necessary to assure that they  
35 conform to current law.

36 (4) Report periodically to the authority to advise and  
37 recommend actions to be taken by the authority to  
38 implement proper minimum jail, work farm and  
39 correctional facility standards.

40 Notwithstanding any other provision of this code to  
41 the contrary, any county commission providing and  
42 maintaining a jail on the effective date of this article  
43 shall not be required to provide and maintain a jail after  
44 a regional jail becomes available pursuant to the  
45 provisions of article twenty, chapter thirty-one of this  
46 code, unless the county commission determines that such  
47 a facility is necessary: *Provided*, That such county  
48 commission may provide and maintain a holding facility  
49 which complies with the standards set forth for such  
50 holding facilities in legislative rules promulgated by the  
51 jail and correctional facility standards commission or its  
52 predecessor, the jail and prison standards commission.

**§31-20-10. Regional jail and correctional facility develop-  
ment fund.**

1 (a) The regional jail and correctional facility develop-  
2 ment fund is hereby created and shall be a special  
3 account in the state treasury. The fund shall operate as  
4 a revolving fund whereby all appropriations and  
5 payments thereto may be applied and reapplied by the  
6 authority for the purposes of this article. Separate  
7 accounts may be established within the special account  
8 for the purpose of identification of various revenue  
9 resources and payment of specific obligations.

10 (b) Revenues deposited into the fund may be used to  
11 make payments of interest and may be pledged as  
12 security for bonds, security interests or notes issued by  
13 the authority pursuant to this article.

14 (c) Whenever the authority determines that the  
15 balance in the fund is in excess of the immediate

16 requirements of this article, it may request that such  
17 excess be invested until needed. In such case such excess  
18 shall be invested in a manner consistent with the  
19 investment of the temporary state funds. Interest earned  
20 on any money invested pursuant to this section shall be  
21 credited to the fund.

22 (d) If the authority determines that funds held in the  
23 fund are in excess of the amount needed to carry out  
24 the purposes of this article, it shall take such action as  
25 is necessary to release such excess and transfer it to the  
26 general fund of the state treasury.

27 (e) The fund shall consist of the following:

28 (1) Amounts raised by the authority by the sale of  
29 bonds or other borrowing authorized by this article;

30 (2) Moneys collected and deposited in the state  
31 treasury which are specifically designated by acts of the  
32 Legislature for inclusion into the fund;

33 (3) Contributions, grants and gifts from any source,  
34 both public and private, which may be used by the  
35 authority for any project or projects;

36 (4) All sums paid by the counties pursuant to subsec-  
37 tion (h) of this section; and

38 (5) All interest earned on investments made by the  
39 state from moneys deposited in this fund.

40 (f) The amounts deposited in the fund shall be  
41 accounted for and expended in the following manner:

42 (1) Amounts raised by the sale of bonds or other  
43 borrowing authorized by this article shall be deposited  
44 in a separate account within the fund and expended for  
45 the purpose of construction and renovation of correc-  
46 tional facilities and regional jails for which need has  
47 been determined by the authority;

48 (2) Amounts deposited from all other sources shall be  
49 pledged first to the debt service on any bonded indebted-  
50 ness or other obligation incurred by borrowing of the  
51 authority;

52 (3) After any requirements of debt service have been

53 satisfied, the authority shall requisition from the fund  
54 such amounts as are necessary to provide for payment  
55 of the administrative expenses of this article;

56 (4) The authority shall requisition from the fund after  
57 any requirements of debt service have been satisfied  
58 such amounts as are necessary for the maintenance and  
59 operation of the correctional facilities or regional jails  
60 or both that are constructed pursuant to the plan  
61 required by this article and shall expend such amounts  
62 for such purpose. The fund shall make an accounting of  
63 all amounts received from each county by virtue of any  
64 filing fees, court costs or fines required by law to be  
65 deposited in the fund and amounts from the jail  
66 improvement funds of the various counties. After the  
67 expenses of administration have been deducted the  
68 amounts expended in the respective regions from such  
69 sources shall be in proportion to the percentage the  
70 amount contributed to the fund by the counties in each  
71 region bears to the total amount received by the fund  
72 from such sources;

73 (5) Notwithstanding any other provisions of this  
74 article, sums paid into the fund by each county pursuant  
75 to subsection (h) of this section for each inmate shall be  
76 placed in a separate account and shall be requisitioned  
77 from the fund to pay for the costs specified in that  
78 subsection incurred at the regional jail facility at which  
79 each such inmate was incarcerated; and

80 (6) Any amounts deposited in the fund from other  
81 sources permitted by this article shall be expended in  
82 the respective regions based on particular needs to be  
83 determined by the authority.

84 (g) After a regional jail facility becomes available  
85 pursuant to this article for the incarceration of inmates,  
86 each county within the region shall incarcerate all  
87 persons whom the county would have incarcerated in  
88 any jail prior to the availability of the regional jail  
89 facility in the regional jail facility except those whose  
90 incarceration in a local jail facility used as a local  
91 holding facility is specified as appropriate under the  
92 standards and procedures developed pursuant to section

93 nine of this article and who the sheriff or the circuit  
94 court elects to incarcerate therein.

95 (h) When inmates are placed in a regional jail facility  
96 pursuant to subsection (g) of this section the county  
97 shall pay into the regional jail and correctional facility  
98 development fund a cost per day for each inmate so  
99 incarcerated to be determined by the regional jail and  
100 correctional facility authority according to criteria and  
101 by procedures established by regulations pursuant to  
102 article three, chapter twenty-nine-a of this code to cover  
103 the costs of operating such regional jail facility to  
104 maintain each such inmate which costs shall not include  
105 the cost of construction, acquisition or renovation of said  
106 regional jail facility.

#### §31-20-19. Tax exemption.

1 The exercise of the powers granted to the authority  
2 by this article will be in all respects for the benefit of  
3 the people of the state for the improvement of their  
4 safety, convenience and welfare. Since the operation and  
5 maintenance of correctional facilities and correctional  
6 facility industries projects will constitute the perfor-  
7 mance of essential governmental functions, the authority  
8 is not required to pay any taxes or assessments upon any  
9 such facilities or projects or upon any property acquired  
10 or used by the authority or upon the income therefrom.  
11 Such bonds, security interests and notes and all interest  
12 and income thereon are exempt from all taxation by this  
13 state, or any county, municipality, political subdivision  
14 or agency thereof, except inheritance taxes.

#### §31-20-22. Money of the authority.

1 All money accruing to the authority from whatever  
2 source derived, except legislative appropriations, and  
3 except that authorized to be deposited directly into the  
4 regional jail and correctional facility development fund  
5 shall be collected and received by the treasurer of the  
6 authority, who shall pay it into the state treasury in the  
7 manner required by section two, article two, chapter  
8 twelve of this code, to be credited to the fund.

**§31-20-24. Agreement with federal agencies not to alter or limit powers of authority**

1 The state hereby pledges to and agrees with each  
2 federal agency that, if such agency constructs or loans  
3 or contributes any funds for the acquisition, construc-  
4 tion, extension, improvement or enlargement of any  
5 correctional facility or correctional facility industries  
6 project, the state will not alter or limit the rights and  
7 powers of the authority in any manner which would be  
8 inconsistent with the due performance of any agreement  
9 between the authority and such federal agency and that  
10 the authority shall continue to have and exercise all  
11 powers granted for carrying out the purposes of this  
12 article for so long as necessary.

**§31-20-25. Further duties of the authority.**

1 The Legislature hereby finds that the regional jail and  
2 correctional facility authority has not complied with the  
3 provisions of this article in certain areas and by this  
4 section imposes further duties upon the authority in  
5 order to save the taxpayers of this state unnecessary  
6 expense in the development of the regional jail system.

7 No moneys shall be expended for regional jail  
8 construction from the regional jail and development  
9 fund and no final site selection for a regional jail shall  
10 be made by the regional jail and correctional facility  
11 authority until (1) the regional jail commissions are  
12 formed and activated under the provisions of section six,  
13 article twenty, chapter thirty-one of this code, and  
14 (2) the regional jail commission for the region in which  
15 a jail is to be constructed submits the report provided  
16 for under the provisions of section seven, article twenty,  
17 chapter thirty-one of this code: *Provided*, That this  
18 section shall not apply to the regional jail commission  
19 previously established for the region consisting of  
20 Berkeley, Morgan and Jefferson counties.

21 Notwithstanding any other provision of this article,  
22 the regional jail and correctional facility authority shall  
23 present a written report to the joint committee on  
24 government and finance of the Legislature no later than

25 the meeting of such committee in the month of De-  
26 cember, one thousand nine hundred eighty-seven, which  
27 will show that the authority has done the following:

28 (a) Completed a comprehensive plan as required in  
29 section five of this article;

30 (b) Specified which counties are to be formed into  
31 regions as required in section five of this article;

32 (c) Appointed a regional jail commission in each  
33 region as required by section six of this article;

34 (d) Developed through the jail and correctional  
35 facility standards commission, jail and correctional  
36 facility standards as required by section nine of this  
37 article;

38 (e) That the authority in obtaining or attempting to  
39 obtain land or buildings for regional jail facilities has  
40 considered all available options which will minimize  
41 costs while maximizing the effectiveness of this article,  
42 including, but not limited to, the option of obtaining  
43 land through offers of such by county or local govern-  
44 ments; and

45 (f) That the authority has developed plans which will  
46 utilize regional jail facilities for the housing of convicted  
47 felons who have committed nonviolent crimes. Such  
48 plans are to provide that the convicted felons shall be  
49 housed separately from those persons serving time for  
50 misdemeanor offenses. The development of the plans  
51 shall be a cooperative effort between the authority and  
52 the department of corrections inasmuch as it is the  
53 intent of the Legislature that the penal system of this  
54 state shall be a consolidated system of both the regional  
55 jail system and the state correctional institutions.

### **§31-20-26. Legislative oversight committee.**

1 The president of the Senate and the speaker of the  
2 House of Delegates shall each designate five members  
3 of their respective houses, at least one of whom shall be  
4 a member of the minority party, to serve on a legislative



5 oversight committee charged with immediate and  
6 ongoing oversight of the authority and the commissions,  
7 and functions and duties thereof created by this article.  
8 This committee shall report regularly at each legislative  
9 session on the implementation of the purposes set forth  
10 in section one-a of this article. It shall regularly  
11 investigate all matters relating to integrity, probity, and  
12 foresight in funding, operating, and planning the  
13 correctional system on state, regional, and county levels.  
14 Specifically, the committee shall study and make  
15 recommendations to the Legislature as to the revision of  
16 the system of classifying inmates, with a view variously  
17 to decreasing the prison population confined in "maxi-  
18 mum security" facilities and to designating and meeting  
19 the needs of inmates classified as elderly, disabled, or  
20 otherwise handicapped.

21 The committee shall further study and inform the  
22 state judiciary of the impact of sentencing on the  
23 composition of the prison population in proportion to the  
24 use of facilities. It shall recommend alternatives to long-  
25 term sentencing, and shall recommend measures to  
26 improve the quality of correctional staff and facilitate  
27 its nonconfrontational contacts with inmates. The  
28 committee shall investigate means to structure inmates'  
29 time to ensure genuine and willing reaccommodations  
30 to societal norms; shall probe and coordinate all  
31 available means for funding state, regional, and county  
32 correctional facilities; and shall contract with penal  
33 experts to study these issues in appropriate depth and  
34 perspective. Annually, to predict a prudent use of  
35 available funds, the committee shall study the profile of  
36 the inmate population with regard to its age and social  
37 background and needs.

38 The committee shall recommend to the Legislature  
39 the funding required to execute such functions. It shall  
40 meet regularly with the governing body of the authority  
41 established in this article to determine what may be  
42 required for full and timely compliance with all court-  
43 ordered changes in the correctional system and shall  
44 recommend funding for such changes.

## CHAPTER 176

(S. B. 182—By Senator Hawse)

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[Passed March 15, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-f, relating to the contractual relationship between farm, construction, industrial or outdoor power equipment retail dealers and their suppliers generally; providing a short title by which the article may be known and cited; providing certain definitions of terms used with respect thereto; requiring certain notices to be given by one party to such contracts to the other party thereto with respect to the termination of any contractual arrangement between them and the time requirements with respect to such notice; providing for certain exceptions with respect to such terminations; the manner, form and content of such notifications; requiring the supplier to repurchase dealer inventory at the time of such termination and the terms of such repurchase; providing exceptions with respect to such repurchase requirements; providing for certain rules with respect to the applicability of the uniform commercial code; providing certain rules with respect to outstanding warranty claims at the time of termination; certain civil remedies against the suppliers available to such dealers and the amounts of recovery with respect to actions brought in such cases; providing for the applicability of certain other legal remedies; and providing for a period of limitations with respect to any actions brought pursuant to said article.

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

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-f, to read as follows:

**ARTICLE 11F. FARM EQUIPMENT DEALER CONTRACT ACT.**

- §47-11F-1. Short title.  
§47-11F-2. Definitions.  
§47-11F-3. Notice of termination of agreement or contract.  
§47-11F-4. Supplier requirement to repurchase dealer inventory; terms of repurchase.  
§47-11F-5. Exceptions to repurchase requirement.  
§47-11F-6. Applicability of uniform commercial practices.  
§47-11F-7. Warranty claims.  
§47-11F-8. Civil remedies applicable.

**§47-11F-1. Short title.**

- 1 This article shall be known and may be cited as the  
2 "West Virginia Farm Equipment Dealer Contract Act."

**§47-11F-2. Definitions.**

- 1 (a) As used in this article, unless the context in which  
2 used clearly requires otherwise:

3 (1) "Agreement" or "contract" means a written or oral  
4 agreement or contract between a dealer and a supplier,  
5 by the terms of which the dealer is granted the right  
6 to sell the supplier's equipment and the dealer is  
7 required to order and maintain inventory from such  
8 supplier in excess of ten thousand dollars at current net  
9 price.

10 (2) "Current net price" means the price listed in the  
11 supplier's price list in effect at the time an agreement  
12 is terminated, less any applicable discount allowed.

13 (3) "Dealer" means any person, firm, partnership,  
14 association, corporation or other business entity engaged  
15 in the business of selling, at retail, farm, construction,  
16 industrial or outdoor power equipment or any combina-  
17 tion of the foregoing and who maintains a total inven-  
18 tory of new equipment and repair parts having an  
19 aggregate value of not less than twenty-five thousand  
20 dollars at current net price and who provides repair  
21 service for such equipment.

22 (4) "Inventory" means the tractors, implements,  
23 attachments, equipment, and repair parts that the  
24 dealer purchased from the supplier, including, but not  
25 limited to, any data processing hardware and software,  
26 special service tools, and business signs the supplier has  
27 required the dealer to purchase and maintain.

28 (5) "Net cost" means the price paid by the dealer to  
29 the supplier for the inventory, less all applicable  
30 discounts allowed, plus the amount the dealer paid for  
31 freight costs from the supplier's location to the dealer's  
32 location and the reasonable cost of assembly incurred or  
33 performed by the dealer.

34 (6) "Supplier" means a wholesaler, manufacturer or  
35 distributor who enters into an agreement with a dealer  
36 and who supplies inventory to such dealer.

37 (7) "Termination" means the termination, cancella-  
38 tion, nonrenewal or discontinuation of an agreement.

39 (b) The terms "farm," "construction," "industrial" or  
40 "outdoor power," when used to refer to tractors,  
41 implements, attachments or repair parts shall have the  
42 meaning commonly used and understood among dealers  
43 and suppliers subject to this article.

**§47-11F-3. Notice of termination of agreement or  
contract.**

1 (a) The provisions of any agreement to the contrary  
2 notwithstanding, a supplier who terminates a contract  
3 or agreement with a dealer shall notify such dealer of  
4 the termination not less than six months prior to the  
5 effective date thereof: *Provided*, That the supplier may  
6 terminate the agreement at anytime after the occur-  
7 rence of any of the following described events:

8 (1) The filing of a petition for bankruptcy or for  
9 receivership filed either by or against the dealer;

10 (2) The dealer defaults under a chattel mortgage or  
11 other security agreement between the dealer and the  
12 supplier;

13 (3) The dealer has made an intentional misrepresen-  
14 tation with the intent to defraud the supplier;

15 (4) The close out or sale or discontinuance of all or at  
16 least fifty percent of the dealer's business related to the  
17 handling of goods or products of the supplier;

18 (5) If the dealer is a partnership or corporation, the

19 commencement of dissolution or liquidation, whether  
20 voluntary or involuntary of such dealer;

21 (6) A change in location of the dealer's principal place  
22 of business as provided in the agreement without the  
23 prior written approval of the supplier;

24 (7) The withdrawal of an individual proprietor,  
25 partner, major shareholder, or the involuntary termina-  
26 tion of the manager of the dealership or a substantial  
27 reduction in the interest of a partner or major share-  
28 holder without the prior written approval of the  
29 supplier. If the dealership is operated from more than  
30 one location, the involuntary termination of a manager  
31 at one or more branch locations without the prior  
32 written approval of the supplier shall not be grounds for  
33 termination of the dealership by the supplier;

34 (8) The revocation or discontinuance by a guarantor  
35 or of any guarantee of the dealer's present or future  
36 obligations to the supplier.

37 (b) The provisions of any agreement to the contrary  
38 notwithstanding, a dealer who terminates an agreement  
39 or contract with a supplier shall notify such supplier of  
40 the termination not less than six months prior to the  
41 effective date thereof.

42 (c) Any agreement or contract may also be terminated  
43 by the written mutual consent of the parties; and the  
44 effective date of such termination may be such as is  
45 mutually agreed upon by the parties.

46 (d) Notification under this section shall be in writing  
47 and shall be given by certified mail, return receipt  
48 requested, or by personal delivery to the recipient and  
49 the receipt thereof acknowledged in writing by such  
50 recipient. Any such notice of termination shall contain  
51 (i) a statement of intention to terminate the agreement;  
52 (ii) a statement of the reasons for such termination; and  
53 (iii) the date on which the termination is to take effect.

**§47-11F-4. Supplier requirement to repurchase dealer  
inventory; terms of repurchase.**

1 (a) The provisions of any agreement to the contrary  
2 notwithstanding, whenever an agreement or contract  
3 between a dealer and a supplier is terminated by either  
4 party, the supplier shall repurchase the dealer's  
5 inventory as provided in this article unless the dealer  
6 chooses to keep the inventory and so advises the supplier  
7 in writing.

8 (b) The supplier's obligation to repurchase the  
9 dealer's inventory shall apply to any successor in  
10 interest or assignee of that supplier. A successor in  
11 interest includes any purchaser of assets or stock, any  
12 surviving corporation resulting from a merger or  
13 liquidation, any receiver, or any trustee of the original  
14 supplier.

15 (c) If the dealer dies or becomes incompetent, the  
16 supplier shall, at the option of the heir, repurchase the  
17 inventory to the same extent as if the agreement had  
18 been terminated. The heir has one year from the date  
19 of the death of the dealer or from the date such dealer  
20 is determined to be incompetent to exercise the options  
21 of the dealer under this article.

22 (d) The supplier shall repurchase from the dealer  
23 within ninety days from the date of termination of the  
24 agreement or contract all inventory previously pur-  
25 chased from the supplier that remains unsold on the  
26 date of termination of the agreement or contract,  
27 including, but not limited to, all data processing  
28 hardware and software, special services tools, and  
29 business signs that the supplier required the dealer to  
30 purchase.

31 (e) The supplier shall pay the dealer:

32 (1) One hundred percent of the net cost of all new,  
33 unused, undamaged and complete inventory, except  
34 repair parts, special service tools, business signs and  
35 data processing equipment, less a reasonable allowance  
36 for deterioration attributable to weather conditions at  
37 the dealer's location; and

38 (2) Ninety percent of the current net price of all new,

39 unused, and undamaged repair parts that are currently  
40 listed in the supplier's price book as of the effective date  
41 of such termination; and

42 (3) Seventy-five percent of the net cost of all undam-  
43 aged special service tools and business signs in the  
44 possession of the dealer which are currently available;  
45 and

46 (4) Net cost less twenty percent per year depreciation  
47 of all data processing hardware and software that the  
48 supplier required the dealer to purchase or the supplier  
49 shall assume all data processing hardware and software  
50 lease responsibilities of the dealer if the supplier  
51 required the dealer to lease the data processing  
52 hardware and software from a specific supplier of such  
53 hardware and/or software.

54 (f) The inventory shall be returned F.O.B. (which  
55 means "free on board") to the dealership and the dealer  
56 shall bear the expenses and risk of putting them into  
57 the possession of the carrier. The supplier may perform  
58 the handling, packing, and loading of repair parts  
59 returned and withhold, as a charge for these services,  
60 five percent of the current net price of the returned  
61 repair parts. The dealer and the supplier may each  
62 furnish a representative to inspect all inventory and  
63 certify as to its acceptability before being returned.

64 (g) The supplier shall pay the full repurchase amount  
65 as required by subsection (d) of this section not later  
66 than ninety days after receipt of the inventory by the  
67 supplier.

#### §47-11F-5. Exceptions to repurchase requirement.

1 Any other provisions of this article to the contrary  
2 notwithstanding, a supplier shall not be required to  
3 repurchase from the dealer (i) a repair part of or with  
4 a limited storage life or which is otherwise subject to  
5 deterioration; that is to say by way of example and not  
6 in limitation thereof, such items as gaskets or batteries;  
7 (ii) multiple packaged repair parts when the package  
8 has been broken; (iii) a repair part that because of its

9 condition is not resalable as a new part without  
10 repackaging or reconditioning; (iv) any portion of the  
11 inventory that the dealer chooses to retain; or (v) any  
12 inventory that was acquired by the dealer from a source  
13 other than the supplier, except for data processing  
14 hardware and software, special service tools, and  
15 business signs that the supplier required the dealer to  
16 purchase; and (vi) any tractor, implement, attachment  
17 or equipment that the dealer purchased from the  
18 supplier more than thirty-six months before the date of  
19 the termination notice.

**§47-11F-6. Applicability of uniform commercial practices.**

1 (a) The provisions of this article do not affect a  
2 security interest of the supplier in the inventory of the  
3 dealer.

4 (b) A repurchase of inventory pursuant to this article  
5 shall not be subject to the bulk transfer provisions of  
6 article six, chapter forty-six of this code.

**§47-11F-7. Warranty claims.**

1 If after the termination of a contract or agreement,  
2 the dealer submits a warranty claim to the supplier for  
3 work performed prior to the effective date of the  
4 termination of such contract or agreement, the supplier  
5 shall accept or reject such claim within a minimum of  
6 forty-five days from the day the supplier received the  
7 warranty claim. A warranty claim not rejected before  
8 the expiration of such forty-five-day period shall be  
9 deemed to be accepted by the supplier. In the event a  
10 warranty claim is accepted by the supplier as pres-  
11 cribed in this section, such claim shall be paid by such  
12 supplier not later than sixty days from the date the  
13 supplier received the claim.

**§47-11F-8. Civil remedies applicable.**

1 (a) The provisions of any agreement to the contrary  
2 notwithstanding, if a supplier fails or refuses without  
3 just cause to repurchase any inventory or portion thereof  
4 when required to do so under the provisions of this



5 article within the time periods prescribed thereby, such  
6 supplier shall be civilly liable for (i) one hundred  
7 percent of the current net price of the inventory or  
8 portion thereof not repurchased; (ii) the amount the  
9 dealer paid for freight costs from the supplier's location  
10 to the dealer's location; (iii) the reasonable cost of  
11 assembly performed by the dealer; (iv) reasonable  
12 attorney's fees and court costs incurred by the dealer in  
13 requiring the supplier to comply with this article of the  
14 code; and (v) interest on the current net price of the  
15 inventory or portion thereof not repurchased, computed  
16 at the prime rate of interest commencing the ninety-first  
17 day after termination of the contract agreement, and  
18 recomputed quarterly thereafter.

19 (b) Any person who suffers monetary loss due to a  
20 violation of this article or because he or she refuses to  
21 accede to a proposal for an arrangement that, if  
22 consummated, is in violation of this article, may bring  
23 civil action to enjoin further violation and to recover  
24 damages sustained by him or her together with the costs  
25 of the suit, including reasonable attorney's fees and  
26 court costs.

27 (c) In the event of failure to provide the required  
28 notice of termination or otherwise comply with provi-  
29 sions of this article, the supplier shall be civilly liable  
30 for the dealer's loss of business for the time period the  
31 supplier is in violation of the notice of termination  
32 provisions of the article, plus reasonable attorney's fees  
33 and court costs.

34 (d) The provisions of this section are in addition to all  
35 legal or equitable remedies available at law, as well as  
36 any remedies available pursuant to any agreement  
37 between the supplier and dealer.

38 (e) A civil action commenced under the provisions of  
39 this article may be brought until the expiration of five  
40 years after the violation complained of is or reasonably  
41 should have been discovered, whichever occurs first.

## CHAPTER 177

(H. B. 2754—By Delegates S. Cook and Hatfield)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to resident trustee accounts required, reports.

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

That section one, article twenty-five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted 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.

#### ARTICLE 25. RESIDENT TRUSTEE ACCOUNTS.

##### §5-25-1. Resident trustee accounts required, reports.

1 All state institutions including, but not limited to,  
2 those institutions under the control of the department of  
3 veterans affairs, the department of health, or the  
4 department of human services which provide custodial  
5 care for any person for any purpose whatsoever shall  
6 establish resident trustee accounts for all persons  
7 resident at the institution who request such accounts or  
8 who are unable to manage their own funds. The  
9 administrator in charge of the institution shall take  
10 possession of all money or other valuables on the person  
11 of or sent to each resident for whom a trustee account  
12 has been established: *Provided*, That this article shall  
13 not apply to state institutions under the control of the  
14 department of corrections or where there is a legal  
15 representative appointed for such person.

16 The administrator shall credit such money and  
17 valuables to the resident entitled thereto and shall keep  
18 an accurate record of all moneys and valuables received

19 or disbursed. This account is subject to examination by  
20 the head of the department which controls the institu-  
21 tion. The administrator shall deposit such fiduciary  
22 funds received into federally insured account approved  
23 by the director of the department except for those funds  
24 required to be kept locally. The local funds shall be  
25 deposited in one or more responsible banks. The  
26 accounts shall be designated "resident trustee account."

27 The administrator shall ensure that proper disburse-  
28 ments are made from the "resident trustee account"  
29 when required for the maintenance of the resident or  
30 when agreed to by the resident.

31 The administrator shall deliver to the resident, or to  
32 the resident's responsible representative payee when  
33 applicable, at the time the resident leaves the institution  
34 all valuables or moneys then credited to the resident or,  
35 in the case of the death of a resident before leaving the  
36 institution, the administrator shall deliver such property  
37 to the resident's representative.

38 The administrator of the institution shall submit a  
39 monthly report to the head of the department control-  
40 ling the institution. This report shall provide a recon-  
41 ciliation of each resident trustee account or other  
42 fiduciary account maintained by the institution.

43 The director of any department who receives these  
44 monthly reports shall submit each month to the legis-  
45 lative auditor a record of the reconciliations for each  
46 institution.

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## CHAPTER 178

(H. B. 2757—By Delegates Whitt and Helmick)

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[Passed April 8, 1989; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section three, article five,  
chapter five of the code of West Virginia, one thousand  
nine hundred thirty-one, as amended; and to amend and  
reenact section twenty-nine, article two, chapter fifteen

of said code, all relating to retirement; the department of public safety; providing that the amount received for permanent and total disability incurred in the performance of duty may not be less than fifteen thousand dollars per year if such disability is to the extent that it prevents the disabled from ever engaging in any gainful employment; and providing that lump sum payments for unused accrued annual leave may not enter into final average salary computation for purposes of retirement.

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

That section three, article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-nine, article two, chapter fifteen of said code be amended and reenacted, 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, Officers, Programs, Etc.**
15. **Public Safety.**

#### **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 5. SALARY INCREASE FOR STATE EMPLOYEES.**

**§5-5-3. Optional payment to employee in lump sum amount for accrued and unused annual leave at termination of employment; no withholding of any employee contribution deduction; exception.**

- 1 Every eligible employee, as defined in section one of
- 2 this article, at the time his or her active employment
- 3 ends due to resignation, death, retirement or otherwise,
- 4 may be paid in a lump sum amount, at his or her option,
- 5 for accrued and unused annual leave at the employee's

6 usual rate of pay at such time. The lump sum payment  
7 shall be made by the time of what would have been the  
8 employee's next regular payday had his employment  
9 continued. In determining the amount of annual leave  
10 entitlement, weekends, holidays or other periods of  
11 normal, noncountable time shall be excluded, and no  
12 deductions may be made for contributions toward  
13 retirement from lump sum payments for unused,  
14 accrued annual leave, since no period of service credit  
15 is granted in relation thereto; however, such lump sum  
16 payment may not be a part of final average salary  
17 computation; and where any such deduction of employee  
18 contribution may have been heretofore made, a refund  
19 of such shall be granted the former employee and made  
20 by the head of the respective former employer spending  
21 unit: *Provided*, That the superintendent of the  
22 department of public safety shall make deductions for  
23 retirement contributions of members of the department,  
24 since retirement benefits are based on cumulative  
25 earnings rather than period of service.

## CHAPTER 15. PUBLIC SAFETY.

### ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

#### §15-2-29. Awards and benefits for disability—Incurred in performance of duty.

1 Any member of said department who has been or shall  
2 become physically or mentally permanently disabled by  
3 injury, illness or disease resulting from any occupational  
4 risk or hazard inherent in or peculiar to the services  
5 required of members of said department and incurred  
6 pursuant to or while such member was or shall be  
7 engaged in the performance of his duties as a member  
8 of said department shall, if, in the opinion of the  
9 retirement board, he is by reason of such cause unable  
10 to perform adequately the duties required of him as a  
11 member of said department, be retired from active  
12 service by the retirement board and thereafter such  
13 member shall be entitled to receive annually and there  
14 shall be paid to such member from the death, disability  
15 and retirement fund in equal monthly installments  
16 during the natural lifetime of such member or until

17 such disability shall sooner terminate, one or the other  
18 of two amounts, whichever is greater:

19 (1) An amount equal to five and one-half percent of  
20 the total salary which would have been earned during  
21 twenty-five years or actual service if more than twenty-  
22 five years in said department based on the average  
23 earnings of such member while employed as a member  
24 of said department; or

25 (2) The sum of six thousand dollars.

26 If such disability shall be permanent and total to the  
27 extent that such member is or shall be incapacitated  
28 ever to engage in any gainful employment, such member  
29 shall be entitled to receive annually and there shall be  
30 paid to such member from the death, disability and  
31 retirement fund in equal monthly installments during  
32 the natural lifetime of such member or until such  
33 disability shall sooner terminate, an amount equal to  
34 eight and one-half percent of the total salary which  
35 would have been earned by such member during  
36 twenty-five years or actual service if more than twenty-  
37 five years of service in said department based on the  
38 average earnings of such member while employed as a  
39 member of said department: *Provided*, That on and after  
40 the first day of July, one thousand nine hundred eighty-  
41 nine, in no event may such amount be less than fifteen  
42 thousand dollars per annum.

43 The superintendent is authorized to expend moneys  
44 from funds appropriated for the department in payment  
45 of medical, surgical, laboratory, X-ray, hospital,  
46 ambulance and dental expenses and fees, and reasonable  
47 costs and expenses incurred in purchase of artificial  
48 limbs and other approved appliances which may be  
49 reasonably necessary for any member of said  
50 department who has or shall become temporarily,  
51 permanently or totally disabled by injury, illness or  
52 disease resulting from any occupational risk or hazard  
53 inherent in or peculiar to the service required of  
54 members of said department and incurred pursuant to  
55 or while such member was or shall be engaged in the  
56 performance of duties as a member of said department.

1 Whenever the superintendent shall determine that any  
2 disabled member is ineligible to receive any of the  
3 aforesaid benefits at public expense the superintendent  
4 shall, at the request of such disabled member, refer such  
5 matter to the retirement board for hearing and final  
6 decision.

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## CHAPTER 179

(H. B. 2414—By Delegates Seacrist and Rollins)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen-d, article three, chapter thirty-three of said code, all relating to retirement benefits for certain municipal employees; requiring municipalities to contribute a minimum amount to its pension and relief funds as determined by the actuarial report; and providing that once the actuarial report determines there is no deficiency in these funds, municipalities are not then required to contribute funds from the municipal pensions and protection fund.

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

That section twenty, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section fourteen-d, article three, chapter thirty-three of said code be amended and reenacted, all to read as follows:

### Chapter

8. Municipal Corporations.

33. Insurance.

## CHAPTER 8. MUNICIPAL CORPORATIONS.

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICE-MEN'S PENSION AND RELIEF FUND; FIRE-MEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.**

**§8-22-20. Minimum standards for actuarial soundness.**

1 The board of trustees for each pension and relief fund  
2 shall have regularly scheduled actuarial valuation  
3 reports prepared by a qualified actuary. All of the  
4 following standards must be met:

5 (a) An actuarial valuation report shall be prepared at  
6 least once every three years commencing with the later  
7 of (1) the first day of July, one thousand nine hundred  
8 eighty-three, or (2) three years following the most  
9 recently prepared actuarial valuation report: *Provided,*  
10 That this most recently prepared actuarial valuation  
11 report meets all of the standards of this section.

12 (b) The actuarial valuation report shall consist of, but  
13 is not limited to, the following disclosures: (1) The  
14 financial objective of the fund and how the objective is  
15 to be attained, (2) the progress being made toward  
16 realization of the financial objective, (3) recent changes  
17 in the nature of the fund, benefits provided, or actuarial  
18 assumptions or methods, (4) the frequency of actuarial  
19 valuation reports and the date of the most recent  
20 actuarial valuation report, (5) the method used to value  
21 fund assets, (6) the extent to which the qualified actuary  
22 relies on the data provided and whether the data was  
23 certified by the fund's auditor or examined by the  
24 qualified actuary for reasonableness, (7) a description  
25 and explanation of the actuarial assumptions and  
26 methods, and (8) any other information the qualified  
27 actuary feels is necessary or would be useful in fully and  
28 fairly disclosing the actuarial condition of the fund.

29 (c) After the thirtieth day of June, one thousand nine  
30 hundred eighty-three, and thereafter, the financial  
31 objective of each municipality shall not be less than to  
32 contribute to the fund annually an amount which,  
33 together with the contributions from the members and  
34 the allocable portion of the state premium tax fund for



35 municipal pension and relief funds established under  
36 section fourteen-d, article three, chapter thirty-three of  
37 this code and other income sources as authorized by law,  
38 will be sufficient to meet the normal cost of the fund  
39 and amortize any actuarial deficiency over a period of  
40 not more than forty years: *Provided*, That for those  
41 funds in existence on the first day of July, one thousand  
42 nine hundred eighty-one, its actuarial deficiency, if any,  
43 shall not be amortized over a period longer than that  
44 which remains under its current schedule. For purposes  
45 of determining this minimum financial objective, (1) the  
46 value of the fund's assets shall be determined on the  
47 basis of any reasonable actuarial method of valuation  
48 which takes into account fair market value, and (2) all  
49 costs, deficiencies, rate of interest, and other factors  
50 under the fund shall be determined on the basis of  
51 actuarial assumptions and methods which, in aggregate,  
52 are reasonable (taking into account the experience of the  
53 fund and reasonable expectations) and which, in com-  
54 bination, offer the qualified actuary's best estimate of  
55 anticipated experience under the fund. If as a result of  
56 this legislation a municipality's financial commitment to  
57 the fund is materially increased, the municipality may  
58 elect to phase in this increase over the five fiscal years  
59 commencing the first day of July, one thousand nine  
60 hundred eighty-three.

61 Notwithstanding any other provision of this section or  
62 article to the contrary, each municipality shall contrib-  
63 ute annually to the fund an amount which may not be  
64 less than the normal cost, as determined by the actuarial  
65 report.

66 (d) For purposes of this section the term "qualified  
67 actuary" means only an actuary who is a member of the  
68 society of actuaries or the American academy of  
69 actuaries. The qualified actuary shall be designated a  
70 fiduciary and shall discharge his duties with respect to  
71 a fund solely in the interest of the members and  
72 member's beneficiaries of that fund. In order for the  
73 standards of this section to be met, the qualified actuary  
74 shall certify that the actuarial valuation report is  
75 complete and accurate and that in his opinion the

76 technique and assumptions used are reasonable and  
77 meet the requirements of this section of this article.

78 (e) The cost of the preparation of the actuarial  
79 valuation report shall be paid by the fund.

### CHAPTER 33. INSURANCE.

#### ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

##### §33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

1 (a) For the purpose of providing additional revenue  
2 for municipal policemen's and firemen's pension and  
3 relief funds and additional revenue for volunteer and  
4 part volunteer fire companies and departments, there is  
5 hereby levied and imposed, on and after the first day  
6 of January, one thousand nine hundred eighty-two, an  
7 additional premium tax equal to one percent of gross  
8 direct premiums collected, less premiums returned to  
9 policyholders because of cancellation of policies, for fire  
10 insurance and casualty insurance policies. For purposes  
11 of this section, casualty insurance shall not include  
12 insurance on the life of a debtor pursuant to or in  
13 connection with a specific loan or other credit transac-  
14 tion or insurance on a debtor to provide indemnity for  
15 payments becoming due on a specific loan or other  
16 credit transaction while the debtor is disabled as defined  
17 in the policy. Except as otherwise provided in this  
18 section, all provisions of this article relating to the levy,  
19 imposition and collection of the regular premium tax  
20 are applicable to the levy, imposition and collection of  
21 the additional tax.

22 All moneys collected from this additional tax shall be  
23 received by the commissioner and paid by him into a  
24 special account in the state treasury, designated the  
25 municipal pensions and protection fund. The net  
26 proceeds of this tax after appropriation thereof by the  
27 Legislature shall be distributed in accordance with the  
28 provisions of subsection (c) of this section.

29 (b) Before the first day of August, one thousand nine  
30 hundred eighty-three, and before the first day of August

31 of each calendar year thereafter, the treasurer of each  
32 municipality in which a municipal policemen's or  
33 firemen's pension and relief fund has been established  
34 shall report to the state treasurer the average monthly  
35 number of members who worked at least one hundred  
36 hours per month of municipal policemen's or firemen's  
37 pension systems during the preceding fiscal year. Before  
38 the first day of August, one thousand nine hundred  
39 eighty-three, and before the first day of August of each  
40 calendar year thereafter, the state fire marshal shall  
41 report to the state treasurer the names and addresses  
42 of all volunteer and part volunteer fire companies and  
43 departments within the state which meet the eligibility  
44 requirements established in section eight-a, article  
45 fifteen, chapter eight of this code.

46 Before the first day of September, one thousand nine  
47 hundred eighty-three, and before the first day of  
48 September of each calendar year thereafter, the state  
49 treasurer shall allocate and authorize for distribution  
50 the revenues in the municipal pensions and protection  
51 fund which were collected during the preceding cal-  
52 endar year to municipal policemen's and firemen's  
53 pension and relief funds and to volunteer and part  
54 volunteer fire companies and departments. Seventy-five  
55 percent of the aforementioned revenues allocated shall  
56 be allocated to municipal policemen's and firemen's  
57 pension and relief funds and twenty-five percent of such  
58 allocated revenues shall be allocated to volunteer and  
59 part volunteer fire companies and departments: *Pro-*  
60 *vided*, That in any year the actuarial report required by  
61 section twenty, article twenty-two, chapter eight of this  
62 code indicates no actuarial deficiency in the municipal  
63 policemen's or firemen's pension and relief fund, no  
64 revenues may be allocated from the municipal pensions  
65 and protection fund to that fund. The revenues from the  
66 municipal pensions and protection fund shall then be  
67 allocated to all other pension funds which have an  
68 actuarial deficiency.

69 (c) (1) Each municipal pension and relief fund shall  
70 have allocated and authorized for distribution a pro rata  
71 share of the revenues allocated to municipal policemen's

72 and firemen's pension and relief funds based upon the  
73 corresponding municipality's average monthly number  
74 of members who worked at least one hundred hours per  
75 month during the preceding fiscal year. All moneys  
76 received by municipal pension and relief funds under  
77 this section may be expended only for the purposes  
78 described in sections sixteen through twenty-eight,  
79 article twenty-two, chapter eight of this code.

80 (2) Each volunteer fire company or department shall  
81 receive an equal share of the revenues allocated for  
82 volunteer and part volunteer fire companies and  
83 departments.

84 (3) In addition to the share allocated and distributed  
85 in accordance with subdivision (1) of this subsection,  
86 each municipal fire department composed of full-time  
87 paid members and volunteers and part volunteer fire  
88 companies and departments shall receive a share equal  
89 to the share distributed to volunteer fire companies  
90 under subdivision (2) of this subsection reduced by an  
91 amount equal to such share multiplied by the ratio of  
92 the number of full-time paid fire department members  
93 who are also members of a municipal firemen's pension  
94 system to the total number of members of such fire  
95 department.

96 (d) The allocation and distribution of revenues pro-  
97 vided for in this section are subject to the provisions of  
98 section twenty, article twenty-two, and sections eight-a  
99 and eight-b, article fifteen, chapter eight of this code.

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## CHAPTER 180

(H. B. 2322—By Delegate Seacrist)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article ten-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contributions paid public employees who are members of the firemen's pension and relief fund and policemen's pension and relief fund.

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

That section three, article ten-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.**

**§5-10C-3. Definitions.**

1 The following words and phrases as used in this  
2 article, unless a different meaning is clearly indicated  
3 by the context, shall have the following meanings:

4 (1) "Accumulated contributions" means the sum of all  
5 amounts credited to a member's individual account in  
6 the members' deposit fund and includes both contribu-  
7 tions deducted from the compensation of a member and  
8 contributions of a member picked up and paid by the  
9 member's participating public employer, plus applica-  
10 ble interest thereon.

11 (2) "Board of trustees" means, as appropriate: The  
12 board of trustees of the West Virginia public employees  
13 retirement system created in article ten, chapter five of  
14 this code; the retirement board of the West Virginia  
15 department of public safety death, disability and  
16 retirement fund created in section twenty-six, article  
17 two, chapter fifteen of this code; the retirement board  
18 of the state teachers and board of regents retirement  
19 system created in article seven-a, chapter eighteen of  
20 this code; the governing board of the board of regents  
21 supplemental and additional retirement plans created in  
22 section four-a, article twenty-three, chapter eighteen of  
23 this code; the retirement board of the judges' retirement  
24 system created in article nine, chapter fifty-one of this  
25 code; or the board of trustees of the firemen's and  
26 policemen's pension and relief funds created in article  
27 twenty-two, chapter eight of this code.

28 (3) "Employee" means any person, whether appointed,  
29 elected, or under contract, providing services for a  
30 public employer, for which compensation is paid and  
31 who is a member of the retirement system.

32 (4) "Member" means any employee who is included in  
33 a retirement system.

34 (5) "Member contributions" means, as appropriate:  
35 The contributions required by section twenty-nine,  
36 article ten, chapter five of this code, from employees  
37 who are members of the West Virginia public employees  
38 retirement system; the contributions required by section  
39 twenty-six, article two, chapter fifteen of this code, from  
40 employees who are members of the West Virginia  
41 department of public safety death, disability and  
42 retirement fund; the contributions required by section  
43 fourteen, article seven-a, chapter eighteen of this code,  
44 from employees who are members of the state teachers  
45 retirement system; the contributions authorized by  
46 section fourteen-a, article seven-a, chapter eighteen or  
47 by section four-a, article twenty-three, chapter eighteen,  
48 from employees who are members of the West Virginia  
49 board of regents retirement plans; the contributions  
50 required by section four, article nine, chapter fifty-one  
51 of this code, from employees who are members of the  
52 judges' retirement system; or the contributions required  
53 by section sixteen, article twenty-two, chapter eight of  
54 this code, from employees who are members of the  
55 firemen's and policemen's pension and relief funds.

56 (6) "Participating public employer" means the state of  
57 West Virginia, any board, commission, department,  
58 institution or spending unit, and shall include any  
59 agency created by rule of the supreme court of appeals  
60 having full-time employees, which for the purpose of  
61 this article shall be deemed a department of state  
62 government, and county boards of education with  
63 respect to teachers employed by them; any political  
64 subdivision in the state which has elected to cover its  
65 employees, as defined in this article, under the West  
66 Virginia public employees retirement system; and any  
67 political subdivision in this state which is subject to the  
68 provisions of article twenty-two, chapter eight of this  
69 code.

70 (7) "Political subdivision" means the state of West  
71 Virginia, a county, city or town in the state; a school  
72 corporation or corporate unit; any separate corporation

73 or instrumentality established by one or more counties,  
74 cities or towns, as permitted by law; any corporation or  
75 instrumentality supported in most part by counties,  
76 cities or towns; any public corporation charged by law  
77 with the performance of a governmental function and  
78 whose jurisdiction is coextensive with one or more  
79 counties, cities or towns, any agency or organization  
80 established by, or approved by the department of health  
81 for the provision of community health or mental  
82 retardation services, and which is supported in part by  
83 state, county or municipal funds.

84 (8) "Retirement system" means, as appropriate: The  
85 West Virginia public employees retirement system  
86 created in article ten, chapter five of this code; the West  
87 Virginia department of public safety death, disability  
88 and retirement fund created in sections twenty-six  
89 through thirty-eight, article two, chapter fifteen of this  
90 code; the state teachers retirement system created in  
91 article seven-a, chapter eighteen of this code; the West  
92 Virginia board of regents retirement plans created in  
93 section fourteen-a, article seven-a, chapter eighteen and  
94 section four-a, article twenty-three, chapter eighteen of  
95 this code; the judges' retirement system created in  
96 article nine, chapter fifty-one of this code; the firemen's  
97 pension and relief fund created in section sixteen, article  
98 twenty-two, chapter eight of this code; or the policemen's  
99 pension and relief fund created in section sixteen, article  
100 twenty-two, chapter eight of this code.

101 (9) "Teacher" shall have the meaning ascribed to it in  
102 section three, article seven-a, chapter eighteen of this  
103 code.

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## CHAPTER 181

(Com. Sub. for S. B. 105—By Senators Whillow and Felton)

[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to the creation of an industrial

access road fund and providing funding therefor; specifying purposes for which moneys from the fund may be used; requiring that counties and municipalities guarantee proposed projects; specifying the criteria upon which the highways commissioner is to base his decision to allocate funds; approval of department of highways of proposed industrial access highway; request for funds by resolution of governing body of county or municipality; consultation by the department of highways; placing industrial access roads under the state road system; restrictions on use of the fund; limits on amount of funds to be allocated; eligible items of construction and engineering; disbursements from the fund; and annual audit of the fund.

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

That chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-a, to read as follows:

**ARTICLE 3A. INDUSTRIAL ACCESS ROAD FUND.**

- §17-3A-1. Industrial access road fund created; construction guarantees by municipalities and counties.
- §17-3A-2. Department of highways to determine construction of industrial access roads.
- §17-3A-3. Industrial access roads to be part of state road system.
- §17-3A-4. Restrictions on use of fund.
- §17-3A-5. Disbursements from fund.
- §17-3A-6. Annual audit to be made of receipts and expenditures of fund.

**§17-3A-1. Industrial access road fund created; construction guarantees by municipalities and counties.**

- 1 (a) Any other provision of this code notwithstanding,
- 2 there is hereby created in the state treasury the
- 3 "industrial access road fund," hereinafter referred to as
- 4 "the fund." There shall be deposited into the fund one
- 5 half of one percent of all state tax collections which are
- 6 otherwise specifically dedicated by the provisions of this
- 7 code to the state road fund. At the end of each fiscal
- 8 year, all unused moneys in the fund shall revert to the
- 9 state road fund.



10 (b) The moneys in the fund shall be expended by the  
11 department of highways for constructing and maintain-  
12 ing industrial access roads within counties and munic-  
13 ipalities to industrial sites on which manufacturing,  
14 processing or other similar establishments, including  
15 publicly owned airports, are already constructed or are  
16 under firm contract to be constructed. In the event there  
17 is no industrial site already constructed or for which the  
18 construction is under firm contract, a county or  
19 municipality may guarantee to the department of  
20 highways by bond or other acceptable device that an  
21 industrial site will be constructed and, if no industrial  
22 site, acceptable to the department of highways, is  
23 constructed within the time limits of the bond, such  
24 bond shall be forfeited.

**§17-3A-2. Department of highways to determine con-  
struction of industrial access roads.**

1 In determining whether or not to construct or improve  
2 any industrial access road, and in determining the  
3 nature of the road to be constructed, the department of  
4 highways shall base its decision on the costs of the  
5 industrial access road in relation to the volume and  
6 nature of the traffic to be generated as a result of  
7 developing the industrial site within the total industrial  
8 area. In making a decision on any industrial site, the  
9 total volume of traffic to be generated shall be consid-  
10 ered in regard to the overall cost of the project. The  
11 department of highways shall consult and work closely  
12 with the governor's office of community and industrial  
13 development in determining the use of industrial access  
14 road funds.

15 Prior to a formal request for the use of moneys from  
16 the fund to provide access to new or expanding indus-  
17 trial sites, the location of the industrial access road shall  
18 be submitted for approval of the department of high-  
19 ways. The department of highways shall consider the  
20 cost of the industrial access road as it relates to the  
21 project's location and as it relates to the possibility of  
22 future extensions of the road to serve other possible  
23 industrial sites as well as the future development of the  
24 surrounding area.

25 Prior to the allocation of moneys from the fund for the  
26 construction or maintenance of an industrial access road  
27 to an industry proposing to locate or expand in a county  
28 or municipality, the governing body of the county or  
29 municipality shall, by resolution, request moneys from  
30 the fund and shall be responsible for the preliminary  
31 negotiations with the industries and other interested  
32 parties. The department of highways shall be available  
33 for consultation with the governing bodies of the  
34 counties or municipalities and other interested parties,  
35 and may prepare surveys, plans, engineering studies  
36 and cost estimates for the proposed industrial access  
37 road.

**§17-3A-3. Industrial access roads to be part of state road system.**

1 Any industrial access road constructed under this  
2 article is a state local service road in the state road  
3 system and shall thereafter be maintained in accordance  
4 with the provisions of this chapter.

**§17-3A-4. Restrictions on use of fund.**

1 (a) The fund may not be used for the adjustment of  
2 utilities or for the construction of industrial access roads  
3 to schools, hospitals, libraries, armories, office buildings,  
4 shopping centers, apartment buildings, amusement  
5 facilities, government installations or similar facilities,  
6 whether public or private. The fund may not be used  
7 to construct industrial access roads on private property.

8 (b) Moneys from the fund may not be allocated until  
9 the governing body of the county or municipality  
10 certifies to the department of highways that the  
11 industrial site is constructed and operating or is under  
12 firm contract to be constructed or operated, or upon the  
13 presentation of acceptable surety in accordance with  
14 section one of this article.

15 (c) Not more than three hundred thousand dollars of  
16 unmatched moneys from the fund may be allocated for  
17 use in any one county in any fiscal year. The maximum  
18 amount of unmatched moneys which may be allocated  
19 from the fund is ten percent of the capital outlay of the

20 designated industrial establishment. The amount of  
21 unmatched funds allocated may be supplemented with  
22 additional matched moneys from the fund, in which case  
23 the matched moneys allocated from the fund may not  
24 exceed one hundred fifty thousand dollars, to be  
25 matched equally from sources other than the fund. The  
26 amount of matched moneys which may be allocated  
27 from the fund over and above the unmatched funds may  
28 not exceed five percent of the capital outlay of the  
29 designated industrial site.

30 (d) Funds may only be allocated to those items of  
31 construction and engineering which are essential to  
32 providing an adequate facility to serve the anticipated  
33 traffic. Funds may not be allocated for items such as  
34 storm sewers, curbs, gutters and extra pavement width  
35 unless necessary to extend or connect an existing access  
36 road.

#### **§17-3A-5. Disbursements from fund.**

1 Any claim of a contractor or others, not otherwise  
2 provided for, for labor done or for materials, services or  
3 supplies furnished to the department of highways  
4 pursuant to the provisions of this article, shall be  
5 audited by the commissioner of the department of  
6 highways. If the commissioner determines that the  
7 claim is valid and correct, the commissioner shall issue  
8 a requisition of the department upon the state auditor  
9 therefor, showing the nature of the claim and specifying  
10 whether the claim is for labor done or materials,  
11 services or supplies furnished for the construction or  
12 maintenance of state roads, or for other purposes, and  
13 the auditor shall issue his warrant upon the state  
14 treasurer therefor. The treasurer shall issue the warrant  
15 to the person, firm or corporation entitled thereto, out  
16 of the funds in the treasury provided for that purpose.  
17 The cost of acquiring a right-of-way shall be paid out  
18 of the fund.

#### **§17-3A-6. Annual audit to be made of receipts and expenditures of fund.**

1 The Legislature, acting through the joint committee  
2 on government and finance, shall cause an annual audit

3 to be made by a resident independent certified public  
4 accountant of all books, accounts and records relating  
5 to all receipts and expenditures of the fund. The  
6 commissioner shall make available to the independent  
7 auditor or auditors performing the audit all of the  
8 department's books, accounts and records pertaining to  
9 all moneys received and expended. The auditor or  
10 auditors performing the audit shall make available  
11 annually the audit report with copies thereof to the  
12 members of the Legislature, the governor, the commis-  
13 sioner of the department of highways, the secretary of  
14 state, the state treasurer, the attorney general and the  
15 state auditor. The audit report shall be available to the  
16 public in the office of the secretary of state.

17 The Legislature, acting through the joint committee  
18 on government and finance, shall obtain the services of  
19 a resident independent certified public accountant for  
20 this purpose, the cost of which shall be payable out of  
21 funds appropriated by the Legislature. Any audits of the  
22 funds which have been made by any official auditing  
23 agency of the United States government shall be  
24 accepted in lieu of the state audit.

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## CHAPTER 182

(Com. Sub. for S. B. 555—By Senators Loehr, Warner, Hylton,  
Holliday, Wagner and Felton)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five, relating to creating the West Virginia Industrial Road Partnership Act of 1989; setting forth legislative findings; defining terms; allowing companies to apply for a road to be designated an "industrial road"; funding for the construction or upgrading of the industrial road; requiring the commissioner of the department of highways to establish a program for designating industrial roads and

providing criteria therefor; creation of a special revenue fund; powers of the commissioner; expiration of the article; authorizing the commissioner to promulgate rules; and severability.

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

That chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-five, to read as follows:

**ARTICLE 25. THE WEST VIRGINIA INDUSTRIAL ROAD PARTNERSHIP ACT OF 1989.**

- §17-25-1. Legislative finding.
- §17-25-2. Definitions.
- §17-25-3. Application to designate industrial road.
- §17-25-4. Industrial roads; how designated.
- §17-25-5. Standards to be established by commissioner.
- §17-25-6. Special revenue fund created.
- §17-25-7. Powers of the commissioner.
- §17-25-8. Expiration of article.
- §17-25-9. Rules.
- §17-25-10. Severability clause; interpretation.

**§17-25-1. Legislative finding.**

1       The Legislature hereby finds that the continued and  
 2       future success of the coal industry is greatly dependent  
 3       upon a quality network of roads and highways. Critical  
 4       market forces make it imperative for such a road system  
 5       to be constructed and maintained. It is the responsibility  
 6       of the state and all industry to form a partnership to  
 7       accomplish this goal. "Industrial roads," for the pur-  
 8       poses of this article, may be construed to include a single  
 9       bridge or combination of bridges.

**§17-25-2. Definitions.**

- 1       (a) "Company" means an individual, partnership or  
 2       corporation licensed under the laws of the state of West  
 3       Virginia and engaged in any industrial business.
- 4       (b) "Industrial road" means a public road of ten miles  
 5       or less in length which is vital to transporting of coal,  
 6       or a road, which upon the designation of the commis-  
 7       sioner, is determined to be vital to one or more  
 8       companies.

9 (c) "Commissioner" means the commissioner of the  
10 department of highways.

11 (d) "Cost" means all funds needed to do engineering,  
12 right-of-way acquisition, construction or upgrading.  
13 Upgrading does not mean normal routine maintenance.

14 (e) "Department" means the department of highways.

15 (f) "Upgrading" means any work on a highway or  
16 bridge which is not routine maintenance.

### §17-25-3. Application to designate industrial road.

1 Any company may apply to the commissioner to have  
2 a certain road designated an industrial road. The  
3 commissioner shall develop an application form. In such  
4 application the company shall agree to pay to the  
5 department one half of the amount of money needed to  
6 bring such road up to the standards needed to become  
7 an industrial road. All construction or upgrading to be  
8 performed under this article shall be bid out to an  
9 independent contractor in such a manner as prescribed  
10 in this code. Upon approval of the application by the  
11 commissioner the company shall transfer to a special  
12 revenue account for the department of highways in the  
13 state treasury as set forth in this article a sum equal  
14 to one half of costs needed to upgrade or construct the  
15 road to standard or the company shall deliver to the  
16 commissioner an irrevocable letter of credit drawn on  
17 a bank chartered by the state of West Virginia or the  
18 federal government in an amount equal to such cost:  
19 *Provided*, That the company shall transfer the moneys  
20 before any construction or upgrading is contracted for.

21 The department shall then begin the process as  
22 outlined in this code to upgrade or construct such public  
23 road.

### §17-25-4. Industrial roads; how designated.

1 The commissioner shall promulgate rules establishing  
2 a program for designating industrial public roads in the  
3 state. The criteria for such designation shall include:

4 (a) The economic impact of such road on the coal or  
5 other companies which use such public road;

6 (b) The impact on the citizens which use the road in  
7 their daily business; and

8 (c) The cost of any improvements which would be  
9 necessary to bring the road up to standard versus the  
10 benefits.

11 The commissioner shall publicize the program and  
12 allow any company to make such application.

**§17-25-5. Standards to be established by commissioner.**

1 The commissioner shall establish standards for  
2 construction and upgrading of industrial roads. In the  
3 design of these standards, he shall consult with repre-  
4 sentatives or organizations which represent companies.  
5 The standards shall provide for:

6 (a) Each road to be at least sixteen feet in width in  
7 addition to any berms or shoulders;

8 (b) Design and construction to handle the weight of  
9 coal and other industrial trucks and equipment as  
10 transported by the companies;

11 (c) Giving the citizens of the area a better road to  
12 travel;

13 (d) Having adequate drainage; and

14 (e) Any other feature which the commissioner deter-  
15 mines is necessary to carry out the goals of this article.

**§17-25-6. Special revenue fund created.**

1 There shall be created in the state treasury a special  
2 revenue fund to be known as the "Industrial Road  
3 Construction Fund." The fund shall receive all funds  
4 contributed by companies for the construction of  
5 approved roads. Only moneys needed to pay the costs of  
6 the roads shall be withdrawn, however, the commis-  
7 sioner may use any moneys generated by any earned  
8 interest to offset his administrative costs in administer-  
9 ing this article.

**§17-25-7. Powers of the commissioner.**

1 In addition to all other powers conferred upon the  
2 commissioner under other provisions of this code, the

3 commissioner shall have all powers necessary to carry  
 4 out the construction, planning or development of any  
 5 industrial road provided for by this article.

**§17-25-8. Expiration of article.**

1 This article shall expire on the thirty-first day of  
 2 December, one thousand nine hundred ninety-two,  
 3 unless reauthorized by the Legislature of the state of  
 4 West Virginia: *Provided*, That if the governor feels the  
 5 continuation of this article, before the above mentioned  
 6 date, would cause a hardship, he may cancel the  
 7 program. However, any project which is approved by  
 8 the commissioner shall be completed.

**§17-25-9. Rules.**

1 The commissioner shall have the authority to promul-  
 2 gate rules to effectuate this article.

**§17-25-10. Severability clause; interpretation.**

1 The provisions of this article are severable and if any  
 2 of its provisions shall be held unconstitutional, the  
 3 decision of the court shall not impair the remaining  
 4 provisions of this article. This article shall be construed  
 5 liberally.

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## CHAPTER 183

(H. B. 2868—By Delegate Farley)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article two of said chapter; to amend and reenact section two-a, article seven, chapter six of said code; to amend and reenact section five, article two, chapter fifteen of said code; to amend and reenact section three, article one, chapter twenty-four of said code; to amend and reenact section ten-a, article one, chapter fifty-one of said code; and to amend and



reenact section thirteen, article two of said chapter fifty-one, all relating to salaries of certain state officers, judges and justices; setting the salaries of secretaries of departments; increasing the salaries of certain state officers; setting the salaries of certain other state appointed officers and employees; setting effective dates and providing for phase-in of certain salary increases; providing for filing sworn statement by certain state appointive officers as to compensation of their employees; making terms of public service commissioners at will and pleasure of governor; increasing salaries of members of department of public safety and providing effective date; increasing salaries of circuit court judges and supreme court justices and providing effective dates thereof.

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

That section three, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article two of said chapter be amended and reenacted; that section two-a, article seven, chapter six of said code be amended and reenacted; that section five, article two, chapter fifteen of said code be amended and reenacted; that section three, article one, chapter twenty-four of said code be amended and reenacted; that section ten-a, article one, chapter fifty-one of said code be amended and reenacted; and that section thirteen, article two of said chapter fifty-one be amended and reenacted, all to read as follows:

#### **Chapter**

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

**6. General Provisions Respecting Officers.**

**15. Public Safety.**

**24. Public Service Commission.**

**51. Courts and Their Officers.**

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

#### **Article**

**1. General Provisions.**

**2. Transfer of Agencies and Boards.**

**ARTICLE 1. GENERAL PROVISIONS.****§5F-1-3. Oath; bond; compensation.**

1 (a) Each person appointed to serve as a secretary shall  
2 take the oath or affirmation prescribed by section five,  
3 article four of the constitution, and such oath shall be  
4 certified by the person who administers the same and  
5 filed in the office of the secretary of state.

6 (b) Each person so appointed shall give bond in the  
7 penalty of twenty-five thousand dollars conditioned for  
8 the faithful performance of the duties of the office,  
9 which bond shall be approved by the attorney general  
10 as to form and by the governor as to sufficiency. The  
11 surety of such bond may be a bonding or surety  
12 company, in which case the premium shall be paid out  
13 of the appropriation made for the administration of the  
14 department.

15 (c) Each secretary shall receive a salary of seventy  
16 thousand dollars per year.

17 (d) The salary and expenses necessary for each  
18 secretary and all expenditures for personal services for  
19 the office of secretary shall be paid from and within  
20 existing appropriations made to the agencies and boards  
21 transferred to the department headed by that secretary,  
22 and revised expenditure schedules shall be submitted to  
23 the commissioner of finance and administration and the  
24 legislative auditor stating the amount and source of  
25 funds to be expended: *Provided*, That for fiscal years  
26 beginning the first day of July, one thousand nine  
27 hundred eighty-nine, such amounts shall follow the  
28 procedures described in chapter five-a of this code.

**ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.****§5F-2-3. Administrators; appointment; oath; bond; compensation.**

1 (a) Notwithstanding any other provision of this code  
2 (including subsections (h) and (i), section one of this  
3 article) to the contrary, each administrator required by  
4 other provisions of this code to be appointed by the  
5 governor shall:

6 (1) Continue to be appointed by the governor by and  
7 with the advice and consent of the Senate and each such  
8 administrator shall serve at the will and pleasure of the  
9 governor, and the governor may appoint a person to fill  
10 more than one such position of administrator and may  
11 appoint a secretary to fill one or more positions of such  
12 administrator, but each person appointed as such an  
13 administrator must possess whatever qualifications are  
14 elsewhere specified in this code as being required for  
15 appointment to such position;

16 (2) Take the oath of office or affirmation prescribed  
17 by section five, article four of the constitution, and such  
18 oath shall be certified by the person who administers the  
19 same and filed in the office of the secretary of state;

20 (3) Give bond in the penalty of fifteen thousand  
21 dollars conditioned for the faithful performance of the  
22 duties of the office, which bond shall be approved by the  
23 attorney general as to form and by the secretary as to  
24 sufficiency. The surety of such bond may be a bonding  
25 or surety company, in which case the premium shall be  
26 paid out of the appropriation made for the administra-  
27 tion of the department; and

28 (4) Receive an annual salary as shall be fixed from  
29 time to time by law or as otherwise provided.

30 (b) Each administrator required by other provisions  
31 of this code to be appointed in any manner other than  
32 by the governor shall continue to be appointed, shall  
33 take such oath of office, give such bond and receive such  
34 salary as shall be so specified by such other provisions  
35 of this code.

## CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

### ARTICLE 7. COMPENSATION AND ALLOWANCES.

#### §6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

1 (a) Notwithstanding any other provision of this code

2 to the contrary, each of the following appointive state  
3 officers named in this subsection shall be appointed by  
4 the governor, by and with the advice and consent of the  
5 Senate. Each of such appointive state officers shall serve  
6 at the will and pleasure of the governor for the term for  
7 which the governor was elected and until the respective  
8 state officers' successors have been appointed and  
9 qualified. Each of such appointive state officers shall  
10 hereafter be subject to the existing qualifications for  
11 holding each such respective office and each shall have  
12 and is hereby granted all of the powers and authority  
13 and shall perform all of the functions and services  
14 heretofore vested in and performed by virtue of existing  
15 law respecting each such office.

16 Beginning on the first day of January, one thousand  
17 nine hundred ninety, the annual salary of each such  
18 named appointive state officer shall be as follows:

19 Administrator, division of highways, sixty thousand  
20 dollars; administrator, division of health, fifty-seven  
21 thousand two hundred dollars; administrator, division of  
22 human services, forty-seven thousand eight hundred  
23 dollars; administrator, state tax division, forty-nine  
24 thousand nine hundred dollars; administrator, division  
25 of energy, sixty-five thousand dollars; administrator,  
26 division of finance and administration, forty-seven  
27 thousand eight hundred dollars; administrator, division  
28 of corrections, forty-five thousand dollars; administra-  
29 tor, division of community and industrial development,  
30 sixty-three thousand six hundred dollars; administrator,  
31 division of workers' compensation, forty-five thousand  
32 dollars; administrator, division of commerce, sixty-two  
33 thousand five hundred dollars; administrator, division of  
34 natural resources, forty-seven thousand eight hundred  
35 dollars; administrator, division of public safety, forty-  
36 four thousand six hundred dollars; administrator,  
37 lottery division, sixty thousand dollars; director, public  
38 employees insurance agency, fifty-five thousand dollars;  
39 administrator, division of employment security, forty-  
40 five thousand dollars; administrator, division of bank-  
41 ing, thirty-eight thousand three hundred dollars;  
42 administrator, division of insurance, thirty-six thousand

43 seven hundred dollars; administrator, division of culture  
44 and history, thirty-eight thousand three hundred  
45 dollars; chairman, public service commission, fifty  
46 thousand dollars; members, public service commission,  
47 forty-six thousand two hundred dollars; administrator,  
48 alcohol beverage control commission, thirty-eight  
49 thousand three hundred dollars; administrator, division  
50 of motor vehicles, forty thousand dollars; director,  
51 division of personnel, thirty-eight thousand three  
52 hundred dollars; adjutant general, thirty-five thousand  
53 seven hundred dollars; chairman, health care cost  
54 review authority, forty thousand dollars; members,  
55 health care cost review authority, thirty-six thousand  
56 five hundred dollars; director, human rights commis-  
57 sion, forty thousand dollars; administrator, division of  
58 labor, thirty-five thousand seven hundred dollars;  
59 administrator, division of veterans affairs, thirty-two  
60 thousand dollars; administrator, division of emergency  
61 services, thirty-two thousand dollars; administrator,  
62 nonintoxicating beer commission, thirty-two thousand  
63 dollars; members, board of probation and parole,  
64 twenty-eight thousand three hundred dollars; members,  
65 employment security review board, seventeen thousand  
66 dollars; members, workers' compensation appeal board,  
67 seventeen thousand eight hundred dollars.

68 Prior to the first day of January, one thousand nine  
69 hundred ninety, each of the aforesaid officers shall  
70 continue to receive the annual salaries they were  
71 receiving as of the last day of March, one thousand nine  
72 hundred eighty-nine.

73 (b) Notwithstanding any other provisions of this code  
74 to the contrary, each of the state officers named in this  
75 subsection shall continue to be appointed in the manner  
76 prescribed in this code, and shall be paid an annual  
77 salary as follows, except that any increase in salary over  
78 and above the salary being received by any of the  
79 following state officers as of the last day of March, one  
80 thousand nine hundred eighty-nine, shall not become  
81 effective until the first day of January, one thousand  
82 nine hundred ninety:

83 Chancellor, board of regents, seventy thousand

84 dollars; state superintendent of schools, seventy thousand  
85 dollars; administrator, division of risk and insurance  
86 management, forty-two thousand dollars; director,  
87 division of rehabilitation services, fifty-five thousand  
88 dollars; executive director, educational broadcasting  
89 authority, forty-seven thousand five hundred dollars;  
90 secretary, library commission, forty-seven thousand five  
91 hundred dollars; director, geologic and economic survey,  
92 forty-seven thousand five hundred dollars; executive  
93 director, water development authority, fifty-four thousand  
94 two hundred dollars; executive secretary, teacher's  
95 retirement system, forty-seven thousand two hundred  
96 dollars; executive secretary, public employees retirement  
97 system, forty thousand one hundred dollars;  
98 director, air pollution control commission, forty-four  
99 thousand eight hundred dollars; executive director,  
100 public legal services council, forty seven thousand five  
101 hundred dollars; director, commission on aging, forty  
102 thousand dollars; commissioner, oil and gas conservation  
103 commission, forty thousand dollars; director, farm  
104 management commission, thirty-two thousand five  
105 hundred dollars; state fire administrator, twenty-five  
106 thousand two hundred dollars; executive secretary,  
107 municipal bond commission, thirty thousand two  
108 hundred dollars; director, railroad maintenance authority,  
109 thirty-two thousand five hundred dollars; executive  
110 secretary, women's commission, thirty thousand one  
111 hundred dollars; executive director, regional jail  
112 authority, forty-two thousand six hundred dollars;  
113 director, hospital finance authority, twenty-five thousand  
114 eight hundred dollars.

115 (c) No increase in the salary of any appointive state  
116 officer pursuant to this section shall be paid until and  
117 unless such appointive state officer shall have first filed  
118 with the state auditor and the legislative auditor a  
119 sworn statement, on a form to be prescribed by the  
120 attorney general, certifying that such spending unit is  
121 in compliance with any general law providing for a  
122 salary increase for his employees. The attorney general  
123 shall prepare and distribute such form to the affected  
124 spending units: *Provided*, That no decrease in salary  
125 shall be effective for any current appointive state officer

126 appointed prior to the first day of January, one thousand  
127 nine hundred eighty-nine: *Provided, however,* That such  
128 decreases shall take effect at such time as any appoin-  
129 tive office is vacated.

## CHAPTER 15. PUBLIC SAFETY.

### ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

#### §15-2-5. Salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

1 Members of the department shall receive annual  
2 salaries pursuant to appropriation by the Legislature,  
3 payable at least monthly as follows:

4 Any lieutenant colonel shall receive an annual salary  
5 of thirty-three thousand six hundred seventy-two  
6 dollars; any major shall receive an annual salary of  
7 thirty-one thousand fifty-six dollars; any captain shall  
8 receive an annual salary of twenty-eight thousand nine  
9 hundred forty-four dollars; any first lieutenant shall  
10 receive an annual salary of twenty-seven thousand three  
11 hundred seventy-two dollars; any second lieutenant shall  
12 receive an annual salary of twenty-five thousand eight  
13 hundred dollars; any master sergeant or first sergeant  
14 shall receive an annual salary of twenty-four thousand  
15 two hundred twenty-eight dollars; any sergeant shall  
16 receive an annual salary of twenty-two thousand six  
17 hundred fifty-six dollars; any corporal shall receive an  
18 annual salary of twenty-one thousand seventy-two  
19 dollars; any trooper first class shall receive an annual  
20 salary of nineteen thousand five hundred dollars; and  
21 any newly enlisted trooper shall receive a salary of one  
22 thousand four hundred five dollars monthly during the  
23 period of his basic training, and upon the satisfactory  
24 completion of such training and assignment to active  
25 duty, each such trooper shall receive, during the  
26 remainder of his first year's service, a salary of one  
27 thousand five hundred fourteen dollars monthly. During  
28 the second year of his service in the department, each  
29 trooper shall receive an annual salary of eighteen  
30 thousand five hundred fifty-two dollars; during the third

31 year of his service each such trooper shall receive an  
32 annual salary of eighteen thousand eight hundred fifty-  
33 two dollars; and during the fourth and fifth year of such  
34 trooper's service and for each year thereafter, he shall  
35 receive an annual salary of nineteen thousand ninety-  
36 two dollars: *Provided*, That effective on the first day of  
37 January, one thousand nine hundred ninety, any  
38 lieutenant colonel shall receive an annual salary of  
39 thirty-five thousand three hundred fifty-two dollars; any  
40 major shall receive an annual salary of thirty-two  
41 thousand six hundred four dollars; any captain shall  
42 receive an annual salary of thirty thousand three  
43 hundred ninety-six dollars; any first lieutenant shall  
44 receive an annual salary of twenty-eight thousand seven  
45 hundred forty dollars; any second lieutenant shall  
46 receive an annual salary of twenty-seven thousand  
47 ninety-six dollars; any master sergeant or first sergeant  
48 shall receive an annual salary of twenty-five thousand  
49 four hundred forty dollars; any sergeant shall receive an  
50 annual salary of twenty-three thousand seven hundred  
51 eighty-four dollars; any corporal shall receive an annual  
52 salary of twenty-two thousand one hundred twenty-eight  
53 dollars; any trooper first class shall receive an annual  
54 salary of twenty thousand four hundred seventy-two  
55 dollars; and any newly enlisted trooper shall receive a  
56 salary of one thousand four hundred seventy-five dollars  
57 monthly during the period of his basic training, and  
58 upon the satisfactory completion of such training and  
59 assignment to active duty, each such trooper shall  
60 receive, during the remainder of his first year's service,  
61 a salary of one thousand five hundred ninety dollars  
62 monthly. During the second year of his service in the  
63 department, each trooper shall receive an annual salary  
64 of nineteen thousand four hundred seventy-six dollars;  
65 during the third year of his service each such trooper  
66 shall receive an annual salary of nineteen thousand eight  
67 hundred dollars; and during the fourth and fifth year  
68 of such trooper's service and for each year thereafter,  
69 he shall receive an annual salary of twenty thousand  
70 fifty-two dollars.

71 Each member of the department whose salary is fixed  
72 and specified herein shall receive and be entitled to an



73 increase in salary over that hereinbefore set forth, for  
74 grade in rank, based on length of service, including that  
75 heretofore and hereafter served with the department as  
76 follows: At the end of five years of service with the  
77 department, such member shall receive a salary  
78 increase of three hundred dollars to be effective during  
79 his next three years of service and a like increase at  
80 three-year intervals thereafter, with such increases to be  
81 cumulative.

82 In applying the foregoing salary schedule where  
83 salary increases are provided for length of service,  
84 members of the department in service at the time this  
85 article becomes effective shall be given credit for prior  
86 service and shall be paid such salaries as the same  
87 length of service will entitle them to receive under the  
88 provisions hereof.

89 The Legislature finds and declares that there is  
90 litigation pending in the circuit court of Kanawha  
91 County on the question whether members of the  
92 department of public safety are covered by the provi-  
93 sions of the state wage and hour law, article five-c,  
94 chapter twenty-one of this code. The Legislature further  
95 finds and declares that because of the unique duties of  
96 members of the department, it is not appropriate to  
97 apply said wage and hour provisions to them. Accord-  
98 ingly, members of the department of public safety are  
99 hereby excluded from the provisions of said wage and  
100 hour law. The express exclusion hereby enacted shall  
101 not be construed as any indication that such members  
102 were or were not heretofore covered by said wage and  
103 hour law.

104 In lieu of any overtime pay they might otherwise have  
105 received under the wage and hour law, and in addition  
106 to their salaries and increases for length of service,  
107 members who have completed basic training may  
108 receive supplemental pay as hereinafter provided.

109 The superintendent shall, within thirty days after the  
110 effective date hereof, promulgate a rule or regulation to  
111 establish the number of hours per month which shall  
112 constitute the standard work month for the members of

113 the department. Such rule or regulation shall further  
114 establish, on a graduated hourly basis, the criteria for  
115 receipt of a portion or all of such supplemental payment  
116 when hours are worked in excess of said standard work  
117 month. Such rule or regulation shall be promulgated  
118 pursuant to the provisions of chapter twenty-nine-a of  
119 this code. The superintendent shall certify monthly to  
120 the department's payroll officer the names of those  
121 members who have worked in excess of the standard  
122 work month and the amount of their entitlement to  
123 supplemental payment.

124 The supplemental payment shall be in an amount  
125 equal to one and one-half percent of the annual salary  
126 of a trooper during his second year of service, not to  
127 exceed two hundred twenty-five dollars monthly:  
128 *Provided*, That effective the first day of January, one  
129 thousand nine hundred ninety, said supplemental  
130 payment may be up to but not exceeding two hundred  
131 thirty-six dollars monthly. The superintendent and  
132 civilian employees of the department shall not be  
133 eligible for any such supplemental payments.

134 Each member of the department, except the superin-  
135 tendent and civilian employees, shall execute, before  
136 entering upon the discharge of his duties, a bond with  
137 security in the sum of five thousand dollars payable to  
138 the state of West Virginia, conditioned upon the faithful  
139 performance of his duties, and such bond shall be  
140 approved as to form by the attorney general and to  
141 sufficiency by the governor.

142 Any member of the department who is called to  
143 perform active duty for training or inactive duty  
144 training in the national guard or any reserve component  
145 of the armed forces of the United States annually shall  
146 be granted upon request leave time not to exceed thirty  
147 calendar days for the purpose of performing such active  
148 duty for training or inactive duty training, and the time  
149 so granted shall not be deducted from any leave  
150 accumulated as a member of the department.

## CHAPTER 24. PUBLIC SERVICE COMMISSION.

### ARTICLE 1. GENERAL PROVISIONS.

**§24-1-3. Commission continued; membership; chairman; compensation.**

1 (a) The public service commission of West Virginia,  
2 heretofore established, is continued and directed as  
3 provided by this chapter, chapter twenty-four-a and  
4 chapter twenty-four-b. In addition, after having con-  
5 ducted a performance audit through its joint committee  
6 on government operations, pursuant to section nine,  
7 article ten, chapter four of this code, the Legislature  
8 hereby finds and declares that the public service  
9 commission should be continued and reestablished.  
10 Accordingly, notwithstanding the provisions of section  
11 four, article ten, chapter four of this code, the public  
12 service commission shall continue to exist until the first  
13 day of July, one thousand nine hundred ninety-two. The  
14 public service commission may sue and be sued by that  
15 name. Such public service commission shall consist of  
16 three members who shall be appointed by the governor  
17 with the advice and consent of the Senate. The commis-  
18 sioners shall be citizens and residents of this state and  
19 at least one of them shall be duly licensed to practice  
20 law in West Virginia, of not less than ten years' actual  
21 experience at the bar. No more than two of said  
22 commissioners shall be members of the same political  
23 party. Each commissioner shall, before entering upon  
24 the duties of his office, take and subscribe to the oath  
25 provided by section five, article four of the constitution,  
26 which oath shall be filed in the office of the secretary  
27 of state. The governor shall designate one of the  
28 commissioners to serve as chairman at the governor's  
29 will and pleasure. The chairman shall be the chief  
30 administrative officer of the commission. The governor  
31 may remove any commissioner only for incompetency,  
32 neglect of duty, gross immorality, malfeasance in office  
33 or violation of subsection (c) of this section.

34 (b) The unexpired term of members of the public  
35 service commission at the time this subsection becomes  
36 effective are continued through the thirtieth day of  
37 June, one thousand nine hundred seventy-nine. In  
38 accordance with the provisions of subsection (a) of this  
39 section, the governor shall appoint three commissioners,

40 one for a term of two years, one for a term of four years  
41 and one for a term of six years, all the terms beginning  
42 on the first day of July, one thousand nine hundred  
43 seventy-nine. All future appointments are for terms of  
44 six years, except that an appointment to fill a vacancy  
45 is for the unexpired term only. The commissioners  
46 whose terms are terminated by the provisions of this  
47 subsection are eligible for reappointment.

48 (c) No person while in the employ of, or holding any  
49 official relation to, any public utility subject to the  
50 provisions of this chapter, or holding any stocks or bonds  
51 thereof, or who is pecuniarily interested therein, may  
52 serve as a member of the commission or as an employee  
53 thereof. Nor may any such commissioner be a candidate  
54 for or hold public office, or be a member of any political  
55 committee, while acting as such commissioner; nor may  
56 any commissioner or employee of said commission  
57 receive any pass, free transportation or other thing of  
58 value, either directly or indirectly, from any public  
59 utility or motor carrier subject to the provisions of this  
60 chapter. In case any of the commissioners becomes a  
61 candidate for any public office or a member of any  
62 political committee, the governor shall remove him from  
63 office and shall appoint a new commissioner to fill the  
64 vacancy created.

65 (d) Effective the first day of July, one thousand nine  
66 hundred eighty-four, and in light of the assignment of  
67 new, substantial additional duties embracing new areas  
68 and fields of activity under certain legislative enact-  
69 ments, each commissioner shall receive a salary of  
70 thirty-nine thousand two hundred forty dollars a year  
71 to be paid in monthly installments from the special  
72 funds in such amounts as follows:

73 (1) From the public service commission fund collected  
74 under the provisions of section six, article three of this  
75 chapter, thirty thousand two hundred ten dollars;

76 (2) From the public service commission motor carrier  
77 fund collected under the provisions of section six, article  
78 six, chapter twenty-four-a of this code, seven thousand  
79 five hundred twenty-five dollars; and

80 (3) From the public service commission gas pipeline  
81 safety fund collected under the provisions of section  
82 three, article five, chapter twenty-four-b of this code,  
83 one thousand five hundred five dollars.

84 In addition to this salary provided for all commission-  
85 ers, the chairman of the commission shall receive three  
86 thousand five hundred dollars a year to be paid in  
87 monthly installments from the public service commis-  
88 sion fund collected under the provisions of section six,  
89 article three of this chapter, on and after the first day  
90 of July, one thousand nine hundred eighty-four.

91 (e) Effective the first day of July, one thousand nine  
92 hundred eighty-five, and in light of the assignment of  
93 new, substantial additional duties embracing new areas  
94 and fields of activity under certain legislative enact-  
95 ments, each commissioner shall receive a salary of forty-  
96 one thousand dollars a year to be paid in monthly  
97 installments from the special funds in such amounts as  
98 follows:

99 (1) From the public service commission fund collected  
100 under the provisions of section six, article three of this  
101 chapter, thirty-one thousand six hundred dollars;

102 (2) From the public service commission motor carrier  
103 fund collected under the provisions of section six, article  
104 six, chapter twenty-four-a of this code, seven thousand  
105 nine hundred dollars; and

106 (3) From the public service commission gas pipeline  
107 safety fund collected under the provisions of section  
108 three, article five, chapter twenty-four-b of this code,  
109 one thousand five hundred dollars.

110 In addition to this salary provided for all commission-  
111 ers, the chairman of the commission shall receive three  
112 thousand six hundred seventy-five dollars a year to be  
113 paid in monthly installments from the public service  
114 commission fund collected under the provisions of  
115 section six, article three of this chapter, on and after the  
116 first day of July, one thousand nine hundred eighty-five.

117 (f) Effective the first day of July, one thousand nine  
118 hundred eighty-eight, and in light of the assignment of

119 new, substantial additional duties embracing new areas  
120 and fields of activity under certain legislative enact-  
121 ments, each commissioner shall receive a salary of forty-  
122 four thousand dollars a year to be paid in monthly  
123 installments from the special funds in such amounts as  
124 follows:

125 (1) From the public service commission fund collected  
126 under the provisions of section six, article three of this  
127 chapter, thirty-three thousand nine hundred dollars;

128 (2) From the public service commission motor carrier  
129 fund collected under the provisions of section six, article  
130 six, chapter twenty-four-a of this code, eight thousand  
131 five hundred dollars; and

132 (3) From the public service commission gas pipeline  
133 safety fund collected under the provisions of section  
134 three, article five, chapter twenty-four-b of this code,  
135 one thousand six hundred dollars.

136 In addition to this salary provided for all commission-  
137 ers, the chairman of the commission shall receive three  
138 thousand six hundred seventy-five dollars a year to be  
139 paid in monthly installments from the public service  
140 commission fund collected under the provisions of  
141 section six, article three of this chapter, on and after the  
142 first day of July, one thousand nine hundred eighty-  
143 eight.

144 (g) Effective the first day of January, one thousand  
145 nine hundred ninety, each commissioner shall receive  
146 the salary set forth in section two-a, article seven,  
147 chapter six of this code to be paid in monthly instal-  
148 lments from the special funds in such amounts as  
149 follows:

150 (1) From the public service commission fund collected  
151 under the provisions of section six, article three of this  
152 chapter, thirty-five thousand five hundred ninety-five  
153 dollars;

154 (2) From the public service commission motor carrier  
155 fund collected under the provisions of section six, article  
156 six, chapter twenty-four-a of this code, eight thousand  
157 nine hundred twenty-five dollars; and

158 (3) From the public service commission gas pipeline  
159 safety fund collected under the provisions of section  
160 three, article five, chapter twenty-four-b of this code,  
161 one thousand six hundred eighty dollars.

162 In addition to this salary provided for all commission-  
163 ers, the chairman of the commission shall receive three  
164 thousand eight hundred dollars a year to be paid in  
165 monthly installments from the public service commis-  
166 sion fund collected under the provisions of section six,  
167 article three of this chapter, on and after the first day  
168 of January, one thousand nine hundred ninety.

## CHAPTER 51. COURTS AND THEIR OFFICERS.

### Article

1. Supreme Court of Appeals.
2. Circuit Courts; Circuit Judges.

### ARTICLE 1. SUPREME COURT OF APPEALS.

#### §51-1-10a. Salary of justices.

1 The salary of each of the justices of the supreme court  
2 of appeals shall be fifty-five thousand dollars per year:  
3 *Provided*, That beginning the first day of January, one  
4 thousand nine hundred ninety, the salary of each of the  
5 justices of the supreme court shall be seventy-two  
6 thousand dollars per year.

### ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

#### §51-2-13. Salaries of judges of circuit courts.

1 The salaries of the judges of the various circuit courts  
2 shall be paid solely out of the state treasury. No county,  
3 county commission, board of commissioners or other  
4 political subdivision shall supplement or add to such  
5 salaries.

6 The annual salary of all circuit judges shall be fifty  
7 thousand dollars per year: *Provided*, That beginning the  
8 first day of January, one thousand nine hundred ninety,  
9 the annual salary of all circuit judges shall be sixty-five  
10 thousand dollars per year.

## CHAPTER 184

(Com. Sub. for S. B. 301—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-two, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four, article twenty-six, chapter sixteen of said code; to amend and reenact sections one, two and eight, article nine, chapter twenty of said code; to further amend said article nine by adding thereto four new sections, designated sections five-a, twelve-a, twelve-b and twelve-c; to further amend said chapter twenty by adding thereto two new articles, designated articles ten and eleven; to amend and reenact sections one and four-b, article two, chapter twenty-four of said code; to amend article two of said chapter twenty-four by adding thereto a new section, designated section one-f; and to amend article two, chapter twenty-four-a by adding thereto a new section, designated section four-a, all relating to solid and hazardous waste disposal generally; county solid waste assessment fees authorized; establishing the West Virginia solid waste management board; short title; definitions; redesignation of West Virginia resource recovery—solid waste disposal authority as the West Virginia solid waste management board; organization; appointment; qualifications; terms of office; compensation and expenses; director; designation and establishment of disposal sheds; construction and maintenance of disposal projects; loans; compliance with state and federal law; powers, duties, and responsibilities of board; power of board to collect service charges; exercise of other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights; development and designation of solid waste disposal



sheds by the board; funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department; solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance; trustee for bondholders; contents of trust agreement; remedies of bondholders and trustees; bonds and notes not a debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article; use of funds and properties by board; restrictions thereon; investment of funds by board; rentals, fees, service charges, and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies; maintenance, operation, and repair of projects; repair of damaged property; reports by board to governor and Legislature; exemption from taxation; governmental agencies authorized to convey property; gratuities and financial interest in contracts and projects prohibited; penalties; conduct of proceedings of board; regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; testimony at commission hearings; cooperation of board and enforcement agencies in the collection and disposal of abandoned appliances and motor vehicles; findings and purposes; definitions; election by county commission to assume powers and duties of the county solid waste authority; assistance to county or regional solid waste authorities; commercial solid waste facilities siting plan; facilities subject to plan; criteria; approval by West Virginia solid waste management board; effect on facilities siting; public hearings; rules and regulations; interim siting approval for commercial solid waste facilities; solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties; creation of commercial hazardous waste management siting board; purpose and legislative findings; definitions; establishment of commercial hazardous waste management facility siting board; composition; appointment; compensation; powers; rules

and procedures; effect of certification; commercial hazardous waste management facility siting fund created; fees; judicial review; remedies; short title; West Virginia recycling program; short title; findings and purpose; recycling goals; recycling plans; establishment of county recycling programs for solid waste; petition for referendum and ballot form; referendum election procedure; effect of election; establishment of state recycling programs for solid waste; procurement of recycled products; jurisdiction of commission; waiver of jurisdiction; jurisdiction of public service commission with respect to solid waste facilities; procedures for changing rates of electric, natural gas, telephone cooperatives and municipally operated public utilities; motor carrier transporting solid waste; and pass through of landfill tip fee as rate surcharge.

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

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

#### **Chapter**

- 7. County Commissions and Officers.**
- 16. Public Health.**
- 20. Natural Resources.**

**24. Public Service Commission.**

**24A. Motor Carriers of Passengers and Property for Hire.**

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 5. FISCAL AFFAIRS.**

**§7-5-22. County solid waste assessment fees authorized.**

1 Each county commission is hereby authorized to  
 2 impose a similar solid waste assessment fee to that  
 3 imposed by section five, article five-f, chapter twenty of  
 4 this code at a rate not to exceed fifty cents per ton or  
 5 part thereof upon the disposal of solid waste in that  
 6 county: *Provided*, That in counties wherein one or more  
 7 municipalities operate their own solid waste collection  
 8 programs and solid waste disposal facilities, such  
 9 municipality or municipalities shall receive one half of  
 10 the assessments collected under this section. Such  
 11 amount shall be divided pro-rata amongst said munic-  
 12 ipalities and shall be deposited in their general revenue  
 13 fund. All assessments due the county shall be applied  
 14 to the reasonable costs of administration of that county's  
 15 regional or county solid waste authority including the  
 16 necessary and reasonable expenses of its members.

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 26. WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD.**

- §16-26-1. Short title.
- §16-26-3. Definitions.
- §16-26-4. West Virginia resource recovery—solid waste disposal authority redesignated West Virginia solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board.
- §16-26-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.
- §16-26-6. Powers, duties and responsibilities of board generally.
- §16-26-7. Power of board to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.
- §16-26-8. Development and designation of solid waste disposal sheds by boards.

- §16-26-9. Expenditure of funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department.
- §16-26-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.
- §16-26-11. Trustee for bondholders; contents of trust agreement.
- §16-26-12. Legal remedies of bondholders and trustees.
- §16-26-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.
- §16-26-14. Use of funds, properties, etc., by board; restrictions thereon.
- §16-26-15. Investment of funds by board.
- §16-26-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies.
- §16-26-17. Maintenance, operation and repair of projects; repair of damaged property; reports by board to governor and Legislature.
- §16-26-19. Exemption from taxation.
- §16-26-20. Governmental agencies authorized to convey property.
- §16-26-21. Financial interest in contracts; projects, etc., prohibited; gratuities prohibited; penalty.
- §16-26-22. Conduct of proceedings of board.
- §16-26-23. Regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.
- §16-26-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.

**§16-26-1. Short title.**

- 1 This article shall be known and cited as the “West  
2 Virginia Solid Waste Management Board Act.”

**§16-26-3. Definitions.**

- 1 As used in this article, unless the context clearly  
2 requires a different meaning:
- 3 (1) “Board” means the West Virginia solid waste  
4 management board created in section four of this  
5 article, heretofore known as the West Virginia state  
6 solid waste authority, the duties, powers, responsibilities  
7 and functions of which are specified in this article. All  
8 references in this code to the West Virginia resource  
9 recovery—solid waste disposal authority shall be  
10 construed as references to the West Virginia solid waste  
11 management board.

12 (2) "Bond" or "solid waste disposal revenue bond"  
13 means a revenue bond or note issued by the West  
14 Virginia solid waste management board, heretofore  
15 known as the West Virginia resource recovery—solid  
16 waste disposal authority, to effect the intents and  
17 purposes of this article.

18 (3) "Construction" includes reconstruction, enlarge-  
19 ment, improvement and providing furnishings or  
20 equipment for a solid waste disposal project.

21 (4) "Cost" means, as applied to solid waste disposal  
22 projects, the cost of their acquisition and construction;  
23 the cost of acquisition of all land, rights-of-way,  
24 property, rights, easements, franchise rights and  
25 interests required by the board for such acquisition and  
26 construction; the cost of demolishing or removing any  
27 buildings or structures on land so acquired, including  
28 the cost of acquiring any land to which such buildings  
29 or structures may be moved; the cost of diverting  
30 highways, interchange of highways and access roads to  
31 private property, including the cost of land or easements  
32 therefor; the cost of all machinery, furnishings and  
33 equipment; all financing charges and interest prior to  
34 and during construction and for no more than eighteen  
35 months after completion of construction; the cost of all  
36 engineering services and all expenses of research and  
37 development with respect to solid waste disposal  
38 facilities; the cost of all legal services and expenses; the  
39 cost of all plans, specifications, surveys and estimates of  
40 cost and revenues; all working capital and other  
41 expenses necessary or incident to determining the  
42 feasibility or practicability of acquiring or constructing  
43 any such project; all administrative expenses and such  
44 other expenses as may be necessary or incident to the  
45 acquisition or construction of the project; the financing  
46 of such acquisition or construction, including the  
47 amount authorized in the resolution of the board  
48 providing for the issuance of solid waste disposal  
49 revenue bonds to be paid into any special funds from the  
50 proceeds of such bonds; and the financing of the placing  
51 of any such project in operation. Any obligation or  
52 expenses incurred after the effective date of this article

53 by any governmental agency, with the approval of the  
54 board, for surveys, borings, preparation of plans and  
55 specifications and other engineering services in connec-  
56 tion with the acquisition or construction of a project  
57 shall be regarded as a part of the cost of such project  
58 and shall be reimbursed out of the proceeds of loans or  
59 solid waste disposal revenue bonds as authorized by the  
60 provisions of this article.

61 (5) "Governmental agency" means the state govern-  
62 ment or any agency, department, division or unit  
63 thereof; counties; municipalities; watershed improve-  
64 ment districts; soil conservation districts; sanitary  
65 districts; public service districts; drainage districts;  
66 regional governmental authorities and any other  
67 governmental agency, entity, political subdivision,  
68 public corporation or agency having the authority to  
69 acquire, construct or operate solid waste disposal  
70 facilities; the United States government or any agency,  
71 department, division or unit thereof; and any agency,  
72 commission or authority established pursuant to an  
73 interstate compact or agreement.

74 (6) "Industrial waste" means any solid waste sub-  
75 stance resulting from or incidental to any process of  
76 industry, manufacturing, trade or business, or from or  
77 incidental to the development, processing or recovery of  
78 any natural resource.

79 (7) "Owner" includes all persons, partnerships or  
80 governmental agencies having any title or interest in  
81 any property rights, easements and interests authorized  
82 to be acquired by this article.

83 (8) "Person" means any public or private corporation,  
84 institution, association, firm or company organized or  
85 existing under the laws of this or any other state or  
86 country; the United States or the state of West Virginia;  
87 governmental agency; political subdivision; county  
88 commission; municipality; industry; sanitary district;  
89 public service district; drainage district; soil conserva-  
90 tion district; solid waste disposal shed district; partner-  
91 ship; trust; estate; individual; group of individuals

92 acting individually or as a group; or any other legal  
93 entity whatever.

94 (9) "Pollution" means the discharge, release, escape or  
95 deposit, directly or indirectly, of solid waste of whatever  
96 kind or character, on lands or in waters in the state in  
97 an uncontrolled, unregulated or unapproved manner.

98 (10) "Revenue" means any money or thing of value  
99 collected by, or paid to, the West Virginia solid waste  
100 management board as rent, use fee, service charge or  
101 other charge for use of, or in connection with, any solid  
102 waste disposal project, or as principal of or interest,  
103 charges or other fees on loans, or any other collections  
104 on loans made by the West Virginia solid waste  
105 management board to governmental agencies to finance  
106 in whole or in part the acquisition or construction of any  
107 solid waste development project or projects, or other  
108 money or property which is received and may be  
109 expended for or pledged as revenues pursuant to this  
110 article.

111 (11) "Solid waste" means all putrescible and nonpu-  
112 trescible solid waste substances, except human excreta,  
113 including, but not limited to, garbage, rubbish, ashes,  
114 incinerator residue, street refuse, dead animals, demo-  
115 lition and construction waste, vehicles and parts thereof,  
116 tires, appliances, sewage plant sludge, commercial and  
117 industrial waste and special waste, including, but not  
118 limited to, explosives, pathological waste and radioac-  
119 tive material, except those commercial and industrial  
120 wastes and special wastes which are under the control  
121 of the department of natural resources, the department  
122 of energy or the West Virginia air pollution control  
123 commission, or both, or of the United States  
124 government.

125 (12) "Solid waste disposal facility" means any method,  
126 system or facility to collect, transport, treat, neutralize,  
127 dispose of, stabilize, segregate, recover, recycle or hold  
128 solid waste, including, without limiting, the generality  
129 of the foregoing, the equipment, furnishings and  
130 appurtenances thereof.

131 (13) "Solid waste disposal project" or "project" means

132 any solid waste disposal facility the acquisition or  
133 construction of which is authorized by the West Virginia  
134 solid waste management board or any acquisition or  
135 construction which is financed in whole or in part from  
136 funds made available by grant or loan by, or through,  
137 the board as provided in this article, including all  
138 buildings and facilities which the board deems neces-  
139 sary for the operation of the project, together with all  
140 property, rights, easements and interests which may be  
141 required for the operation of the project.

142 (14) "Solid waste disposal shed" or "shed" means a  
143 geographical area which the West Virginia solid waste  
144 management board designates as provided in section  
145 eight of this article for solid waste management.

**§16-26-4. West Virginia resource recovery—solid waste disposal authority redesignated West Virginia solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board.**

1 The West Virginia resource recovery—solid waste  
2 disposal authority is hereby continued in all respects as  
3 heretofore constituted but is hereafter designated and  
4 shall be known as the West Virginia solid waste  
5 management board. All references in this code to the  
6 West Virginia resource recovery—solid waste disposal  
7 authority shall be construed as references to the West  
8 Virginia solid waste management board. The board is  
9 a governmental instrumentality of the state and a body  
10 corporate. The exercise by the board of the powers  
11 conferred on it by this article and the carrying out of  
12 its purposes and duties are essential governmental  
13 functions and are for a public purpose.

14 The board shall be composed of seven members. The  
15 director of the department of health and the director of  
16 the department of natural resources, or their designees,  
17 shall be members ex officio of the board. The other five  
18 members of the board shall be appointed by the  
19 governor, on the effective date of this section, by and



20 with the advice and consent of the Senate, for terms of  
21 one, two, three, four and five years, respectively. Two  
22 appointees shall be persons having at least three years  
23 of professional experience in solid waste management,  
24 civil engineering or regional planning and three  
25 appointees shall be representatives of the general public.  
26 The successor of each such appointed member shall be  
27 appointed for a term of five years in the same manner  
28 the original appointments were made and so that the  
29 representation on the board as set forth in this section  
30 is preserved, except that any person appointed to fill a  
31 vacancy occurring prior to the expiration of the term for  
32 which his predecessor was appointed shall be appointed  
33 only for the remainder of such term. Each board  
34 member shall serve until the appointment and qualifi-  
35 cation of his successor.

36 No more than three of the appointed board members  
37 may at any one time be from the same congressional  
38 district or belong to the same political party. No  
39 appointed board member may be an officer or employee  
40 of the United States or this state. Appointed board  
41 members may be reappointed to serve additional terms.  
42 All members of the board shall be citizens of the state.  
43 Each appointed member of the board, before entering  
44 upon his duties, shall comply with the requirements of  
45 article one, chapter six of this code and give bond in the  
46 sum of twenty-five thousand dollars. Appointed  
47 members may be removed from the board only for the  
48 same causes as elective state officers may be removed.

49 Annually the board shall elect one of its appointed  
50 members as chairman, another as vice chairman and  
51 appoint a secretary-treasurer, who need not be a  
52 member of the board. Four members of the board shall  
53 constitute a quorum and the affirmative vote of four  
54 members shall be necessary for any action taken by vote  
55 of the board. No vacancy in the membership of the  
56 board shall impair the rights of a quorum by such vote  
57 to exercise all the rights and perform all the duties of  
58 the board. The person appointed as secretary-treasurer  
59 shall give bond in the sum of fifty thousand dollars. If  
60 a board member is appointed as secretary-treasurer, he

61 shall give bond in the sum of twenty-five thousand  
62 dollars in addition to the bond required in the preceding  
63 paragraph.

64 The ex officio members of the board shall not receive  
65 any compensation for serving as a board member. Each  
66 of the five appointed members of the board shall receive  
67 compensation of fifty dollars for each day actually spent  
68 in attending meetings of the board or in the discharge  
69 of his duties as a member of the board, but not to exceed  
70 two thousand five hundred dollars in any fiscal year.  
71 Each of the seven board members shall be reimbursed  
72 for all reasonable and necessary expenses actually  
73 incurred in the performance of his duties as a member  
74 of the board. All such compensation and expenses  
75 incurred by board members shall be payable solely from  
76 funds of the board or from funds appropriated for such  
77 purpose by the Legislature and no liability or obligation  
78 shall be incurred by the board beyond the extent to  
79 which moneys are available from funds of the board or  
80 from such appropriation.

81 The board shall meet at least four times annually and  
82 at any time upon the call of its chairman or upon the  
83 request in writing to the chairman of four board  
84 members.

85 The board shall appoint a director as its chief  
86 executive officer. The director shall have successfully  
87 completed an undergraduate education and, in addition,  
88 shall have two years of professional experience in solid  
89 waste management, civil engineering, public adminis-  
90 tration or regional planning.

**§16-26-5. Board to designate and establish disposal sheds;  
construction, maintenance, etc., of disposal  
projects; loan agreements; compliance with  
federal and state law.**

1 To accomplish the public policy and purpose and to  
2 meet the responsibility of the state as set forth in this  
3 article, the West Virginia solid waste management  
4 board shall designate and establish solid waste disposal  
5 sheds and it may initiate, acquire, construct, maintain,  
6 repair and operate solid waste disposal projects or cause

7 the same to be operated pursuant to a lease, sublease or  
8 agreement with any person or governmental agency;  
9 may make loans and grants to persons and to govern-  
10 mental agencies for the acquisition or construction of  
11 solid waste disposal projects by such persons and  
12 governmental agencies; and may issue solid waste  
13 disposal revenue bonds of this state, payable solely from  
14 revenues, to pay the cost of, or finance, in whole or in  
15 part, by loans to governmental agencies, such projects.  
16 A solid waste disposal project shall not be undertaken  
17 unless the board determines that the project is consist-  
18 ent with federal law, with its solid waste disposal shed  
19 plan, with the standards set by the state water resources  
20 board and the division of water resources of the  
21 department of natural resources for any waters of the  
22 state which may be affected thereby, with the air  
23 quality standards set by the West Virginia air pollution  
24 control commission and with health standards set by the  
25 department of health. Any resolution of the board  
26 providing for acquiring or constructing such projects or  
27 for making a loan or grant for such projects shall  
28 include a finding by the board that such determinations  
29 have been made. A loan agreement shall be entered into  
30 between the board and each governmental agency to  
31 which a loan is made for the acquisition or construction  
32 of a solid waste disposal project, which loan agreement  
33 shall include, without limitation, the following provisions:

34 (1) The cost of such project, the amount of the loan,  
35 the terms of repayment of such loan and the security  
36 therefor, which may include, in addition to the pledge  
37 of all revenues from such project after a reasonable  
38 allowance for operation and maintenance expenses, a  
39 deed of trust or other appropriate security instrument  
40 creating a lien on such project;

41 (2) The specific purposes for which the proceeds of the  
42 loan shall be expended, the procedures as to the  
43 disbursement of loan proceeds and the duties and  
44 obligations imposed upon the governmental agency in  
45 regard to the construction or acquisition of the project;

46 (3) The agreement of the governmental agency to  
47 impose, collect, and, if required to repay the obligations

48 of such governmental agency under the loan agreement,  
49 increase service charges from persons using said  
50 project, which service charges shall be pledged for the  
51 repayment of such loan together with all interest, fees  
52 and charges thereon and all other financial obligations  
53 of such governmental agency under the loan agreement;  
54 and

55 (4) The agreement of the governmental agency to  
56 comply with all applicable laws, rules and regulations  
57 issued by the board or other state, federal and local  
58 bodies in regard to the construction, operation, mainte-  
59 nance and use of the project.

60 The board shall comply with all of the provisions of  
61 federal law and of article one of this chapter and any  
62 rules and regulations promulgated thereunder which  
63 pertain to solid waste collection and disposal.

**§16-26-6. Powers, duties and responsibilities of board  
generally.**

1 The West Virginia solid waste management board  
2 may exercise all powers necessary or appropriate to  
3 carry out and effectuate its corporate purpose. The  
4 board may:

5 (1) Adopt, and from time to time, amend and repeal  
6 bylaws necessary and proper for the regulation of its  
7 affairs and the conduct of its business, and rules and  
8 regulations, promulgated pursuant to the provisions of  
9 chapter twenty-nine-a of this code, to implement and  
10 make effective its powers and duties.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office which shall be in  
13 Kanawha County, and, if necessary, regional suboffices  
14 at locations properly designated or provided.

15 (4) Sue and be sued in its own name and plead and  
16 be impleaded in its own name, and particularly to  
17 enforce the obligations and covenants made under  
18 sections ten, eleven and sixteen of this article. Any  
19 actions against the board shall be brought in the circuit  
20 court of Kanawha County.

- 21       (5) Make loans and grants to persons and to govern-  
22       mental agencies for the acquisition or construction of  
23       solid waste disposal projects and adopt rules and  
24       procedures for making such loans and grants.
- 25       (6) Acquire, construct, reconstruct, enlarge, improve,  
26       furnish, equip, maintain, repair, operate, lease or rent  
27       to, or contract for operation by a governmental agency  
28       or person, solid waste disposal projects, and, in accor-  
29       dance with chapter twenty-nine-a of this code, adopt  
30       rules and regulations for the use of such projects.
- 31       (7) Make available the use or services of any solid  
32       waste disposal project to one or more persons, one or  
33       more governmental agencies, or any combination  
34       thereof.
- 35       (8) Issue solid waste disposal revenue bonds and notes  
36       and solid waste disposal revenue refunding bonds of the  
37       state, payable solely from revenues as provided in  
38       section nine of this article unless the bonds are refunded  
39       by refunding bond, for the purpose of paying all or any  
40       part of the cost of or financing by loans to governmental  
41       agencies one or more solid waste disposal projects or  
42       parts thereof.
- 43       (9) Acquire by gift or purchase, hold and dispose of  
44       real and personal property in the exercise of its powers  
45       and the performance of its duties as set forth in this  
46       article.
- 47       (10) Acquire in the name of the state, by purchase or  
48       otherwise, on such terms and in such manner as it  
49       deems proper, or by the exercise of the right of eminent  
50       domain in the manner provided in chapter fifty-four of  
51       this code, such public or private lands, or parts thereof  
52       or rights therein, rights-of-way, property, rights,  
53       easements and interests it deems necessary for carrying  
54       out the provisions of this article, but excluding the  
55       acquisition by the exercise of the right of eminent  
56       domain of any solid waste disposal facility operated  
57       under permits issued pursuant to the provisions of  
58       article five-f, chapter twenty of this code and owned by  
59       any person or governmental agency. This article does  
60       not authorize the board to take or disturb property or

61 facilities belonging to any public utility or to a common  
62 carrier, which property or facilities are required for the  
63 proper and convenient operation of such public utility  
64 or common carrier, unless provision is made for the  
65 restoration, relocation or duplication of such property or  
66 facilities elsewhere at the sole cost of the board.

67 (11) Make and enter into all contracts and agreements  
68 and execute all instruments necessary or incidental to  
69 the performance of its duties and the execution of its  
70 powers. When the cost under any such contract or  
71 agreement, other than compensation for personal  
72 services, involves an expenditure of more than two  
73 thousand dollars, the board shall make a written  
74 contract with the lowest responsible bidder after public  
75 notice published as a Class II legal advertisement in  
76 compliance with the provisions of article three, chapter  
77 fifty-nine of this code, the publication area for such  
78 publication to be the county wherein the work is to be  
79 performed or which is affected by the contract, which  
80 notice shall state the general character of the work and  
81 the general character of the materials to be furnished,  
82 the place where plans and specifications therefor may  
83 be examined and the time and place of receiving bids.  
84 A contract or lease for the operation of a solid waste  
85 disposal project constructed and owned by the board or  
86 an agreement for cooperation in the acquisition or  
87 construction of a solid waste disposal project pursuant  
88 to section sixteen of this article is not subject to the  
89 foregoing requirements and the board may enter into  
90 such contract or lease or such agreement pursuant to  
91 negotiation and upon such terms and conditions and for  
92 such period as it finds to be reasonable and proper  
93 under the circumstances and in the best interests of  
94 proper operation or of efficient acquisition or construc-  
95 tion of such project. The board may reject any and all  
96 bids. A bond with good and sufficient surety, approved  
97 by the board, shall be required of all contractors in an  
98 amount equal to at least fifty percent of the contract  
99 price, conditioned upon the faithful performance of the  
100 contract.

101 (12) Employ managers, superintendents, engineers,

102 accountants, auditors and other employees, and retain or  
103 contract with consulting engineers, financial consul-  
104 tants, accounting experts, architects, attorneys and such  
105 other consultants and independent contractors as are  
106 necessary in its judgment to carry out the provisions of  
107 this article, and fix the compensation or fees thereof. All  
108 expenses thereof shall be payable solely from the  
109 proceeds of solid waste disposal revenue bonds or notes  
110 issued by the board, from revenues and from funds  
111 appropriated for such purpose by the Legislature.

112 (13) Receive and accept from any federal agency,  
113 subject to the approval of the governor, grants for or in  
114 aid of the construction of any solid waste disposal project  
115 or for research and development with respect to solid  
116 waste disposal projects and solid waste disposal sheds  
117 and receive and accept from any source aid or contri-  
118 butions of money, property, labor or other things of  
119 value, to be held, used and applied only for the purposes  
120 for which such grants and contributions are made.

121 (14) Engage in research and development with  
122 respect to solid waste disposal projects and solid waste  
123 disposal sheds.

124 (15) Purchase fire and extended coverage and liability  
125 insurance for any solid waste disposal project and for  
126 the principal office and suboffices of the board, insu-  
127 rance protecting the board and its officers and em-  
128 ployees against liability, if any, for damage to property  
129 or injury to or death of persons arising from its  
130 operations and any other insurance the board may agree  
131 to provide under any resolution authorizing the issuance  
132 of solid waste disposal revenue bonds or in any trust  
133 agreement securing the same.

134 (16) Charge, alter and collect rentals and other  
135 charges for the use or services of any solid waste  
136 disposal project as provided in this article, and charge  
137 and collect reasonable interest, fees and other charges  
138 in connection with the making and servicing of loans to  
139 governmental agencies in furtherance of the purposes of  
140 this article.

141 (17) Establish or increase reserves from moneys

142 received or to be received by the board to secure or to  
143 pay the principal of and interest on the bonds and notes  
144 issued by the board pursuant to this article.

145 (18) Do all acts necessary and proper to carry out the  
146 powers expressly granted to the board in this article.

**§16-26-7. Power of board to collect service charges and  
exercise other powers of governmental agen-  
cies in event of default; power to require  
governmental agencies to enforce their  
rights.**

1 In order to ensure that the public purposes to be  
2 served by the board may be properly carried out and  
3 in order to assure the timely payment to the board of  
4 all sums due and owing under loan agreements with  
5 governmental agencies, as referred to in section five of  
6 this article, notwithstanding any provision to the  
7 contrary elsewhere contained in this code, in event of  
8 any default by a governmental agency under such a loan  
9 agreement, the board shall have, and may, at its option,  
10 exercise the following rights and remedies in addition  
11 to the rights and remedies conferred by law or pursuant  
12 to said loan agreement:

13 (1) The board may directly impose, in its own name  
14 and for its own benefit, service charges determined by  
15 it to be necessary under the circumstances upon all  
16 users of the solid waste disposal project to be acquired  
17 or constructed pursuant to such loan agreement, and  
18 proceed directly to enforce and collect such service  
19 charges, together with all necessary costs of such  
20 enforcement and collection.

21 (2) The board may exercise, in its own name or in the  
22 name of and as agent for the governmental agency, all  
23 of the rights, board, powers and remedies of the  
24 governmental agency with respect to the solid waste  
25 disposal project or which may be conferred upon the  
26 governmental agency by statute, rule, regulation or  
27 judicial decision, including, without limitation, all rights  
28 and remedies with respect to users of such solid waste  
29 disposal project.



30 (3) The board may, by civil action, mandamus or  
31 other judicial or administrative proceeding, compel  
32 performance by such governmental agency of all of the  
33 terms and conditions of such loan agreement including,  
34 without limitation, the adjustment and increase of  
35 service charges as required to repay the loan or  
36 otherwise satisfy the terms of such loan agreement, the  
37 enforcement and collection of such service charges and  
38 the enforcement by such governmental agency of all  
39 rights and remedies conferred by statute, rule, regula-  
40 tion or judicial decision.

**§16-26-8. Development and designation of solid waste disposal sheds by board.**

1 The board shall maintain the division of the state into  
2 geographical areas for solid waste management which  
3 shall be known as solid waste disposal sheds. The board  
4 may, from time to time, modify the boundaries of such  
5 sheds in a manner consistent with the provisions of this  
6 section. Before it modifies the sheds, the board shall  
7 consult with the affected municipalities and county or  
8 regional solid waste authorities and obtain and evaluate  
9 their opinions as to how many sheds there should be and  
10 where their boundaries should be located. The board  
11 shall then cause feasibility and cost studies to be made  
12 in order for it to designate the solid waste disposal sheds  
13 within each of which the most dependable, effective,  
14 efficient and economical solid waste disposal projects  
15 may be established. The sheds shall not overlap and  
16 shall cover the entire state.

17 The board shall designate the sheds so that:

18 (1) The goal of providing solid waste collection and  
19 disposal service to each household, business and industry  
20 in the state can reasonably be achieved.

21 (2) The total cost of solid waste collection and disposal  
22 and the cost of solid waste collection and disposal within  
23 each shed and per person can be kept as low as possible.

24 (3) Solid waste collection and disposal service, facil-  
25 ities and projects can be integrated in the most feasible,  
26 dependable, effective, efficient and economical manner.

27 (4) No county is located in more than one shed:  
28 *Provided*, That the board may divide a county among  
29 two or more sheds upon request of the appropriate  
30 county or regional solid waste authority.

31 The board, in modifying the boundaries of solid waste  
32 disposal sheds, is exempt from the provisions of chapter  
33 twenty-nine-a.

**§16-26-9. Expenditure of funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department.**

1 With the approval of the board, the director of the  
2 department of health shall expend out of any funds  
3 available for the purpose such moneys as are necessary  
4 for the study and engineering of any proposed solid  
5 waste disposal project and may use its employees and  
6 consultants for that purpose. All such expenses incurred  
7 by the director of the department of health prior to the  
8 issuance of solid waste disposal revenue bonds or notes  
9 under this article shall be paid by him and charged to  
10 the appropriate solid waste disposal project. The  
11 director of the department of health shall keep proper  
12 records and accounts showing the amounts so charged.  
13 Upon the sale of solid waste disposal revenue bonds or  
14 notes for a solid waste disposal project, the moneys so  
15 expended by the director of the department of health  
16 with the approval of the board in connection with such  
17 project shall be repaid to the department of health from  
18 the proceeds of such bonds or notes.

**§16-26-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.**

1 The board is hereby empowered to issue, from time  
2 to time, solid waste disposal revenue bonds and notes of  
3 the state in such principal amounts as the board deems  
4 necessary to pay the cost of or finance in whole or in  
5 part by loans to governmental agencies, one or more  
6 solid waste development projects, but the aggregate  
7 amount of all issues of bonds and notes outstanding at

8 one time for all projects authorized hereunder shall not  
9 exceed that amount capable of being serviced by  
10 revenues received from such projects, and shall not  
11 exceed in the aggregate the sum of fifty million dollars.

12 The board may, from time to time, issue renewal  
13 notes, issue bonds to pay such notes and whenever it  
14 deems refunding expedient, refund any bonds by the  
15 issuance of solid waste disposal revenue refunding bonds  
16 of the state. Except as may otherwise be expressly  
17 provided in this article or by the board, every issue of  
18 its bonds or notes shall be obligations of the board  
19 payable out of the revenues and reserves created for  
20 such purposes by the board, which are pledged for such  
21 payment, without preference or priority of the first  
22 bonds issued, subject only to any agreements with the  
23 holders of particular bonds or notes pledging any  
24 particular revenues. Such pledge shall be valid and  
25 binding from the time the pledge is made and the  
26 revenue so pledged and thereafter received by the board  
27 shall immediately be subject to the lien of such pledge  
28 without any physical delivery thereof or further act and  
29 the lien of any such pledge shall be valid and binding  
30 as against all parties having claims of any kind in tort,  
31 contract or otherwise against the board irrespective of  
32 whether such parties have notice thereof. All such bonds  
33 and notes shall have all the qualities of negotiable  
34 instruments.

35 The bonds and notes shall be authorized by resolution  
36 of the board, shall bear such dates and shall mature at  
37 such times, in the case of any such note or any renewals  
38 thereof not exceeding five years from the date of issue  
39 of such original note, and in the case of any such bond  
40 not exceeding fifty years from the date of issue, as such  
41 resolution may provide. The bonds and notes shall bear  
42 interest at such rate, be in such denominations, be in  
43 such form, either coupon or registered, carry such  
44 registration privileges, be payable in such medium of  
45 payment, at such place and be subject to such terms of  
46 redemption as the board may authorize. The board may  
47 sell such bonds and notes at public or private sale, at  
48 the price the board determines. The bonds and notes

49 shall be executed by the chairman and vice chairman  
50 of the board, both of whom may use facsimile signa-  
51 tures. The official seal of the board or a facsimile thereof  
52 shall be affixed thereto or printed thereon and attested,  
53 manually or by facsimile signature, by the secretary-  
54 treasurer of the board, and any coupons attached thereto  
55 shall bear the signature or facsimile signature of the  
56 chairman of the board. In case any officer whose  
57 signature, or a facsimile of whose signature, appears on  
58 any bonds, notes or coupons ceases to be such officer  
59 before delivery of such bonds or notes, such signature  
60 or facsimile is nevertheless sufficient for all purposes  
61 the same as if he had remained in office until such  
62 delivery and, in case the seal of the board has been  
63 changed after a facsimile has been imprinted on such  
64 bonds or notes, such facsimile seal will continue to be  
65 sufficient for all purposes.

66 Any resolution authorizing any bonds or notes or any  
67 issue thereof may contain provisions (subject to such  
68 agreements with bondholders or noteholders as may  
69 then exist, which provisions shall be a part of the  
70 contract with the holders thereof) as to pledging all or  
71 any part of the revenues of the board to secure the  
72 payment of the bonds or notes or of any issue thereof;  
73 the use and disposition of revenues of the board; a  
74 covenant to fix, alter and collect rentals, fees, service  
75 charges and other charges so that pledged revenues will  
76 be sufficient to pay the costs of operation, maintenance  
77 and repairs, pay principal of and interest on bonds or  
78 notes secured by the pledge of such revenues and  
79 provide such reserves as may be required by the  
80 applicable resolution or trust agreement; the setting  
81 aside of reserve funds, sinking funds or replacement and  
82 improvement funds and the regulation and disposition  
83 thereof; the crediting of the proceeds of the sale of bonds  
84 or notes to and among the funds referred to or provided  
85 for in the resolution authorizing the issuance of the  
86 bonds or notes; the use, lease, sale or other disposition  
87 of any solid waste disposal project or any other assets  
88 of the board; limitations on the purpose to which the  
89 proceeds of sale of bonds or notes may be applied and  
90 pledging such proceeds to secure the payment of the

91 bonds or notes or of any issue thereof; agreement of the  
92 board to do all things necessary for the authorization,  
93 issuance and sale of bonds in such amounts as may be  
94 necessary for the timely retirement of notes issued in  
95 anticipation of the issuance of bonds; limitations on the  
96 issuance of additional bonds or notes; the terms upon  
97 which additional bonds or notes may be issued and  
98 secured; the refunding of outstanding bonds or notes; the  
99 procedure, if any, by which the terms of any contract  
100 with bondholders or noteholders may be amended or  
101 abrogated, the holders of which must consent thereto,  
102 and the manner in which such consent may be given;  
103 limitations on the amount of moneys to be expended by  
104 the board for operating, administrative or other  
105 expenses of the board; securing any bonds or notes by  
106 a trust agreement; and any other matters, of like or  
107 different character, which in any way affect the security  
108 or protection of the bonds or notes.

109 In the event that the sum of all reserves pledged to  
110 the payment of such bonds or notes shall be less than  
111 the minimum reserve requirements established in any  
112 resolution or resolutions authorizing the issuance of such  
113 bonds or notes, the chairman of the board shall certify,  
114 on or before the first day of December of each year, the  
115 amount of such deficiency to the governor of the state,  
116 for inclusion, if the governor shall so elect, of the amount  
117 of such deficiency in the budget to be submitted to the  
118 next session of the Legislature for appropriation to the  
119 board to be pledged for payment of such bonds or notes:  
120 *Provided*, That the Legislature shall not be required to  
121 make any appropriation so requested, and the amount  
122 of such deficiencies shall not constitute a debt or liability  
123 of the state.

124 Neither the members of the board nor any person  
125 executing the bonds or notes shall be liable personally  
126 on the bonds or notes or be subject to any personal  
127 liability or accountability by reason of the issuance  
128 thereof.

**§16-26-11. Trustee for bondholders; contents of trust agreement.**

1 In the discretion of the board, any solid waste disposal  
2 revenue bonds or notes or solid waste disposal revenue  
3 refunding bonds issued by the board under this article  
4 may be secured by a trust agreement between the board  
5 and a corporate trustee, which trustee may be any trust  
6 company or banking institution having the powers of a  
7 trust company within or without this state.

8 Any such trust agreement may pledge or assign  
9 revenues of the board to be received, but shall not  
10 convey or mortgage any solid waste disposal project or  
11 any part thereof. Any such trust agreement or any  
12 resolution providing for the issuance of such bonds or  
13 notes may contain such provisions for protecting and  
14 enforcing the rights and remedies of the bondholders or  
15 noteholders as are reasonable and proper and not in  
16 violation of law, including the provisions contained in  
17 section nine of this article, covenants setting forth the  
18 duties of the board in relation to the acquisition of  
19 property, the construction, improvement, maintenance,  
20 repair, operation and insurance of the solid waste  
21 disposal project, the cost of which is paid in whole or  
22 in part from the proceeds of such bonds or notes, the  
23 rentals or other charges to be imposed for the use or  
24 services of any solid waste disposal project, provisions  
25 with regard to the payment of the principal of and  
26 interest, charges and fees on loans made to governmen-  
27 tal agencies from the proceeds of such bonds or notes,  
28 the custody, safeguarding, and application of all moneys  
29 and provisions for the employment of consulting  
30 engineers in connection with the construction or  
31 operation of such solid waste disposal project. Any  
32 banking institution or trust company incorporated  
33 under the laws of this state which may act as depository  
34 of the proceeds of bonds or notes or of revenues shall  
35 furnish such indemnifying bonds or pledge such  
36 securities as are required by the board. Any such trust  
37 agreement may set forth the rights and remedies of the  
38 bondholders and noteholders and of the trustee and may  
39 restrict individual rights of action by bondholders and  
40 noteholders as customarily provided in trust agreements  
41 or trust indentures securing similar bonds. Such trust  
42 agreement may contain such other provisions as the

43 board deems reasonable and proper for the security of  
44 the bondholders or noteholders. All expenses incurred in  
45 carrying out the provisions of any such trust agreement  
46 may be treated as a part of the cost of the operation of  
47 the solid waste disposal project. Any such trust agree-  
48 ment or resolution authorizing the issuance of solid  
49 waste disposal revenue bonds may provide the method  
50 whereby the general administrative overhead expenses  
51 of the board shall be allocated among the several  
52 projects acquired or constructed by it as a factor of the  
53 operating expenses of each such project.

**§16-26-12. Legal remedies of bondholders and trustees.**

1 Any holder of solid waste disposal revenue bonds  
2 issued under the authority of this article or any of the  
3 coupons appertaining thereto and the trustee under any  
4 trust agreement, except to the extent the rights given  
5 by this article may be restricted by the applicable  
6 resolution or such trust agreement, may by civil action,  
7 mandamus or other proceeding, protect and enforce any  
8 rights granted under the laws of this state or granted  
9 under this article, by the trust agreement or by the  
10 resolution authorizing the issuance of such bonds, and  
11 may enforce and compel the performance of all duties  
12 required by this article, or by the trust agreement or  
13 resolution, to be performed by the board or any officer  
14 or employee thereof, including the fixing, charging and  
15 collecting of sufficient rentals, fees, service charges or  
16 other charges.

**§16-26-13. Bonds and notes not debt of state, county,  
municipality or of any political subdivision;  
expenses incurred pursuant to article.**

1 Solid waste disposal revenue bonds and notes and solid  
2 waste disposal revenue refunding bonds issued under  
3 authority of this article and any coupons in connection  
4 therewith shall not constitute a debt or a pledge of the  
5 faith and credit or taxing power of this state or of any  
6 county, municipality or any other political subdivision  
7 of this state, and the holders or owners thereof shall  
8 have no right to have taxes levied by the Legislature or  
9 taxing authority of any county, municipality or any

10 other political subdivision of this state for the payment  
11 of the principal thereof or interest thereon, but such  
12 bonds and notes shall be payable solely from the  
13 revenues and funds pledged for their payment as  
14 authorized by this article unless the notes are issued in  
15 anticipation of the issuance of bonds or the bonds are  
16 refunded by refunding bonds issued under authority of  
17 this article, which bonds or refunding bonds shall be  
18 payable solely from revenues and funds pledged for  
19 their payment as authorized by this article. All such  
20 bonds and notes shall contain on the face thereof a  
21 statement to the effect that the bonds or notes, as to both  
22 principal and interest, are not debts of the state or any  
23 county, municipality or political subdivision thereof, but  
24 are payable solely from revenues and funds pledged for  
25 their payment.

26 All expenses incurred in carrying out the provisions  
27 of this article shall be payable solely from funds  
28 provided under authority of this article. This article  
29 does not authorize the board to incur indebtedness or  
30 liability on behalf of or payable by the state or any  
31 county, municipality or political subdivision thereof.

**§16-26-14. Use of funds, properties, etc., by board;  
restrictions thereon.**

1 All moneys, properties and assets acquired by the  
2 board, whether as proceeds from the sale of solid waste  
3 disposal revenue bonds or as revenues or otherwise, shall  
4 be held by it in trust for the purposes of carrying out  
5 its powers and duties, and shall be used and reused in  
6 accordance with the purposes and provisions of this  
7 article. Such moneys shall at no time be commingled  
8 with other public funds. Such moneys, except as  
9 otherwise provided in any resolution authorizing the  
10 issuance of solid waste disposal revenue bonds or in any  
11 trust agreement securing the same, or except when  
12 invested pursuant to section fifteen of this article, shall  
13 be kept in appropriate depositories and secured as  
14 provided and required by law. The resolution authoriz-  
15 ing the issuance of such bonds of any issue or the trust  
16 agreement securing such bonds shall provide that any  
17 officer to whom, or any banking institution or trust



18 company to which, such moneys are paid shall act as  
19 trustee of such moneys and hold and apply them for the  
20 purposes hereof, subject to the conditions this article and  
21 such resolution or trust agreement provide.

**§16-26-15. Investment of funds by board.**

1 The board is hereby authorized and empowered to  
2 invest any funds not needed for immediate disbursement  
3 in any of the following securities:

4 (1) Direct obligations of or obligations guaranteed by  
5 the United States of America;

6 (2) Bonds, debentures, notes or other evidences of  
7 indebtedness issued by any of the following agencies:  
8 Banks for cooperatives; federal intermediate credit  
9 banks; federal home loan bank system; Export-Import  
10 Bank of the United States; federal land banks; the  
11 Federal National Mortgage Association or the Govern-  
12 ment National Mortgage Association;

13 (3) Public housing bonds issued by public agencies or  
14 municipalities and fully secured as to the payment of  
15 both principal and interest by a pledge of annual  
16 contributions under any annual contributions contract  
17 or contracts with the United States of America; or  
18 temporary notes issued by public agencies or municipal-  
19 ities or preliminary loan notes issued by public agencies  
20 or municipalities, in each case, fully secured as to the  
21 payment of both principal and interest by a requisition  
22 or payment agreement with the United States of  
23 America;

24 (4) Certificates of deposit secured by obligations of the  
25 United States of America;

26 (5) Direct obligations of or obligations guaranteed by  
27 the state of West Virginia; or

28 (6) Direct and general obligations of any other state  
29 within the territorial United States, to the payment of  
30 the principal of and interest on which the full faith and  
31 credit of such state is pledged: *Provided*, That at the  
32 time of their purchase, such obligations are rated in  
33 either of the two highest rating categories by a  
34 nationally recognized bond-rating agency.

35 Funds of the board in excess of current needs, except  
36 as otherwise provided in any resolution authorizing the  
37 issuance of its solid waste disposal revenue bonds or in  
38 any trust agreement securing the same, may be invested  
39 by the board in any security or securities in which the  
40 West Virginia state board of investments is authorized  
41 to invest under sections nine and ten, article six, chapter  
42 twelve of this code, except those securities specified in  
43 subsections (f) and (g) of said section nine. Income from  
44 all such investments of moneys in any fund shall be  
45 credited to such funds as the board determines, subject  
46 to the provisions of any such resolution or trust  
47 agreement and such investments may be sold at such  
48 times as the board determines.

**§16-26-16. Rentals, fees, service charges and other  
revenues from solid waste disposal pro-  
jects; contracts and leases of board; coop-  
eration of other governmental agencies;  
bonds of such agencies.**

1 This section shall apply to any solid waste disposal  
2 project or projects which are owned in whole or in part  
3 by the board.

4 The board may charge, alter and collect rentals, fees,  
5 service charges or other charges for the use or services  
6 of any solid waste disposal project, and contract in the  
7 manner provided by this section with one or more  
8 persons, one or more governmental agencies, or any  
9 combination thereof, desiring the use or services thereof,  
10 and fix the terms, conditions, rentals, fees, service  
11 charges or other charges for such use or services. Such  
12 rentals, fees, service charges or other charges shall not  
13 be subject to supervision or regulation by any other  
14 authority, department, commission, board, bureau or  
15 agency of the state, and such contract may provide for  
16 acquisition by such person or governmental agency of  
17 all or any part of such solid waste disposal project for  
18 such consideration payable over the period of the  
19 contract or otherwise as the board in its sole discretion  
20 determines to be appropriate, but subject to the

21 provisions of any resolution authorizing the issuance of  
22 solid waste disposal revenue bonds or notes or solid  
23 waste disposal revenue refunding bonds of the board or  
24 any trust agreement securing the same. Any govern-  
25 mental agency which has power to construct, operate  
26 and maintain solid waste disposal facilities may enter  
27 into a contract or lease with the board whereby the use  
28 or services of any solid waste disposal project of the  
29 board will be made available to such governmental  
30 agency and pay for such use or services such rentals,  
31 fees, service charges or other charges as may be agreed  
32 to by such governmental agency and the board.

33 Any governmental agency or agencies or combination  
34 thereof may cooperate with the board in the acquisition  
35 or construction of a solid waste disposal project and shall  
36 enter into such agreements with the board as are  
37 necessary, with a view to effective cooperative action  
38 and safeguarding of the respective interests of the  
39 parties thereto, which agreements shall provide for such  
40 contributions by the parties thereto in such proportion  
41 as may be agreed upon and such other terms as may  
42 be mutually satisfactory to the parties, including,  
43 without limitation, the authorization of the construction  
44 of the project by one of the parties acting as agent for  
45 all of the parties and the ownership and control of the  
46 project by the board to the extent necessary or approp-  
47 riate for purposes of the issuance of solid waste disposal  
48 revenue bonds by the board. Any governmental agency  
49 may provide such contribution as is required under such  
50 agreements by the appropriation of money or, if  
51 authorized by a favorable vote of the electors to issue  
52 bonds or notes or levy taxes or assessments and issue  
53 notes or bonds in anticipation of the collection thereof,  
54 by the issuance of bonds or notes or by the levying of  
55 taxes or assessments and the issuance of bonds or notes  
56 in anticipation of the collection thereof, and by the  
57 payment of such appropriated money or the proceeds of  
58 such bonds or notes to the board pursuant to such  
59 agreements.

60 Any governmental agency, pursuant to a favorable  
61 vote of the electors in an election held before or after

62 the effective date of this section for the purpose of  
63 issuing bonds to provide funds to acquire, construct or  
64 equip, or provide real estate and interests in real estate  
65 for a solid waste disposal project, whether or not the  
66 governmental agency at the time of such election had  
67 the board to pay the proceeds from such bonds or notes  
68 issued in anticipation thereof to the board as provided  
69 in this section, may issue such bonds or notes in  
70 anticipation of the issuance thereof and pay the proceeds  
71 thereof to the board in accordance with an agreement  
72 between such governmental agency and the board:  
73 *Provided*, That the legislative board of the governmental  
74 agency finds and determines that the solid waste  
75 disposal project to be acquired or constructed by the  
76 board in cooperation with such governmental agency  
77 will serve the same public purpose and meet substan-  
78 tially the same public need as the project otherwise  
79 proposed to be acquired or constructed by the govern-  
80 mental agency with the proceeds of such bonds or notes.

**§16-26-17. Maintenance, operation and repair of projects;  
repair of damaged property; reports by  
board to governor and Legislature.**

1 Each solid waste development project, when con-  
2 structed and placed in operation, shall be maintained  
3 and kept in good condition and repair by the board or  
4 if owned by a governmental agency, by such governmen-  
5 tal agency, or the board or such governmental agency  
6 shall cause the same to be maintained and kept in good  
7 condition and repair. Each such project owned by the  
8 board shall be operated by such operating employees as  
9 the board employs or pursuant to a contract or lease  
10 with a governmental agency or person. All public or  
11 private property damaged or destroyed in carrying out  
12 the provision of this article and in the exercise of the  
13 powers granted hereunder with regard to any project  
14 shall be restored or repaired and placed in its original  
15 condition, as nearly as practicable, or adequate compen-  
16 sation made therefor out of funds provided in accor-  
17 dance with the provisions of this article.

18 As soon as possible after the close of each fiscal year,  
19 the board shall make an annual report of its activities

20 for the preceding fiscal year to the governor and the  
21 Legislature. Each such report shall set forth a complete  
22 operating and financial statement covering the board's  
23 operations during the preceding fiscal year. The board  
24 shall cause an audit of its books and accounts to be made  
25 at least once each fiscal year by certified public  
26 accountants and the cost thereof may be treated as a  
27 part of the cost of construction or of operation of its  
28 projects. A report of the audit shall be submitted to the  
29 governor and the Legislature.

**§16-26-19. Exemption from taxation.**

1 The board shall not be required to pay any taxes or  
2 assessments upon any solid waste disposal project or  
3 upon any property acquired or used by the board or  
4 upon the income therefrom. Bonds and notes issued by  
5 the board and all interest and income thereon shall be  
6 exempt from all taxation by this state, or any county,  
7 municipality, political subdivision or agency thereof,  
8 except inheritance taxes.

**§16-26-20. Governmental agencies authorized to convey property.**

1 All governmental agencies, notwithstanding any  
2 provision of law to the contrary, may lease, lend, grant  
3 or convey to the board, at its request, upon such terms  
4 as the proper authorities of such governmental agencies  
5 deem reasonable and fair and without the necessity for  
6 an advertisement, auction, order of court or other action  
7 or formality, other than the regular and formal action  
8 of the governmental agency concerned, any real prop-  
9 erty or interests therein, including improvements  
10 thereto or personal property which is necessary or  
11 convenient to the effectuation of the authorized purposes  
12 of the board, including public roads and other real  
13 property or interests therein, including improvements  
14 thereto or personal property already devoted to public  
15 use.

**§16-26-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.**

1 No officer, member or employee of the board may be

2 financially interested, directly or indirectly, in any  
3 contract of any person with the board, or in the sale of  
4 any property, real or personal, to or by the board. This  
5 section does not apply to contracts or purchases of  
6 property, real or personal, between the board and any  
7 governmental agency.

8 No officer, member or employee of the board may  
9 have or acquire any financial interest, either direct or  
10 indirect, in any project or activity of the board or in any  
11 services or material to be used or furnished in connec-  
12 tion with any project or activity of the board. If an  
13 officer, member or employee of the board has any such  
14 interest at the time he becomes an officer, member or  
15 employee of the board, he shall disclose and divest  
16 himself of it. Failure to do so shall be cause for dismissal  
17 from the position he holds with the authority.

18 This section does not apply in instances where a  
19 member of the board who is a contract solid waste  
20 hauler either seeks or has a financial interest, direct or  
21 indirect, in any project or activity of the board or in any  
22 services or material to be used or furnished in connec-  
23 tion with any project or activity of the board: *Provided,*  
24 That that member shall fully disclose orally and in  
25 writing to the board the nature and extent of any  
26 interest, prior to any vote by the board which involves  
27 his interest, withdraw from any deliberation or discus-  
28 sion by the board of matters involving his interest, and  
29 refrain from voting on any matter which directly or  
30 indirectly affects him.

31 No officer, member or employee of the board may  
32 accept a gratuity from any person doing business with  
33 the board or from any person for the purpose of gaining  
34 favor with the board.

35 Any officer, member or employee of the board who  
36 has any financial interest prohibited by this section or  
37 who fails to comply with its provisions is guilty of a  
38 misdemeanor, and, upon conviction thereof, shall be  
39 fined not more than one thousand dollars, or imprisoned  
40 in the county jail not more than one year, or both fined  
41 and imprisoned.

**§16-26-22. Conduct of proceedings of board.**

- 1 The board shall comply with all of the requirements
- 2 in article nine-a, chapter six of this code.

**§16-26-23. Regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.**

1 Solid waste collectors and haulers who are "common  
2 carriers by motor vehicle," as defined in section two,  
3 article one, chapter twenty-four-a of this code, shall  
4 continue to be regulated by the public service commis-  
5 sion in accordance with the provisions of chapter  
6 twenty-four-a and rules and regulations promulgated  
7 thereunder. Nothing in this article shall give the board  
8 any power or right to regulate such solid waste  
9 collectors and haulers in any manner, but the public  
10 service commission, when it issues a new certificate of  
11 convenience and necessity, or when it alters or adjusts  
12 the provisions of any existing certificate of convenience  
13 and necessity, or when it approves the assignment or  
14 transfer of any certificate of convenience and necessity,  
15 shall consult with the board regarding what action it  
16 could take which would most likely further the imple-  
17 mentation of the board's solid waste disposal shed plan  
18 and solid waste disposal projects and shall take any  
19 reasonable action that will lead to or bring about  
20 compliance of such waste collectors and haulers with  
21 such plan and projects.

22 At any hearing conducted by the public service  
23 commission pertaining to solid waste collectors and  
24 haulers on any of these matters, any member of the  
25 board, the director or an employee of the board  
26 designated by the director may appear before the  
27 commission and present evidence.

**§16-26-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.**

1 The provisions of this article are complementary to  
 2 those contained in article twenty-four, chapter seventeen  
 3 of this code, and do not alter or diminish the authority  
 4 of any enforcement agency, as defined in section two  
 5 thereof, to collect and dispose of abandoned household  
 6 appliances and motor vehicles, inoperative household  
 7 appliances and junked motor vehicles and parts thereof,  
 8 including tires. The board and such enforcement  
 9 agencies shall cooperate fully with each other in  
 10 collecting and disposing of such solid waste.

## CHAPTER 20. NATURAL RESOURCES.

### Article

- 9. County and Regional Solid Waste Authorities.
- 10. Commercial Hazardous Waste Management Facility Siting Board.
- 11. West Virginia Recycling Program.

### ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

- §20-9-1. Legislative findings and purposes.
- §20-9-2. Definitions.
- §20-9-5a. Election by county commission to assume powers and duties of the county solid waste authority.
- §20-9-8. Assistance to county or regional solid waste authorities by West Virginia state solid waste management board, department of natural resources, department of health and the attorney general.
- §20-9-12a. Commercial solid waste facility siting plan; facilities subject to plan, criteria; approval by West Virginia state solid waste management board; effect on facility siting; public hearings; rules and regulations.
- §20-9-12b. Interim siting approval for commercial solid waste facilities.
- §20-9-12c. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

#### §20-9-1. Legislative findings and purposes.

1 The Legislature finds that the improper and uncon-  
 2 trolled collection, transportation, processing and dispo-  
 3 sal of domestic and commercial garbage, refuse and  
 4 other solid wastes in the state of West Virginia results  
 5 in: (1) A public nuisance and a clear and present danger  
 6 to the citizens of West Virginia, (2) the degradation of  
 7 the state's environmental quality including both surface  
 8 and groundwaters which provide essential and irre-  
 9 placeable sources of domestic and industrial water



10 supplies, (3) provides harborages and breeding places  
11 for disease-carrying, injurious insects, rodents and other  
12 pests injurious to the public health, safety and welfare,  
13 (4) decreases public and private property values and  
14 results in the blight and deterioration of the natural  
15 beauty of the state, (5) has adverse social and economic  
16 effects on the state and its citizens, and (6) results in the  
17 waste and squandering of valuable nonrenewable  
18 resources contained in such solid wastes which can be  
19 recovered through proper recycling and resource-  
20 recovery techniques with great social and economic  
21 benefits for the state.

22 The Legislature further finds that the proper collec-  
23 tion, transportation, processing, recycling and disposal  
24 of solid waste is for the general welfare of the citizens  
25 of the state and that the lack of proper and effective  
26 solid waste collection services and disposal facilities  
27 demands that the state of West Virginia and its political  
28 subdivisions act promptly to secure such services and  
29 facilities in both the public and private sectors.

30 The Legislature further finds that other states of these  
31 United States of America have imposed stringent  
32 standards for the proper collection and disposal of solid  
33 waste and that the relative lack of such standards and  
34 enforcement for such activities in West Virginia has  
35 resulted in the importation and disposal into the state  
36 of increasingly large amounts of infectious, dangerous  
37 and undesirable solid waste and hazardous waste from  
38 other states by persons and firms who wish to avoid the  
39 costs and requirements for proper, effective and safe  
40 disposal of such wastes in the states of origin.

41 Therefore, it is the purpose of the Legislature to  
42 protect the public health and welfare by providing for  
43 a comprehensive program of solid waste collection,  
44 processing, recycling and disposal to be implemented by  
45 state and local government in cooperation with the  
46 private sector. The Legislature intends to accomplish  
47 this goal by establishing county and regional solid waste  
48 authorities throughout the state to develop and imple-  
49 ment litter and solid waste control plans. It is the  
50 further purpose of the Legislature to restrict and

51 regulate persons and firms from exploiting and endan-  
52 gering the public health and welfare of the state by  
53 disposing of solid wastes and other dangerous materials  
54 which would not be accepted for disposal in the location  
55 where such wastes or materials were generated.

56 The Legislature further finds that the potential  
57 impacts of proposed commercial solid waste facilities  
58 may have a deleterious and debilitating impact upon the  
59 transportation network, property values, economic  
60 growth, environmental quality, other land uses and the  
61 public health and welfare in affected communities. The  
62 Legislature also finds that the siting of such facilities  
63 is not being adequately addressed to protect these  
64 compelling interests of counties and local communities.

65 The Legislature further finds that affected citizens  
66 and local governments often look to state environmental  
67 regulatory agencies to resolve local land use conflicts  
68 engendered by these proposed facilities. The Legislature  
69 also finds that such local land use conflicts are most  
70 effectively resolved in a local governmental forum  
71 where citizens can most easily participate in the  
72 decision-making process and the land use values of local  
73 communities most effectively identified and incorpo-  
74 rated into a comprehensive policy which reflects the  
75 values and goals of those communities.

76 Therefore, it is the purpose of the Legislature to  
77 enable local citizens to resolve the land use conflicts  
78 which may be created by proposed commercial solid  
79 waste facilities through the existing forum of county or  
80 regional solid waste authorities.

#### §20-9-2. Definitions.

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

3 (a) "Approved solid waste facility" means a commer-  
4 cial solid waste facility or practice which has a valid  
5 permit or compliance order under article five-f of this  
6 chapter;

7 (b) "Commercial solid waste facility" means any solid  
8 waste facility which accepts solid waste generated by

9 sources other than the owner or operator of the facility  
10 and shall not include an approved solid waste facility  
11 owned and operated by a person for the sole purpose of  
12 disposing of solid wastes created by that person or such  
13 person and other person on a cost-sharing or nonprofit  
14 basis and shall not include the legitimate reuse and  
15 recycling of materials for structural fill, road base, mine  
16 reclamation, and similar applications;

17 (c) "Compliance order" means an administrative  
18 order issued pursuant to section five, article five-f,  
19 chapter twenty of this code authorizing a solid waste  
20 facility to operate without a solid waste permit;

21 (d) "Open dump" means any solid waste disposal  
22 which does not have a permit under this article, or is  
23 in violation of state law, or where solid waste is disposed  
24 in a manner that does not protect the environment;

25 (e) "Person" means any industrial user, public or  
26 private corporation, institution, association, firm or  
27 company organized or existing under the laws of this or  
28 any other state or country; the state of West Virginia;  
29 governmental agency, including federal facilities;  
30 political subdivision; county commission; municipal  
31 corporation; industry; sanitary district; public service  
32 district; drainage district; soil conservation district;  
33 watershed improvement district; partnership; trust;  
34 estate; person or individual; group of persons or  
35 individuals acting individually or as a group; or any  
36 legal entity whatever;

37 (f) "Sludge" means any solid, semisolid, residue or  
38 precipitate, separated from or created by a municipal,  
39 commercial or industrial waste treatment plant, water  
40 supply treatment plant or air pollution control facility  
41 or any other such waste having similar origin;

42 (g) "Solid waste" means any garbage, paper, litter,  
43 refuse, cans, bottles, sludge from a waste treatment  
44 plant, water supply treatment plant or air pollution  
45 control facility, other discarded material, including  
46 carcasses of any dead animal or any other offensive or  
47 unsightly matter, solid, liquid, semisolid or contained  
48 liquid or gaseous material resulting from industrial,

49 commercial, mining or from community activities but  
50 does not include solid or dissolved material in sewage,  
51 or solid or dissolved materials in irrigation return flows  
52 or industrial discharges which are point sources and  
53 have permits under article five-a, chapter twenty of this  
54 code, or source, special nuclear or by-product material  
55 as defined by the Atomic Energy Act of 1954, as  
56 amended, or a hazardous waste either identified or  
57 listed under article five-e, chapter twenty of this code  
58 or refuse, slurry, overburden or other waste or material  
59 resulting from coal-fired electric power generation, the  
60 exploration, development, production, storage and  
61 recovery of coal, oil and gas, and other mineral  
62 resources placed or disposed of at a facility which is  
63 regulated under chapter twenty-two, twenty-two-a or  
64 twenty-two-b of this code, so long as such placement or  
65 disposal is in conformance with a permit issued  
66 pursuant to said chapters; "solid waste" shall also not  
67 include materials which are recycled by being used or  
68 reused in an industrial process to make a product, as  
69 effective substitutes for commercial products, or are  
70 returned to the original process as a substitute for raw  
71 material feedstock;

72 (h) "Solid waste disposal" means the practice of  
73 disposing solid waste including placing, depositing,  
74 dumping or throwing or causing to be placed, deposited,  
75 dumped or thrown any solid waste;

76 (i) "Solid waste disposal shed" means the geographical  
77 area which the resource recovery—solid waste disposal  
78 authority designates and files in the state register  
79 pursuant to section eight, article twenty-six, chapter  
80 sixteen of this code; and

81 (j) "Solid waste facility" means any system, facility,  
82 land, contiguous land, improvements on the land,  
83 structures or other appurtenances or methods used for  
84 processing, recycling or disposing of solid waste,  
85 including landfills, transfer stations, resource recovery  
86 facilities and other such facilities not herein specified.

**§20-9-5a. Election by county commission to assume powers and duties of the county solid waste authority.**

1 Notwithstanding any provision of this article, any  
2 county commission which, on the first day of July, one  
3 thousand nine hundred eighty-eight, held a valid permit  
4 or compliance order for a commercial solid waste  
5 transfer station issued pursuant to article five-f of this  
6 chapter, may elect to assume all the duties, powers,  
7 obligations, rights, title and interests vested in the  
8 county solid waste authority by this chapter. A county  
9 commission may, prior to the first day of October, one  
10 thousand nine hundred eighty-nine, exercise this right  
11 of election by entering an order declaring such election  
12 and serving a certified copy thereof upon the resource  
13 recovery—solid waste disposal authority. Thirty days  
14 after entry of said order by the county commission the  
15 county solid waste authority shall cease to exist and the  
16 county commission shall assume all the duties, powers,  
17 obligations, rights, title and interest vested in the  
18 former authority pursuant to this chapter.

**§20-9-8. Assistance to county or regional solid waste  
authorities by West Virginia state solid waste  
management board, department of natural  
resources, department of health and the  
attorney general.**

1 The department of natural resources, the resource  
2 recovery—solid waste disposal authority, and the  
3 department of health shall provide technical assistance  
4 to each county and regional solid waste authority as  
5 reasonable and practicable for the purposes of this  
6 article within the existing resources and appropriations  
7 of each agency available for such purposes. The attorney  
8 general shall provide legal counsel and representation  
9 to each county and regional solid waste authority for the  
10 purposes of this article within the existing resources and  
11 appropriations available for such purposes, or with the  
12 written approval of the attorney general, said authority  
13 may employ counsel to represent it.

**§20-9-12a. Commercial solid waste facility siting plan;  
facilities subject to plan; criteria; approval  
by West Virginia state solid waste manage-  
ment board; effect on facility siting; public  
hearings; rules and regulations.**

1 (a) On or before the first day of July, one thousand  
2 nine hundred ninety, each county or regional solid waste  
3 authority shall prepare and complete a commercial solid  
4 waste facilities siting plan for the county or counties  
5 within its jurisdiction: *Provided*, That the West Virginia  
6 state solid waste management board may authorize any  
7 reasonable extension of up to one year for the completion  
8 of the said siting plan by any county or regional solid  
9 waste authority. The siting plan shall identify zones  
10 within each county where siting of the following  
11 facilities is authorized or prohibited:

12 (1) Commercial solid waste landfills which may  
13 accept an aggregate of more than ten thousand tons of  
14 solid waste per month.

15 (2) Commercial solid waste landfills which shall  
16 accept only less than an aggregate of ten thousand tons  
17 of solid waste per month.

18 (3) Commercial solid waste transfer stations or  
19 commercial facilities for the processing or recycling of  
20 solid waste.

21 The siting plan shall include an explanation of the  
22 rationale for the zones established therein based on the  
23 criteria established in subsection (b) of this section.

24 (b) The county or regional solid waste authority shall  
25 develop the siting plan authorized by this section based  
26 upon the consideration of one or more of the following  
27 criteria: The efficient disposal of solid waste, including  
28 all solid waste generated within the county or region,  
29 economic development, transportation facilities, prop-  
30 erty values, groundwater and surface waters, geological  
31 and hydrological conditions, aesthetic and environmen-  
32 tal quality, historic and cultural resources, the present  
33 or potential land uses for residential, commercial,  
34 recreational, environmental conservation or industrial  
35 purposes and the public health, welfare and conven-  
36 ience. The plan shall be developed based upon informa-  
37 tion readily available. Due to the limited funds and time  
38 available the plan need not be an exhaustive and  
39 technically detailed analysis of the criteria set forth  
40 above. Unless the information readily available clearly

41 establishes that an area is suitable for the location of a  
42 commercial solid waste facility or not suitable for such  
43 a facility, the area shall be designated as an area in  
44 which the location of a commercial solid waste facility  
45 is tentatively prohibited. Any person making an  
46 application for the redesignation of a tentatively  
47 prohibited area shall make whatever examination is  
48 necessary and submit specific detailed information in  
49 order to meet the provision established in subsection  
50 (g) of this section.

51 (c) Prior to completion of the siting plan, the county  
52 or regional solid waste authority shall complete a draft  
53 siting plan and hold at least one public hearing in each  
54 county encompassed in said draft siting plan for the  
55 purpose of receiving public comment thereon. The  
56 authority shall provide notice of such public hearings  
57 and encourage and solicit other public participation in  
58 the preparation of the siting plan as required by the  
59 rules and regulations promulgated by the West Virginia  
60 state solid waste management board for this purpose.  
61 Upon completion of the siting plan, the county or  
62 regional solid waste authority shall file said plan with  
63 the West Virginia state solid waste authority.

64 (d) The siting plan shall take effect upon approval by  
65 the West Virginia state solid waste management board  
66 pursuant to the rules and regulations promulgated for  
67 this purpose. Upon approval of said plan, the West  
68 Virginia state solid waste management board shall  
69 transmit a copy thereof to the director of the department  
70 of natural resources and to the clerk of the county  
71 commission of the county encompassed by said plan  
72 which county clerk shall file the plan in an appropriate  
73 manner and shall make the plan available for inspection  
74 by the public.

75 (e) Effective upon approval of the siting plan by the  
76 West Virginia state solid waste management board, it  
77 shall be unlawful for any person to establish, construct,  
78 install or operate a commercial solid waste landfill or  
79 transfer station at a site not authorized by the siting  
80 plan: *Provided*, That an existing commercial solid waste  
81 landfill or transfer station which, on the effective date

82 of this section, held a valid solid waste permit or  
83 compliance order issued by the department of natural  
84 resources pursuant to article five-f of this chapter may  
85 continue to operate but may not expand the spatial land  
86 area of the said facility beyond that authorized by said  
87 solid waste permit or compliance order, and may not  
88 increase the aggregate monthly solid waste capacity in  
89 excess of ten thousand tons monthly unless such a  
90 facility is authorized by the siting plan.

91 (f) The county or regional solid waste authority may,  
92 from time to time, amend the siting plan in a manner  
93 consistent with the requirements of this section for  
94 completing the initial siting plan and the rules and  
95 regulations promulgated by the West Virginia state  
96 solid waste management board for the purpose of such  
97 amendments.

98 (g) Notwithstanding any provision of this code to the  
99 contrary, upon application from a person who has filed  
100 a pre-siting notice pursuant to section five-c, article five-  
101 f of this chapter, the county or regional solid waste  
102 authority or county commission, as appropriate, may  
103 amend the siting plan by redesignating a zone that has  
104 been designated as an area where a commercial solid  
105 waste facility is tentatively prohibited to an area where  
106 one is authorized. In such case, the person seeking the  
107 change has the burden to affirmatively and clearly  
108 demonstrate, based on the criteria set forth in subsection  
109 (b) of this section, that a solid waste facility could be  
110 appropriately operated in the public interest at such  
111 location. The West Virginia state solid waste manage-  
112 ment board shall provide, within available resources,  
113 technical support to a county or regional solid waste  
114 authority or county commission, as appropriate, when  
115 requested by such authority or commission to assist it  
116 in reviewing an application for any such amendment.

117 (h) The West Virginia state solid waste management  
118 board shall prepare and adopt a siting plan for any  
119 county or regional solid waste authority which does not  
120 complete and file with the said state authority such a  
121 siting plan in compliance with the provisions of this  
122 section and the rules and regulations promulgated



123 thereunder. Any siting plan adopted by the West  
124 Virginia state solid waste authority pursuant to this  
125 subsection shall comply with the provisions of this  
126 section, and the rules and regulations promulgated  
127 thereunder, and shall have the same effect as a siting  
128 plan prepared by a county or regional solid waste  
129 authority and approved by the said state authority.

130 (i) The siting plan adopted pursuant to this section  
131 shall incorporate the provisions of the litter and solid  
132 waste control plan, as approved by the West Virginia  
133 state solid waste management board pursuant to section  
134 seven of this article, regarding collection and disposal  
135 of solid waste and the requirements, if any, for addi-  
136 tional commercial solid waste landfill and transfer  
137 station capacity.

138 (j) The West Virginia state solid waste management  
139 board is authorized and directed to promulgate rules  
140 and regulations specifying the public participation  
141 process, content, format, amendment, review and  
142 approval of siting plans for the purposes of this section.

**§20-9-12b. Interim siting approval for commercial solid waste facilities.**

1 (a) Until the first day of July, one thousand nine  
2 hundred ninety-one, or the effective date of the commer-  
3 cial solid waste facility siting plan authorized by section  
4 twelve-a of this article, whichever date occurs first, it  
5 shall be unlawful for any person to establish, construct  
6 or install a commercial solid waste landfill or transfer  
7 station, or to expand the spatial land area of such an  
8 existing facility, without a certificate of site approval  
9 from the county or regional solid waste authority for the  
10 county in which the facility would be situated: *Provided,*  
11 That a person, who, on the effective date of this section,  
12 holds a valid Class A approval permit issued by a county  
13 commission, may obtain site approval from the county  
14 commission for the county in which the facility would  
15 be situated: *Provided, however,* That no such certificate  
16 will be required for such an existing commercial solid  
17 waste facility which on the effective date of this section  
18 held a valid solid waste permit or compliance order

19 issued by the department of natural resources unless  
20 such facility increases its spatial land area beyond that  
21 authorized by such solid waste permit or compliance  
22 order.

23 (b) The county or regional solid waste authority, or  
24 county commission, as appropriate, shall issue or deny  
25 the certificate of site approval based upon the consid-  
26 eration of the effects of the proposed commercial solid  
27 waste landfill or transfer station upon one or more of  
28 the following criteria: The efficient disposal of solid  
29 waste generated within the county or region, economic  
30 development, transportation facilities, property values,  
31 groundwater and surface waters, geological and hydro-  
32 logical conditions, aesthetic and environmental quality,  
33 historic or cultural resources, the present or potential  
34 land uses for residential, commercial, recreational,  
35 industrial or environmental conservation purposes and  
36 the public health, welfare and convenience.

37 (c) The county or regional solid waste authority, or  
38 county commission, as appropriate, shall issue or deny  
39 the certificate of site approval within a reasonable  
40 period upon receiving the pre-siting notice for the  
41 proposed commercial solid waste facility required by  
42 section five-c of article five-f of this chapter.

43 (d) The county or regional solid waste authority, or  
44 county commission, as appropriate, shall hold a public  
45 hearing prior to the issuance of a certificate of site  
46 approval for the purpose of receiving public comment  
47 upon the siting of the proposed commercial solid waste  
48 facility. The authority shall provide notice of such public  
49 hearing with publication of a Class II legal advertise-  
50 ment in a qualified newspaper serving the county where  
51 the proposed site is situated.

52 (e) The county or regional solid waste authority, or  
53 county commission, as appropriate, shall complete  
54 findings of fact and conclusions relating to the criteria  
55 authorized in subsection (b) hereof which support its  
56 decision to issue or deny a certificate of site approval.

57 (f) Any person adversely affected by a decision of a  
58 county or regional solid waste authority, or county

59 commission, as appropriate, to issue or deny a certificate  
60 of site approval pursuant to this section may appeal that  
61 decision to the circuit court for the county in which the  
62 proposed commercial solid waste facility would be  
63 located.

**§20-9-12c. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.**

1 (a) *Imposition.*—Effective the first day of July, one  
2 thousand nine hundred eighty-nine, a solid waste  
3 assessment interim fee is hereby levied and imposed  
4 upon the disposal of solid waste at any solid waste  
5 disposal facility in this state to be collected at the rate  
6 of one dollar per ton or part thereof of solid waste. Said  
7 interim fee shall expire on the thirtieth day of June, one  
8 thousand nine hundred ninety-one. The fee imposed by  
9 this section shall be in addition to all other fees levied  
10 by law.

11 (b) *Collection, return, payment and record.*—The fee  
12 herein imposed shall be paid by the person disposing of  
13 solid waste at a solid waste disposal facility and shall  
14 be collected by the operator of such facility and remitted  
15 to the state tax commissioner. The fee accrues at the  
16 time the solid waste is disposed of in this state. The fee  
17 imposed by this section shall be due and payable on or  
18 before the fifteenth day of the month next succeeding  
19 the month in which the fee accrued together with a  
20 return on such form or forms as prescribed by the state  
21 tax commissioner. Each person disposing of solid waste  
22 at a solid waste disposal facility and each person  
23 required to collect the fee imposed by this section shall  
24 keep complete and accurate records in such form as the  
25 state tax commissioner may by regulation require.

26 (c) *Regulated motor carriers.*—The fee imposed by this  
27 section and section twenty-two, article five, chapter  
28 seven of this code shall be considered a necessary and  
29 reasonable cost for motor carriers of solid waste subject  
30 to the jurisdiction of the public service commission  
31 under chapter twenty-four-a of this code.  
32 Notwithstanding any provision of law to the contrary,

33 upon the filing of a petition by an affected motor carrier,  
34 the public service commission shall, within fourteen  
35 days, reflect the cost of said fee in said motor carrier's  
36 rates for solid waste removal service.

37 (d) *Definition of solid waste disposal facility.*—For  
38 purposes of this section, the term “solid waste disposal  
39 facility” means any approved solid waste facility or open  
40 dump in this state. Nothing herein shall be construed  
41 to authorize in any way the creation or operation of or  
42 contribution to an open dump.

43 (e) *Exemptions.*—The following transactions shall be  
44 exempt from the fee imposed by this section:

45 (1) Disposal of solid waste at a solid waste disposal  
46 facility by the person who owns, operates or leases the  
47 solid waste disposal facility if it is used exclusively to  
48 dispose of waste originally produced by such person in  
49 such person's regular business or personal activities or  
50 by persons utilizing the facility on a cost-sharing or  
51 nonprofit basis;

52 (2) Reuse or recycling of any solid waste; and

53 (3) Disposal of residential solid waste by an individual  
54 not in the business of hauling or disposing of solid waste  
55 on such days and times as designated by the director of  
56 the department of natural resources by regulation as  
57 exempt from the fee imposed pursuant to section five-  
58 a, article five-f, chapter twenty of this code.

59 (f) *Procedure and administration.*—Each and every  
60 provision of the “West Virginia Tax Procedure and  
61 Administration Act” set forth in article ten, chapter  
62 eleven of this code shall apply to the fee imposed by this  
63 section with like effect as if said act were applicable  
64 only to the fee imposed by this section and were set forth  
65 in extenso herein.

66 (g) *Criminal penalties.*—Notwithstanding section two,  
67 article nine, chapter eleven of this code, sections three  
68 through seventeen, article nine, chapter eleven of this  
69 code shall apply to the fee by this section with like effect  
70 as if said sections were the only fee imposed by this  
71 section and were set forth in extenso herein.

72 (h) *Dedication of proceeds.*—The net proceeds of the  
73 interim fee collected pursuant to this section shall be  
74 transferred to a special revenue account designated as  
75 the “Solid Waste Planning Fund” as such proceeds are  
76 received by the state tax commissioner. The West  
77 Virginia state solid waste management board shall  
78 allocate the proceeds of the said fund as follows:

79 (1) Fifty percent of the total proceeds shall be divided  
80 equally among, and paid over to, each county solid waste  
81 authority to be expended for the purposes of this article:  
82 *Provided,* That where a regional solid waste authority  
83 exists, such funds shall be paid over to the regional solid  
84 waste authority to be expended for the purposes of this  
85 article in an amount equal to the total share of all  
86 counties within the jurisdiction of said regional solid  
87 waste authority; and

88 (2) Fifty percent of the total proceeds shall be  
89 expended by the West Virginia state solid waste  
90 management board for: (i) Grants to the county or  
91 regional solid waste authorities for the purposes of this  
92 article; (ii) administration, technical assistance or other  
93 costs of the state solid waste management board  
94 necessary to implement the purposes of this article.

95 (i) *Severability.*—If any provision of this section or the  
96 application thereof shall for any reason be adjudged by  
97 any court of competent jurisdiction to be invalid, such  
98 judgment shall not affect, impair or invalidate the  
99 remainder of this section, but shall be confined in its  
100 operation to the provision thereof directly involved in  
101 the controversy in which such judgment shall have been  
102 rendered, and the applicability of such provision to other  
103 persons or circumstances shall not be affected thereby.

104 (j) *Effective date.*—This section is effective on the first  
105 day of July, one thousand nine hundred eighty-nine.

#### ARTICLE 10. COMMERCIAL HAZARDOUS WASTE MANAGE- MENT FACILITY SITING BOARD.

§20-10-1. Purpose and legislative findings.

§20-10-2. Definitions.

§20-10-3. Establishment of commercial hazardous waste management facility siting board; composition; appointment; compensation; powers; rules; and procedures.

§20-10-4. Effect of certification.

§20-10-5. Commercial hazardous waste management facility siting fund created; fees.

§20-10-6. Judicial review.

§20-10-7. Remedies.

§20-10-8. Short title.

### §20-10-1. Purpose and legislative findings.

1 (a) The purpose of this article is to establish a state  
2 commercial hazardous waste management facility siting  
3 board and to establish the procedure for which approval  
4 certificates shall be granted or denied for commercial  
5 hazardous waste management facilities.

6 (b) The Legislature finds that hazardous waste is  
7 generated throughout the state as a by-product of the  
8 materials used and consumed by individuals, businesses,  
9 enterprise and governmental units in the state, and that  
10 the proper management of hazardous waste is necessary  
11 to prevent adverse effects on the environment and to  
12 protect public health and safety. The Legislature  
13 further finds that:

14 (1) The availability of suitable facilities for the  
15 treatment, storage and disposal of hazardous waste is  
16 necessary to protect the environment resources and  
17 preserve the economic strength of this state and to fulfill  
18 the diverse needs of its citizens;

19 (2) Whenever a site is proposed for the treatment,  
20 storage or disposal of hazardous waste, the nearby  
21 residents and the affected county and municipalities  
22 may have a variety of reasonable concerns regarding the  
23 location, design, construction, operation, closing and  
24 long-term care of facilities to be located at the site, the  
25 effect of the facility upon their community's economic  
26 development and environmental quality and the incor-  
27 poration of such concerns into the siting process;

28 (3) Local authorities have the responsibility for  
29 promoting public health, safety, convenience and  
30 general welfare, encouraging planned and orderly land  
31 use development, recognizing the needs of industry and  
32 business, including solid waste disposal and the treat-  
33 ment, storage and disposal of hazardous waste and that

34 reasonable concerns of local authorities should be  
35 considered in the siting of commercial hazardous waste  
36 management facilities; and

37 (4) New procedures are needed to resolve many of the  
38 conflicts which arise during the process of siting  
39 commercial hazardous waste management facilities.

#### §20-10-2. Definitions.

1 Unless the context clearly requires a different  
2 meaning, as used in this article the terms;

3 (a) "Board" means the commercial hazardous waste  
4 management facility siting board established pursuant  
5 to section three of this article;

6 (b) "Commercial hazardous waste management facil-  
7 ity" means any hazardous waste treatment, storage or  
8 disposal facility which accepts hazardous waste, as  
9 identified or listed by the director of the department of  
10 natural resources under article five-e of this chapter,  
11 generated by sources other than the owner or operator  
12 of the facility and shall not include an approved  
13 hazardous waste facility owned and operated by a  
14 person for the sole purpose of disposing of hazardous  
15 wastes created by that person or such person and other  
16 persons on a cost-sharing or nonprofit basis;

17 (c) "Hazardous waste management facility" means  
18 any facility including land and structures, appurtenan-  
19 ces, improvements and equipment used for the treat-  
20 ment, storage or disposal of hazardous wastes, which  
21 accepts hazardous waste for storage, treatment or  
22 disposal. For the purposes of this article, it does not  
23 include: (i) Facilities for the treatment, storage or  
24 disposal of hazardous wastes used principally as fuels in  
25 an on-site production process; or (ii) facilities used  
26 exclusively for the pretreatment of wastes discharged  
27 directly to a publicly owned sewage treatment works. A  
28 facility may consist of one or more treatment, storage  
29 or disposal operational units.

#### §20-10-3. Establishment of commercial hazardous waste management facility siting board; composition; appointment; compensation; powers; rules; and procedures.

1 (a) There is hereby established a commercial hazard-  
2 ous waste management facility siting board consisting  
3 of nine members including the director of the depart-  
4 ment of natural resources and the director of the air  
5 pollution control commission who shall be nonvoting  
6 members ex officio, two ad hoc members appointed by  
7 the county commission of the county in which the facility  
8 is or is proposed to be located and who shall be residents  
9 of said county, and five other permanent members to be  
10 appointed by the governor with the advice and consent  
11 of the Senate, two of whom shall be representative of  
12 industries engaged in business in this state and three of  
13 whom shall be representative of the public at large. No  
14 two or more of the five permanent voting members of  
15 the board appointed by the governor shall be from the  
16 same county. Upon initial appointment, which shall be  
17 made by the governor within thirty days of the effective  
18 date of this article, one of said other five members shall  
19 be appointed for five years, one for four years, one for  
20 three years, one for two years and one for one year  
21 which terms shall commence on the effective date of this  
22 article. Thereafter, said permanent members shall be  
23 appointed for terms of five years each. Vacancies  
24 occurring other than by expiration of a term shall be  
25 filled by the governor in the same manner as the  
26 original appointment for the unexpired portion of the  
27 term. The term of the ad hoc members shall continue  
28 until a final determination has been made in the  
29 particular proceeding for which they are appointed.  
30 Four of the voting members on the board shall consti-  
31 tute a quorum for the transaction of any business, and  
32 the decision of four voting members of the board shall  
33 constitute action of the board. No person shall be eligible  
34 to be an appointee of the governor to the board who has  
35 any direct personal financial interest in any commercial  
36 hazardous waste management enterprise. The five  
37 permanent voting members of the board shall annually  
38 elect from among themselves a chairman no later than  
39 the thirty-first day of July of each calendar year. The  
40 board shall meet upon the call of the chairman or upon  
41 the written request of at least three of the voting  
42 members of the board.



43 (b) Each member of the board, other than the two  
44 members ex officio, shall be paid, out of funds approp-  
45 riated for such purpose as compensation for his or her  
46 services on the board, the sum of seventy-five dollars for  
47 each day or substantial portion thereof that he or she  
48 is actually engaged in their duties pursuant to this  
49 article. In addition, each member, including members  
50 ex officio, shall be reimbursed, out of moneys approp-  
51 riated for such purpose, all reasonable sums which he  
52 or she necessarily shall expend in the discharge of duties  
53 as a member of the board. The department of natural  
54 resources shall make available to the board such  
55 professional and support staff and services as may be  
56 necessary in order to support the board in carrying out  
57 its responsibilities within the limit of funds available for  
58 this purpose. The office of the attorney general shall  
59 provide legal advice and representation to the board as  
60 requested, within the limit of funds available for this  
61 purpose, or the board, with the written approval of the  
62 attorney general, may employ counsel to represent it.

63 (c) After the effective date of this article, no person  
64 shall construct or commence construction of a commer-  
65 cial hazardous waste management facility without first  
66 obtaining a certificate of site approval issued by the  
67 board in the manner prescribed herein. For the purpose  
68 of this section, "construct" and "construction" shall mean  
69 (i) with respect to new facilities, the significant alter-  
70 ation of a site to install permanent equipment or  
71 structures or the installation of permanent equipment or  
72 structures; (ii) with respect to existing facilities, the  
73 alteration or expansion of existing structures or  
74 facilities to include accommodation of hazardous waste,  
75 or expansion of more than fifty percent the area or  
76 capacity of an existing hazardous waste facility, or any  
77 change in design or process of a hazardous waste facility  
78 that will result in a substantially different type of  
79 facility. Construction does not include preliminary  
80 engineering or site surveys, environmental studies, site  
81 acquisition, acquisition of an option to purchase or  
82 activities normally incident thereto.

83 (d) Upon receiving a written request from the owner

84 or operator of the facility, the board may allow, without  
85 going through the procedures of this article, any  
86 changes in the facilities which are designed (1) to  
87 prevent a threat to human health or the environment  
88 because of an emergency situation; (2) to comply with  
89 federal or state laws and regulations; or (3) to result in  
90 demonstrably safer or environmentally more acceptable  
91 processes.

92 (e) An application for certificate of site approval shall  
93 consist of a copy of all hazardous waste permits, if any,  
94 and permit applications, if any, issued by or filed with  
95 any state permit-issuing authority pursuant to article  
96 five-e of this chapter and a detailed written analysis  
97 with supporting documentation of the following factors:

98 (1) The nature of the probable environmental and  
99 economic impacts, including, but not limited to, speci-  
100 fication of the predictable adverse effects on quality of  
101 natural environment, public health and safety, scenic,  
102 historic, cultural and recreational values, water and air  
103 quality, wildlife, property values, transportation net-  
104 works, and an evaluation of measures to mitigate such  
105 adverse effects;

106 (2) The nature of the environmental benefits likely to  
107 be derived from such facility, including the resultant  
108 decrease in reliance upon existing waste disposal  
109 facilities which do not comply with applicable laws and  
110 regulations, and a reduction in fuel consumption and  
111 vehicle emissions related to long-distance transportation  
112 of hazardous waste; and

113 (3) The economic benefits likely to be derived from  
114 such facility, including, but not limited to, a reduction  
115 in existing costs for the disposal of hazardous waste,  
116 improvement to the state's ability to retain and attract  
117 business and industry due to predictable and stable  
118 waste disposal costs, and any economic benefits which  
119 may accrue to the municipality or county in which the  
120 facility is to be located.

121 (f) On or before sixty calendar days after the receipt

122 of such application, the board shall mail written notice  
123 to the applicant as to whether or not such application  
124 is complete. If, or when, the application is complete, the  
125 board shall notify the applicant and the county commis-  
126 sion of the county in which the facility is or is proposed  
127 to be located. Said county commission shall thereupon,  
128 within thirty days of receipt of such notice, appoint the  
129 two ad hoc members of the board to act upon the  
130 application.

131 (g) Immediately upon determining that an application  
132 is complete, the board shall, at the applicant's expense,  
133 cause a notice to be published in the state register,  
134 which shall be no later than thirty calendar days after  
135 the date of such written notice of completeness, and shall  
136 provide notice to the chief executive office of each  
137 municipality in which the proposed facility is to be  
138 located and to the county commission of the county in  
139 which the facility is proposed to be located, and shall  
140 direct the applicant to provide reasonable notice to the  
141 public which shall, at a minimum, include publication  
142 as a Class I-O legal advertisement in at least two  
143 newspapers having general circulation in the vicinity in  
144 which the proposed facility is to be located identifying  
145 the proposed location, type of facility and activities  
146 involved, the name of the permittee, and the date, time  
147 and place at which the board will convene a public  
148 hearing with regard to the application. The date of the  
149 hearing shall be set by the board and shall commence  
150 within sixty days of the date of notice of completeness  
151 of an application.

152 (h) The board shall conduct a public hearing upon the  
153 application in the county in which the facility is to be  
154 located and shall keep an accurate record of such  
155 proceedings by stenographic notes and characters or by  
156 mechanical or electronic means. Such proceedings shall  
157 be transcribed at the applicant's expense. The board  
158 may accept both written and oral comments on the  
159 application.

160 (i) The commercial hazardous waste management  
161 facility siting board request further information of the  
162 applicant and shall render a decision based upon the

163 application and the record, either, requesting further  
164 information, granting a certificate of site approval,  
165 denying it, or granting it upon such terms, conditions  
166 and limitations as the board deems appropriate. The  
167 board shall base its decision upon the factors set forth  
168 in subsection (e). The written decision of the board  
169 containing its findings and conclusions shall be mailed  
170 by certified mail to the applicant and to any requesting  
171 person on or before sixty calendar days after receipt by  
172 the board of a complete record of the hearing.

173 (j) The board may exercise all powers necessary or  
174 appropriate to carry out the purposes and duties  
175 provided in this article, including the power to promul-  
176 gate rules in compliance with chapter twenty-nine-a of  
177 this code.

#### **§20-10-4. Effect of certification.**

1 A grant of an approval certificate shall supersede any  
2 local ordinance or regulation that is inconsistent with  
3 the terms of the approval certificate. Nothing in this  
4 chapter shall affect the authority of the host community  
5 to enforce its regulations and ordinances to the extent  
6 that they are not inconsistent with the terms and  
7 conditions of the approval certificate. Grant of an  
8 approval certificate shall not preclude or excuse the  
9 applicant from the requirement to obtain approval or  
10 permits under this chapter or other state or federal  
11 laws.

#### **§20-10-5. Commercial hazardous waste management facility siting fund created; fees.**

1 (a) There is hereby created and established in the  
2 state treasury a special revenue fund entitled the  
3 "commercial hazardous waste management facility  
4 siting fund" which may be expended by the director of  
5 the department of natural resources for the following:

6 (1) The necessary expenses of the board which may  
7 include expenses and compensation for each member of  
8 the board as authorized by this article.

9 (2) Administration, professional and support services  
10 provided by the department to the board.

11 (3) Legal counsel and representation provided by the  
12 attorney general to the board for the purposes of this  
13 article.

14 (b) The director of the department of natural resour-  
15 ces shall promulgate rules and regulations, pursuant to  
16 section one, article one, chapter twenty-nine-a of this  
17 code, establishing reasonable fees to be charged each  
18 applicant for a certificate of site approval. Such fees  
19 shall be calculated to recover the reasonable and  
20 necessary expenses of the board, department of natural  
21 resources and attorney general which such agencies  
22 incur as pursuant to this article.

#### §20-10-6. Judicial review.

1 (a) Any person having an interest adversely affected  
2 by a final decision made and entered by the board is  
3 entitled to judicial review thereof in the Circuit Court  
4 of Kanawha County, or the circuit court of the county  
5 in which the facility is, or is proposed to be, situated,  
6 such appeal to be perfected by the filing of a petition  
7 with the court within sixty days of the date of receipt  
8 by the applicant of the board's written decision.

9 (b) The review shall be conducted by the court  
10 without a jury and shall be upon the record made before  
11 the board except that in cases of alleged irregularities  
12 in procedure before the board not shown in the record,  
13 testimony thereon may be taken before the court. The  
14 court may hear oral arguments and require written  
15 briefs.

16 The court may affirm the order or decision of the  
17 board or remand the case for further proceedings. It  
18 may reverse, vacate or modify the order or decision of  
19 the board if the substantial rights of the petitioner or  
20 petitioners have been prejudiced because the adminis-  
21 trative findings, inferences, conclusions, decision or  
22 order are:

23 (1) In violation of constitutional or statutory provi-  
24 sions; or

- 25 (2) In excess of the statutory authority or jurisdiction  
26 of the board; or
- 27 (3) Made upon unlawful procedures; or
- 28 (4) Affected by other error of law; or
- 29 (5) Clearly wrong in view of the reliable, probative  
30 and substantial evidence on the whole record; or
- 31 (6) Arbitrary or capricious or characterized by abuse  
32 of discretion or clearly unwarranted exercise of  
33 discretion.
- 34 (c) The judgment of the circuit court shall be final  
35 unless reversed, vacated or modified on appeal to the  
36 supreme court of appeals. The petition seeking such  
37 review must be filed with said supreme court of appeals  
38 within ninety days from the date of entry of the  
39 judgment of the circuit court.
- 40 (d) Legal counsel and services for the board in all  
41 appeal proceedings shall be provided by the attorney  
general.

#### §20-10-7. Remedies.

- 1 (a) Any person who violates this section shall be  
2 compelled by injunction, in a proceeding instituted in  
3 the circuit court or the locality where the facility or  
4 proposed facility is to be located, to cease the violation.
- 5 (b) Such an action may be instituted by the board,  
6 director of the department of natural resources, air  
7 pollution control commission, political subdivision in  
8 which the violation occurs, or any other person ag-  
9 grieved by such violation. In any such action, it shall not  
10 be necessary for the plaintiff to plead or prove irrepar-  
11 able harm or lack of an adequate remedy at law. No  
12 person shall be required to post any injunction bond or  
13 other security under this section.
- 14 (c) No action may be brought under this section after  
15 an approval certificate has been issued by the board,  
16 notwithstanding the pendency of any appeals or other  
17 challenges to the board's action.
- 18 (d) In any action under this section, the court may

19 award reasonable costs of litigation, including attorney  
20 and expert witness fees, to any party if the party  
21 substantially prevails on the merits of the case and if  
22 in the determination of the court the party against  
23 whom the costs are requested has acted in bad faith.

**§20-10-8. Short title.**

1 This article may be known and cited as the "Commer-  
2 cial Hazardous Waste Management Facility Siting Act."

**ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.**

§20-11-1. Short title.

§20-11-2. Legislative findings and purpose.

§20-11-3. Recycling goals.

§20-11-4. Recycling plans.

§20-11-5. Establishment of county recycling programs for solid waste;  
petition for referendum to be placed on ballot; referendum  
election procedure; effect of such election.

§20-11-6. Establishment of state recycling program for solid waste.

§20-11-7. Procurement of recycled products.

**§20-11-1. Short title.**

1 This article shall be known and cited as the "West  
2 Virginia Recycling Act of 1989."

**§20-11-2. Legislative findings and purpose**

1 The Legislature finds that many citizens desire a  
2 recycling program in their county in order to conserve  
3 limited natural resources, reduce litter, recycle valuable  
4 materials, extend the useful life of solid waste landfills  
5 and reduce the need for new landfills.

6 The Legislature further finds that the identification  
7 and creation of local, regional, state and national  
8 markets for recyclable materials are necessary for the  
9 implementation of effective recycling programs.

10 The Legislature further finds that recycling programs  
11 can most successfully be established by encouraging the  
12 source separation of solid waste.

13 Therefore, it is the purpose of the Legislature to  
14 establish goals for the recycling of solid waste; to  
15 authorize each county commission, or the citizens of a  
16 county by referendum, to adopt a comprehensive  
17 recycling program for solid waste; to encourage source

18 separation of solid waste; to increase the purchase of  
19 recycled products by the various agencies and instru-  
20 mentalities of government; and to educate the public  
21 concerning the benefits of recycling.

**§20-11-3. Recycling goals.**

1 (a) It is the goal of this state to reduce the solid waste  
2 stream by thirty percent by the year two thousand.

3 (b) It is an interim goal of this state to reduce the solid  
4 waste stream by twenty percent by the first day of  
5 January, one thousand nine hundred ninety-four.

**§20-11-4. Recycling plans.**

1 (a) Each county or regional solid waste authority, as  
2 part of the comprehensive litter and solid waste control  
3 plan required pursuant to the provisions of section  
4 seven, article nine of this chapter, shall prepare and  
5 adopt a comprehensive recycling plan to assist in the  
6 implementation of the recycling goals in section four of  
7 this article.

8 (b) Each recycling plan required by this section shall  
9 include, but not be limited to:

10 (1) Designation of the recyclable materials that can be  
11 most effectively source separated in the region or  
12 county, which shall include at least three recyclable  
13 materials; and

14 (2) Designation of potential strategies for the collec-  
15 tion, marketing and disposition of designated source  
16 separated recyclable materials in each region or county.

**§20-11-5. Establishment of county recycling programs  
for solid waste; petition for referendum to be  
placed on ballot; referendum election proce-  
dure; effect of such election.**

1 (a) A comprehensive recycling program for solid  
2 waste may be established in any county of this state by  
3 action of a county commission in accordance with the  
4 provisions of this section. Such program shall require:

5 (1) That, prior to collection at its source, all solid  
6 waste shall be segregated into separate identifiable



7 recyclable materials by each person, partnership,  
8 corporation and governmental agency subscribing to a  
9 solid waste collection service in the county or transport-  
10 ing solid waste to a commercial solid waste facility in  
11 the county;

12 (2) That each commercial solid waste facility located  
13 in the county and each person engaged in the commer-  
14 cial collection, transportation, processing or disposal of  
15 solid waste within the county shall accept only such solid  
16 waste from which recyclable materials in accordance  
17 with said county's comprehensive recycling program  
18 have been segregated; and

19 (3) That the provisions of the recycling plan prepared  
20 pursuant to section four of this article shall, to the extent  
21 practicable, be incorporated in said county's comprehen-  
22 sive recycling program.

23 (b) For the purposes of this article, recyclable  
24 materials shall include, but not be limited to, steel and  
25 bi-metallic cans, aluminum, glass, paper, and such other  
26 solid waste materials as may be specified by the county  
27 commission with the advice of the county or regional  
28 solid waste authority.

29 (c) A referendum to determine whether it is the will  
30 of the voters of a county that a comprehensive recycling  
31 program for solid waste be established in the county  
32 may be held at any regular primary or general election  
33 or in conjunction with any other election. Any election  
34 at which the question of establishing a policy of  
35 comprehensive recycling for solid waste is voted upon  
36 shall be held at the voting precincts established for  
37 holding primary or general elections. All of the provi-  
38 sions of the general election laws, when not in conflict  
39 with the provisions of this article, shall apply to voting  
40 and elections hereunder, insofar as practicable.

41 (d) The county commission, upon the written petition  
42 of qualified voters residing within the county equal to  
43 at least five percent of the number of persons who voted  
44 in that county in the preceding general election, which  
45 petition may be in any number of counterparts, shall  
46 order a referendum be placed upon the ballot at the next

47 primary, general or special election to determine  
48 whether it is the will of the voters of said county that  
49 a policy of comprehensive recycling of solid waste be  
50 established in the county.

51 (e) The ballot, or the ballot labels where voting  
52 machines are used, shall have printed thereon substan-  
53 tially the following:

54 "Shall the County Commission be required to establish  
55 a comprehensive recycling program for solid waste in  
56 \_\_\_\_\_ County, West Virginia?

57  For Recycling

58  Against Recycling

59 (Place a cross mark in the square opposite your  
60 choice.)"

61 (f) If a majority of legal votes cast upon the question  
62 be for the establishment of a policy of comprehensive  
63 recycling of solid waste, the county commission shall,  
64 after the certification of the results of the referendum,  
65 thereafter establish by ordinance a comprehensive  
66 recycling program for solid waste in the county within  
67 ninety days of said certification. If a majority of the  
68 legal votes cast upon the question be against the  
69 establishment of a policy of comprehensive recycling of  
70 solid waste, said policy shall not take effect, but the  
71 question may again be submitted to a vote at any  
72 subsequent election in the manner herein provided.

73 (g) Any comprehensive recycling program adopted by  
74 referendum pursuant to this section may be rescinded  
75 only by a subsequent referendum adopted pursuant to  
76 the following procedures:

77 (1) The county commission, upon the written petition  
78 of qualified voters residing within the county equal to  
79 at least five percent of the number of persons who voted  
80 in that county in the next preceding general election,  
81 which petition may be in any number of counterparts,  
82 shall order a referendum be placed upon the ballot at  
83 the next primary, general or special election to deter-  
84 mine whether it is the will of the voters of said county

85 that the policy of comprehensive recycling of solid waste  
86 previously established in the county be terminated.

87 (2) The ballot, or the ballot labels where voting  
88 machines are used, shall have printed thereon substan-  
89 tially the following:

90 "Shall the County Commission be required to termi-  
91 nate the comprehensive recycling program for solid  
92 waste in \_\_\_\_\_  
93 County, West Virginia?

94  Continue Recycling

95  End Recycling

96 (Place a cross mark in the square opposite your  
97 choice.)"

98 (h) If a majority of legal votes cast upon the question  
99 be for the termination of a policy of comprehensive  
100 recycling of solid waste previously established in the  
101 county, the county commission shall, after the certifica-  
102 tion of the results of the referendum, thereafter rescind  
103 by ordinance the comprehensive recycling program for  
104 solid waste in the county within ninety days of said  
105 certification. If a majority of the legal votes cast upon  
106 the question be for the continuation of the policy of  
107 comprehensive recycling of solid waste, said ordinance  
108 shall not be rescinded, but the question may again be  
109 submitted to a vote at any subsequent election in the  
110 manner herein provided.

**§20-11-6. Establishment of state recycling program for  
solid waste.**

1 Notwithstanding any provision of this article to the  
2 contrary, all agencies and instrumentalities of the state  
3 shall implement programs to recycle solid waste. Such  
4 programs shall include, but not be limited to, the  
5 following:

6 (a) Source separation of at least two recyclable  
7 materials;

8 (b) In the absence of a comprehensive county recy-  
9 cling plan pursuant to section five of this article,

10 collection and transportation of source separated  
11 recycled materials to an appropriate location.

**§20-11-7. Procurement of recycled products.**

1 (a) It is the goal of the Legislature that, to the  
2 maximum extent possible, the state purchase recycled  
3 products.

4 (b) In furtherance of the aforesaid goal, the director  
5 of the department of finance and administration shall  
6 develop a procurement plan for recycled paper products.  
7 Such plan shall include a review of existing procure-  
8 ment policies and a cost analysis of the impacts of such  
9 plan. The director shall submit a report on the thirty-  
10 first day of January, one thousand nine hundred ninety,  
11 summarizing the plan and any recommendations for its  
12 implementation. Said report shall be submitted to the  
13 governor, speaker of the House of Delegates and  
14 president of the Senate.

**CHAPTER 24. PUBLIC SERVICE COMMISSION.**

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

§24-2-1f. Jurisdiction of commission over solid waste facilities.

§24-2-4b. Procedures for changing rates of electric, natural gas, telephone cooperatives and municipally operated public utilities.

**§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

1 The jurisdiction of the commission shall extend to all  
2 public utilities in this state, and shall include any utility  
3 engaged in any of the following public services:

4 Common carriage of passengers or goods, whether by  
5 air, railroad, street railroad, motor or otherwise, by  
6 express or otherwise, by land, water or air, whether  
7 wholly or partly by land, water or air; transportation of  
8 oil, gas or water by pipeline; transportation of coal and  
9 its derivatives and all mixtures and combinations  
10 thereof with other substances by pipeline; sleeping car  
11 or parlor car services; transmission of messages by  
12 telephone, telegraph or radio; generation and transmis-  
13 sion of electrical energy by hydroelectric or other

14 utilities for service to the public, whether directly or  
15 through a distributing utility; supplying water, gas or  
16 electricity, by municipalities or others; sewer systems  
17 servicing twenty-five or more persons or firms other  
18 than the owner of the sewer systems; any public service  
19 district created under the provisions of article thirteen-  
20 a, chapter sixteen of this code; toll bridges, wharves,  
21 ferries; solid waste facilities, pursuant to section one-f  
22 of this article; and any other public service: *Provided*,  
23 That natural gas producers who provide natural gas  
24 service to not more than twenty-five residential custo-  
25 mers are exempt from the jurisdiction of the commission  
26 with regard to the provisions of such residential service:  
27 *Provided, however*, That upon request of any of the  
28 customers of such natural gas producers, the commis-  
29 sion may, upon good cause being shown, exercise such  
30 authority as the commission may deem appropriate over  
31 the operation, rates and charges of such producer and  
32 for such length of time as the commission may consider  
33 to be proper: *Provided further*, That the jurisdiction the  
34 commission may exercise over the rates and charges of  
35 municipally operated public utilities is limited to that  
36 authority granted the commission in section four-b of  
37 this article: *And provided further*, That the decision-  
38 making authority granted to the commission in sections  
39 four and four-a of this article shall, in respect to an  
40 application filed by a public service district, be  
41 delegated to a single hearing examiner appointed from  
42 the commission staff, which hearing examiner shall be  
43 authorized to carry out all decision-making duties  
44 assigned to the commission by said sections, and to issue  
45 orders having the full force and effect of orders of the  
46 commission.

47 The commission may, upon application, waive its  
48 jurisdiction and allow a utility operating in an adjoining  
49 state to provide service in West Virginia when:

50 (1) An area of West Virginia cannot be practicably  
51 and economically served by a utility licensed to operate  
52 within the state of West Virginia;

53 (2) Said area can be provided with utility service by

54 a utility which operates in a state adjoining West  
55 Virginia;

56 (3) The utility operating in the adjoining state is  
57 regulated by a regulatory agency or commission of the  
58 adjoining state; and

59 (4) The number of customers to be served is not  
60 substantial.

61 The rates the out-of-state utility charges West Virgi-  
62 nia customers shall be the same as the rate the utility  
63 is duly authorized to charge in the adjoining  
64 jurisdiction.

65 The commission, in the case of any such utility, may  
66 revoke its waiver of jurisdiction for good cause.

**§24-2-1f. Jurisdiction of commission over solid waste facilities.**

1 Effective the first day of July, one thousand nine  
2 hundred eighty-nine, in addition to all other powers and  
3 duties of the commission as defined in this article, the  
4 commission shall establish, prescribe and enforce rates  
5 and fees charged by commercial solid waste facilities,  
6 as defined in subsection (b), section two, article nine,  
7 chapter twenty of this code: *Provided*, That an owner of  
8 a commercial solid waste facility that is not in existence  
9 on the effective date of this article that has executed or  
10 executes an agreement with a county commission or  
11 county or regional solid waste authority, establishing  
12 disposal rates or fees for said county or region, shall not  
13 be subject to the requirements of this chapter upon the  
14 approval of said disposal rates or fees by the commission  
15 for the term of such agreement: *Provided, however*, That  
16 any revisions to rates or fees or any renewals or  
17 extensions of said agreement would be similarly subject  
18 to such approval. The purpose of this provision is to  
19 encourage the development of solid waste disposal  
20 facilities which meet the environmental standards and  
21 requirements of article five-f of chapter twenty of this  
22 code and which provide for quality waste disposal for  
23 the county or region at reasonable rates. If any  
24 provisions of this section shall be held unconstitutional,

25 all commercial solid waste facilities shall be subject to  
26 the jurisdiction of the commission as provided herein.

**§24-2-4b. Procedures for changing rates of electric,  
natural gas, telephone cooperatives and  
municipally operated public utilities.**

1 (a) Electric cooperatives, natural gas cooperatives,  
2 telephone cooperatives and municipally operated public  
3 utilities, except for municipally operated commercial  
4 solid waste facilities as defined in section two-h, article  
5 five-f, chapter twenty of this code, are not subject to the  
6 rate approval provisions of section four or four-a of this  
7 article but are subject to the limited rate provisions of  
8 this section.

9 (b) All rates and charges set by electric cooperatives,  
10 natural gas cooperatives, telephone cooperatives and  
11 municipally operated public utilities shall be just,  
12 reasonable, applied without unjust discrimination or  
13 preference and based primarily on the costs of providing  
14 these services. Such rates and charges shall be adopted  
15 by the electric, natural gas or telephone cooperative's  
16 governing board and in the case of the municipally  
17 operated public utility by municipal ordinance to be  
18 effective not sooner than forty-five days after adoption:  
19 *Provided*, That notice of intent to effect a rate change  
20 shall be specified on the monthly billing statement of the  
21 customers of such utility for the month next preceding  
22 the month in which the rate change is to become  
23 effective or the utility shall give its customers, and in  
24 the case of a cooperative, its customers, members and  
25 stockholders, such other reasonable notices as will allow  
26 filing of timely objections to such rate change. Such  
27 rates and charges shall be filed with the commission  
28 together with such information showing the basis of  
29 such rates and charges and such other information as  
30 the commission considers necessary. Any change in such  
31 rates and charges with updated information shall be  
32 filed with the commission. If a petition, as set out in  
33 subdivision (1), (2) or (3), subsection (c) of this section,  
34 is received and the electric cooperative, natural gas  
35 cooperative, telephone cooperative, or municipality has  
36 failed to file with the commission such rates and charges

37 with such information showing the basis of rates and  
38 charges and such other information as the commission  
39 considers necessary, the suspension period limitation of  
40 one hundred twenty days and the one hundred day  
41 period limitation for issuance of an order by a hearing  
42 examiner, as contained in subsections (d) and (e) of this  
43 section, is tolled until the necessary information is filed.  
44 The electric cooperative, natural gas cooperative,  
45 telephone cooperative or municipality shall set the date  
46 when any new rate or charge is to go into effect.

47 (c) The commission shall review and approve or  
48 modify such rates upon the filing of a petition within  
49 thirty days of the adoption of the ordinance or resolution  
50 changing said rates or charges by:

51 (1) Any customer aggrieved by the changed rates or  
52 charges who presents to the commission a petition  
53 signed by not less than twenty-five percent of the  
54 customers served by such municipally operated public  
55 utility, or twenty-five percent of the membership of the  
56 electric, natural gas or telephone cooperative residing  
57 within the state; or

58 (2) Any customer who is served by a municipally  
59 operated public utility and who resides outside the  
60 corporate limits and who is affected by the change in  
61 said rates or charges and who presents to the commis-  
62 sion a petition alleging discrimination between custo-  
63 mers within and without the municipal boundaries. Said  
64 petition shall be accompanied by evidence of discrimi-  
65 nation; or

66 (3) Any customer or group of customers who are  
67 affected by said change in rates who reside within the  
68 municipal boundaries and who present a petition to the  
69 commission alleging discrimination between said  
70 customer or group of customers and other customers of  
71 the municipal utility. Said petition shall be accompanied  
72 by evidence of discrimination.

73 (d) (1) The filing of a petition with the commission  
74 signed by not less than twenty-five percent of the  
75 customers served by the municipally operated public  
76 utility, or twenty-five percent of the membership of the



77 electric, natural gas or telephone cooperative residing  
78 within the state, under subdivision (1), subsection (c) of  
79 this section, shall suspend the adoption of the rate  
80 change contained in the ordinance or resolution for a  
81 period of one hundred twenty days from the date said  
82 rates or charges would otherwise go into effect, or until  
83 an order is issued as provided herein.

84 (2) Upon sufficient showing of discrimination by  
85 customers outside the municipal boundaries, or a  
86 customer or a group of customers within the municipal  
87 boundaries, under a petition filed under subdivision  
88 (2) or (3), subsection (c) of this section, the commission  
89 shall suspend the adoption of the rate change contained  
90 in the ordinance for a period of one hundred twenty days  
91 from the date said rates or charges would otherwise go  
92 into effect or until an order is issued as provided herein.

93 (e) The commission shall forthwith appoint a hearing  
94 examiner from its staff to review the grievances raised  
95 by the petitioners. Said hearing examiner shall conduct  
96 a public hearing, and shall within one hundred days  
97 from the date the said rates or charges would otherwise  
98 go into effect, unless otherwise tolled as provided in  
99 subsection (b) of this section, issue an order approving,  
100 disapproving or modifying, in whole or in part, the rates  
101 or charges imposed by the electric, natural gas or  
102 telephone cooperative or by the municipally operated  
103 public utility pursuant to this section.

104 (f) Upon receipt of a petition for review of the rates  
105 under the provisions of subsection (c) of this section, the  
106 commission may exercise the power granted to it under  
107 the provisions of section three of this article. The  
108 commission may determine the method by which such  
109 rates are reviewed and may grant and conduct a de novo  
110 hearing on the matter if the customer, electric, natural  
111 gas or telephone cooperative or municipality requests  
112 such a hearing.

113 (g) The commission may, upon petition by a munic-  
114 ipality or electric, natural gas or telephone cooperative,  
115 allow an interim or emergency rate to take effect,  
116 subject to future modification, if it is determined that

117 such interim or emergency rate is necessary to protect  
118 the municipality from financial hardship and if that  
119 financial hardship is attributable solely to the purchase  
120 of the utility commodity sold. In such cases, the  
121 commission may waive the forty-five-day waiting period  
122 provided for in subsection (b) of this section and the one  
123 hundred twenty-day suspension period provided for in  
124 subsection (d) of this section.

125 (h) Notwithstanding any other provision, the commis-  
126 sion shall have no authority or responsibility with  
127 regard to the regulation of rates, income, services or  
128 contracts by municipally operated public utilities for  
129 services which are transmitted and sold outside of the  
130 state of West Virginia.

## CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

### ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

#### **§24A-2-4a. Motor carriers transporting solid waste; pass through of landfill tip fees as rate surcharge.**

1 Any common carrier transporting solid waste in this  
2 state pursuant to authority granted under section five,  
3 article two, chapter twenty-four-a of the code of West  
4 Virginia, one thousand nine hundred thirty-one, as  
5 amended, may make application to the commission for  
6 approval of a rate surcharge to pass through any  
7 increase in the disposal rate charged by the landfill at  
8 which solid waste is disposed by the motor carrier,  
9 commonly known as the tip fee, to commercial and  
10 residential customers, including increases which are the  
11 direct result of fees, charges, taxes, or any other  
12 assessment imposed upon the landfill by a governmental  
13 body. The commission shall within fourteen days of  
14 receipt of said application notify the motor carrier of  
15 approval of the requested rate surcharge, or approval  
16 of a rate surcharge other than in the amount requested  
17 and the reason therefor. The effective date of the  
18 approved rate surcharge shall be the same date as the  
19 effective date of the increase in the tip fee to which the

20 surcharge relates; except that in the event the applica-  
21 tion for approval of the rate surcharge is received by  
22 the commission more than sixty days after the effective  
23 date of the tip fee increase, then the effective date of the  
24 approved rate surcharge shall be the date said applica-  
25 tion was received by the commission.

26 The commission shall immediately promulgate emer-  
27 gency rules which set forth the procedures for the filing  
28 of the tip fee rate surcharge application. It is the  
29 purpose of this statute to provide an expedited process  
30 which will allow the subject motor carriers to pass  
31 through tip fee increases to all customers. Only that data  
32 necessary to review in accordance with this statute may  
33 be required by the commission to be submitted by the  
34 motor carrier.

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## CHAPTER 185

(S. B. 249—Originating in the Committee on Finance)

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[Passed February 28, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirty, article fifteen, chapter eleven of said code, all relating to authorizing the governor to incur indebtedness to redeem previous liabilities for the ordinary expenses of the state; specifying maximum amount of indebtedness and setting the time of repayment; providing the manner of issuance of such indebtedness; authorizing the governor to enter into trust agreements and covenants and to contract for professional and technical services in connection with such issuance; specifying that evidences of such indebtedness shall be negotiable instruments; providing for exemption of principal and interest on such indebtedness from taxation by the state and its political subdivisions; specifying that such indebtedness shall not be an obligation of the state; creating special fund for receipt of proceeds of such issuance and providing the purpose

for which such proceeds may be expended; creating a special fund for repayment of principal and interest on such indebtedness; pledging and dedicating certain portion of consumers sales tax for said repayment; and authorizing repayments from such fund to the occupational pneumoconiosis fund.

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

That section nineteen, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirty, article fifteen, chapter eleven of said code be amended and reenacted, 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.**

**11. Taxation.**

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

**ARTICLE 1. THE GOVERNOR.**

**§5-1-19. Temporary loans.**

- 1 The governor may raise, from time to time, by  
2 temporary loans, not having over eighteen months to  
3 run, nor bearing a greater interest than two cents per  
4 hundred dollars per day, so much as may be needed to  
5 supply the wants of the treasury: *Provided*, That the  
6 governor may, on or before the thirtieth day of June, one  
7 thousand nine hundred eighty-nine, issue notes, revenue  
8 bonds, certificates or other evidences of indebtedness of  
9 the state as provided in this section to redeem previous  
10 liabilities for the ordinary expenses of the state. Such  
11 notes, revenue bonds, certificates or other evidences of  
12 indebtedness may not exceed in the aggregate the  
13 principal sum of one hundred thirty-five million dollars  
14 and shall provide for repayment of principal and

15 interest in full no later than the thirtieth day of June,  
16 one thousand nine hundred ninety-two.

17 The issuance of such notes, revenue bonds, certificates  
18 or other evidences of indebtedness shall be authorized  
19 by an executive order, and such notes, revenue bonds,  
20 certificates or other evidences of indebtedness shall be  
21 payable in such medium of payment and at such place  
22 or places, within or without the state, and may have  
23 such other terms and conditions as the governor  
24 determines. Such notes, revenue bonds, certificates or  
25 other evidences of indebtedness shall be signed by the  
26 governor, under the great seal of the state, and attested  
27 by the secretary of state. The governor and secretary of  
28 state may sign and attest such notes, revenue bonds,  
29 certificates or other evidences of indebtedness by  
30 facsimile signature. Such notes, revenue bonds, certifi-  
31 cates or other evidences of indebtedness may be issued  
32 at such interest rate or rates as the governor deems  
33 reasonable and necessary to serve the best interests of  
34 the state and to enhance their marketability. Such notes,  
35 revenue bonds, certificates or other evidences of  
36 indebtedness shall be sold in such manner and on such  
37 terms and conditions as the governor may determine to  
38 be in the best interests of the state. Any revenue bonds  
39 issued hereunder shall be in registered form.

40 The governor may enter into trust agreements with  
41 banks or trust companies, within or without the state,  
42 and in such trust agreements or the executive order  
43 authorizing the issuance of such notes, revenue bonds,  
44 certificates or other evidences of indebtedness he may  
45 enter into valid and legally binding covenants with the  
46 holders of such notes, revenue bonds, certificates or  
47 other evidences of indebtedness as to the custody,  
48 safekeeping and disposition of the moneys within the  
49 "Fiscal Responsibility Fund" hereinafter created and as  
50 to any other matters or provisions which are deemed  
51 necessary or advisable by the governor to serve the best  
52 interests of the state and to enhance the marketability  
53 of such notes, revenue bonds, certificates or other  
54 evidences of indebtedness. The governor may contract  
55 for the provision of such professional and technical

56 services as he may deem necessary or advisable in  
57 connection with the issuance of such notes, revenue  
58 bonds, certificates or other evidences of indebtedness,  
59 including without limitation accounting, actuarial,  
60 consulting, financial and legal services. The fees and  
61 expenses of such professionals and any and all other  
62 costs associated with the issuance of such notes, revenue  
63 bonds, certificates or other evidences of indebtedness  
64 shall be payable from the proceeds of such issuance.

65 Such notes, revenue bonds, certificates or other  
66 evidences of indebtedness shall be and constitute  
67 negotiable instruments under the Uniform Commercial  
68 Code of this state; shall, together with the interest  
69 thereon, be exempt from all taxation by the state of  
70 West Virginia, or by any county, school district,  
71 municipality or political subdivision thereof; and such  
72 notes, revenue bonds, certificates or other evidences of  
73 indebtedness shall not be deemed to be general obliga-  
74 tions or debts of the state within the meaning of the  
75 constitution of the state of West Virginia, and the credit  
76 or the taxing power of the state shall not be pledged  
77 therefor, but such notes, revenue bonds, certificates or  
78 other evidences of indebtedness shall be payable only  
79 from the revenue pledged therefor as provided in this  
80 section.

81 The proceeds of any indebtedness issued hereunder  
82 shall be paid into a special fund hereby created in the  
83 state treasury named "The Fund for Redemption of  
84 Previous Liabilities". The governor may make disburse-  
85 ments from this fund to pay the reasonable fees,  
86 expenses and costs associated with the issuance of the  
87 indebtedness authorized by this section, and such other  
88 disbursements as he deems necessary to redeem pre-  
89 vious liabilities for the ordinary expenses of the state.

90 There is hereby created in the state treasury a special  
91 fund named the "Fiscal Responsibility Fund" into which  
92 shall be paid on and after the first day of July, one  
93 thousand nine hundred eighty-nine, the amounts as and  
94 when specified in section thirty, article fifteen, chapter  
95 eleven of this code. All moneys deposited in said fund  
96 are pledged to the repayment of principal and interest

97 on any notes, revenue bonds, certificates or other  
98 evidences of indebtedness issued pursuant to this  
99 section. A lien on the fund shall exist in favor of the  
100 holders of any notes, revenue bonds, certificates or other  
101 evidences of indebtedness issued under this section to  
102 the extent of such indebtedness. Any moneys not needed  
103 for repayment of principal and interest on and costs  
104 associated with the notes, revenue bonds, certificates or  
105 other evidences of indebtedness authorized by this  
106 section may be used to repay principal and interest on  
107 moneys previously transferred from the occupational  
108 pneumoconiosis fund pursuant to section eight-a, article  
109 four-b, chapter twenty-three of this code. Repayment to  
110 the occupational pneumoconiosis fund, if any, shall be  
111 made into the special account created in the state  
112 treasury by said section eight-a. Any amounts remain-  
113 ing in the "Fiscal Responsibility Fund" after provisions  
114 for repayment of indebtedness issued pursuant to this  
115 section and not otherwise used for repayment of moneys  
116 previously transferred from the occupational pneumoco-  
117 niosis fund shall be transferred to the general revenue  
118 fund of this state on or before the first day of August,  
119 one thousand nine hundred ninety-two.

## CHAPTER 11. TAXATION.

### ARTICLE 15. CONSUMERS SALES TAX.

#### §11-15-30. Proceeds of tax; dedication of certain revenues.

1 The proceeds of the tax imposed by this article shall  
2 be deposited in the general revenue fund of the state:  
3 *Provided*, That beginning the first day of July, one  
4 thousand nine hundred eighty-nine, and continuing each  
5 month thereafter through the last day of July, one  
6 thousand nine hundred ninety-two, the first five million  
7 dollars of proceeds of this tax for each month shall be  
8 paid into the "Fiscal Responsibility Fund" created by  
9 section nineteen, article one, chapter five of this code  
10 and used for the purposes specified therein: *Provided*,  
11 *however*, That for the fiscal year one thousand nine  
12 hundred eighty-nine, one million dollars of the proceeds  
13 of the tax imposed by this article shall be dedicated to

14 the cancer center at West Virginia University and eight  
15 million dollars of the proceeds of the tax imposed by this  
16 article shall be dedicated to the "Higher Education  
17 Salary Fund" which is hereby created in the state  
18 treasury. All moneys credited to the higher education  
19 salary fund shall be expended by the board of regents  
20 for further implementation of the fee schedules estab-  
21 lished in articles twenty-two and twenty-six-b, chapter  
22 eighteen of this code.

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## CHAPTER 186

(Com. Sub. for H. B. 2051—By Delegate Love)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to scheduling governmental agencies or programs for termination pursuant to the West Virginia sunset law.

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

That section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

#### §4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs  
2 shall be terminated on the date indicated but no  
3 governmental entity or program shall be terminated  
4 under this article unless a performance audit has been  
5 conducted of such entity or program, except as autho-  
6 rized under section fourteen of this article:

7 (1) On the first day of July, one thousand nine  
8 hundred eighty-one: Judicial council of West Virginia;  
9 motor vehicle certificate appeal board; child welfare  
10 licensing board.



11 (2) On the first day of July, one thousand nine  
12 hundred eighty-two: Ohio River basin commission;  
13 commission on postmortem examination; state commis-  
14 sion on manpower, training and technology.

15 (3) On the first day of July, one thousand nine  
16 hundred eighty-three: Anatomical board; economic  
17 opportunity advisory committee; community develop-  
18 ment authority board.

19 (4) On the first day of July, one thousand nine  
20 hundred eighty-four: The following programs of the  
21 department of natural resources: Rabies control, work  
22 incentive program; West Virginia alcoholic beverage  
23 control licensing advisory board.

24 (5) On the first day of July, one thousand nine  
25 hundred eighty-five: Beautification commission; labor  
26 management advisory council.

27 (6) On the first day of July, one thousand nine  
28 hundred eighty-six: Health resources advisory council.

29 (7) On the first day of July, one thousand nine  
30 hundred eighty-seven: Civil service commission advisory  
31 board; council of finance and administration; and the  
32 motorcycle safety standards and specifications board.

33 (8) On the first day of July, one thousand nine  
34 hundred eighty-eight: Veteran's council; labor manage-  
35 ment relations board; records management and preser-  
36 vation advisory committee; minimum wage rate board;  
37 commission on mass transportation; real estate commis-  
38 sion; the department of labor; the division of archives  
39 and history of the department of culture and history;  
40 and the public employees insurance board.

41 (9) On the first day of July, one thousand nine  
42 hundred eighty-nine: Mental retardation advisory  
43 committee; board of school finance; veteran's affairs  
44 advisory council; reclamation commission.

45 (10) On the first day of July, one thousand nine  
46 hundred ninety: Consumer affairs advisory council;  
47 savings and loan association; forest industries industrial  
48 foundation; U.S. geological survey program within the

49 department of natural resources; drivers' license  
50 advisory board; women's commission; office of workers'  
51 compensation commissioner; child advocate office,  
52 department of human services; board of investments;  
53 and the department of corrections.

54 (11) On the first day of July, one thousand nine  
55 hundred ninety-one: State advisory council of the  
56 department of employment security; department of  
57 human services; oil and gas conservation commission;  
58 the family law masters system; state lottery commission;  
59 the department of commerce; West Virginia health care  
60 cost review authority; the following divisions or pro-  
61 grams of the department of agriculture: Soil conserva-  
62 tion committee, rural resource division, meat inspection  
63 program; interagency committee on pesticides; pesti-  
64 cides board of review; and the geological and economic  
65 survey.

66 (12) On the first day of July, one thousand nine  
67 hundred ninety-two: State water resources board; water  
68 resources division, department of natural resources;  
69 whitewater advisory board; state board of risk and  
70 insurance management; West Virginia's membership in  
71 the interstate commission on the Potomac River basin;  
72 board of banking and financial institutions; state  
73 building commission; the capitol building and grounds  
74 preservation commission; the board of examiners in  
75 counseling; and the public service commission: *Provided,*  
76 That in the case of the public service commission, the  
77 performance and fiscal audit required by this article  
78 shall be completed and transmitted to the joint commit-  
79 tee on government and finance on or before the first day  
80 of July, one thousand nine hundred ninety-one, in order  
81 that the joint committee or its designated subcommittee  
82 may review the audit pursuant to the provisions of  
83 section one, article one, chapter twenty-four of this code.

84 (13) On the first day of July, one thousand nine  
85 hundred ninety-three: Commission on uniform state  
86 laws; state structural barriers compliance board; and  
87 the oil and gas inspectors examining board.

88 (14) On the first day of July, one thousand nine

- 89 hundred ninety-four: Ohio River valley water sanitation  
90 commission; and the southern regional education board.
- 91 (15) On the first day of July, one thousand nine  
92 hundred ninety-five: Emergency medical services  
93 advisory council; commission on charitable organiza-  
94 tions; information system advisory commission; and the  
95 board of social work examiners.

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## CHAPTER 187

(Com. Sub. for H. B. 2327—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 8, 1989; in effect June 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia parkways, economic development and tourism authority; dissolving and terminating the West Virginia turnpike commission as of the first day of June, one thousand nine hundred eighty-nine, and creating as of the same date the West Virginia parkways, economic development and tourism authority; amending and reenacting existing provisions relating to turnpike commission; providing for construction, operation and financing of parkway, economic development and tourism projects; declaring construction of modern highways and promotion and enhancement of tourism and economic development in state as goals of authority, including, but not limited to, development, construction, improvement and enhancement of state parks and tourist facilities and attractions; providing that bonds issued by authority not debt of state or any political subdivision thereof; providing for composition of authority, terms of members and procedural matters relating thereto; transferring powers, obligations, liabilities, duties, functions, personnel, property and other assets of turnpike commission to authority; defining certain terms used in article; setting forth powers of authority including, but not limited to, power

to issue revenue and revenue refunding bonds to finance projects, to construct, reconstruct, improve, repair, maintain and operate projects, to fix and revise tolls, rents, fees and other charges, and to make and enter into contracts and agreements necessary or incidental to the performance of its duties; authorizing construction of grade separations at intersection of any project; authorizing acquisition of land, property, rights and other interests in land as authority may deem necessary; authorizing condemnation proceedings in certain circumstances; authorizing issuance of revenue bonds generally for purposes of paying all or any part of cost of projects, and specifying form and terms thereof and rights of holders thereof; authorizing issuance of revenue bonds to pay cost of West Virginia turnpike, including repayment to state of funds owed to it in connection with upgrading turnpike to federal interstate standards and, to the extent permitted by federal law, paying all or any part of the cost of related parkway projects, and limiting issuance of such bonds to an aggregate principal amount of eighty-three million dollars; specifying uses of bond proceeds; providing that bonds may be secured by trust agreement with any trust company and certain banks; providing that authority may fix, revise, charge and collect tolls, rents, fees, charges and other revenues and requiring competitive bidding on certain contracts; exempting authority from payment of taxes; designating all money received by authority as trust funds; setting forth bondholder and trustee remedies; requiring that all private property damaged or destroyed by authority be repaired or restored by authority from its funds; authorizing commissioner of highways department to expend funds to study feasibility of projects and reimbursing commissioner from bond proceeds; establishing penalty for defrauding authority; providing for cessation of tolls under certain circumstances; requiring removal of certain tolls on turnpike by specified date; providing that parkway projects shall constitute part of state road system; authorizing issuance of revenue refunding bonds generally to refund outstanding bonds of authority and, if deemed advisable by authority, to pay all or any part

of the cost of new project or projects, and to repay to state funds owed to it in connection with upgrading turnpike to federal interstate standards, and providing form and terms thereof and rights of holders thereof; authorizing issuance of special revenue refunding bonds in an aggregate principal amount not to exceed sixty million dollars to eliminate outstanding debt on West Virginia turnpike and, to the extent permissible under federal law, to pay all or any part of the cost of additional parkway projects or to repay to state funds owed to it in connection with upgrading turnpike to federal interstate standards; establishing special highway fund, to be separate and distinct from state road fund and general revenues, consisting of funds disbursed by the authority to department of highways in repayment of state funds used to upgrade West Virginia turnpike, and all appropriations, grants, gifts and other contributions to fund, and all interest earned on moneys held in fund; authorizing governor to transfer up to thirty-five million dollars from special highway fund to economic development authority insurance fund, and specifying that balance of special highway fund to be subject to legislative appropriation; providing that act to be deemed to provide additional and alternative methods for accomplishing purposes thereof; authorizing issuance of special obligation bonds; requiring preparation of annual report of financial condition and operations; providing for development of exit awareness signs; providing severability clause; and providing effective date of first day of June, one thousand nine hundred eighty-nine.

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

That article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.**

- §17-16A-1. Constructing, operating, financing, etc., parkway, economic development and tourism projects.
- §17-16A-2. Parkway revenue bonds and revenue refunding bonds not debt of state or political subdivisions; statement on bonds.

- §17-16A-3. Dissolution and termination of West Virginia turnpike commission; West Virginia parkways, economic development and tourism authority generally.
- §17-16A-4. Transfer of powers, duties, functions, assets and liabilities of turnpike commission to parkways authority.
- §17-16A-5. Definitions.
- §17-16A-6. Parkway authority's powers.
- §17-16A-7. Parkway authority's incidental powers.
- §17-16A-8. Acquisition of land, property, easements, etc.
- §17-16A-9. Condemnation of property.
- §17-16A-10. Parkway revenue bonds—Generally.
- §17-16A-11. Parkway revenue bonds—West Virginia Turnpike; related projects.
- §17-16A-12. Parkway revenue bonds—Trust agreement.
- §17-16A-13. Tolls, rents, fees, charges and revenues; competitive bidding on contracts.
- §17-16A-14. Trust funds.
- §17-16A-15. Remedies.
- §17-16A-16. Exemption from taxation.
- §17-16A-17. Repair, etc., of damaged property; conveyances, etc., by counties, cities, etc., to parkways authority; maintenance and policing of projects; defrauding parkways authority; evading payment of tolls, rents, fees or charges; trespassing.
- §17-16A-18. Cessation of tolls.
- §17-16A-19. Preliminary expenses.
- §17-16A-20. Parkway projects part of state road system; pledge of limited funds by state department of highways in case of deficit.
- §17-16A-21. Parkway revenue refunding bonds—Generally.
- §17-16A-22. Parkway revenue refunding bonds—West Virginia Turnpike.
- §17-16A-23. Special highway fund; appropriations from fund.
- §17-16A-24. Article deemed to provide additional and alternative methods.
- §17-16A-25. Additional powers of parkways authority; issuance of special obligation bonds.
- §17-16A-26. Annual report.
- §17-16A-27. Exit awareness signs.
- §17-16A-28. Severability.
- §17-16A-29. Effective date.

**§17-16A-1. Constructing, operating, financing, etc., parkway, economic development and tourism projects.**

- 1 In order to remove the present handicaps and hazards
- 2 on the congested highways and roads in the state of West
- 3 Virginia, to facilitate vehicular traffic throughout the
- 4 state, to promote and enhance the tourism industry and
- 5 to develop and improve tourist facilities and attractions
- 6 in the state, to promote the agricultural, economic and
- 7 industrial development of the state, and to provide for

8 the construction of modern express highways including  
9 center divisions, ample shoulder widths, long-sight  
10 distances, the bypassing of cities, multiple lanes in each  
11 direction and grade separations at all intersections with  
12 other highways and railroads, to provide for the  
13 development, construction, improvement and enhance-  
14 ment of state parks, tourist facilities and attractions,  
15 and to provide for the improvement and enhancement  
16 of state parks presently existing, the West Virginia  
17 parkways, economic development and tourism authority  
18 (hereinafter created) is hereby authorized and empow-  
19 ered to construct, reconstruct, improve, maintain, repair  
20 and operate parkway projects, economic development  
21 projects and tourism projects (as those terms are  
22 hereinafter defined in section five of this article) at such  
23 locations as shall be approved by the state department  
24 of transportation, and to issue parkway revenue bonds  
25 of the state of West Virginia, payable solely from  
26 revenues, to pay the cost of such projects.

**§17-16A-2. Parkway revenue bonds and revenue refund-  
ing bonds not debt of state or political  
subdivisions; statement on bonds.**

1 Parkway revenue bonds and revenue refunding bonds  
2 issued under the provisions of this article shall not be  
3 deemed to constitute a debt of the state or of any  
4 political subdivision thereof or a pledge of the faith and  
5 credit of the state or of any such political subdivision,  
6 but such bonds shall be payable solely from the funds  
7 herein provided therefor from revenues. All such  
8 parkway revenue bonds and revenue refunding bonds  
9 shall contain on the face thereof a statement to the effect  
10 that neither the state nor any political subdivision  
11 thereof shall be obligated to pay the same or the interest  
12 thereon except from revenues of the project or projects  
13 for which they are issued and that neither the faith and  
14 credit nor the taxing power of the state or any political  
15 subdivision thereof is pledged to the payment of the  
16 principal of or the interest on such bonds.

**§17-16A-3. Dissolution and termination of West Virginia  
turnpike commission; West Virginia park-  
ways, economic development and tourism  
authority generally.**

1       On and after the first day of June, one thousand nine  
2 hundred eighty-nine, the West Virginia turnpike  
3 commission is hereby abolished in all respects, and there  
4 is hereby created the "West Virginia Parkways, Eco-  
5 nomic Development and Tourism Authority," and by  
6 that name the parkways authority may sue and be sued  
7 and plead and be impleaded. The parkways authority is  
8 hereby constituted an agency of the state, and the  
9 exercise by the parkways authority of the powers  
10 conferred by this article in the construction, reconstruc-  
11 tion, improvement, operation and maintenance of  
12 parkway, economic development and tourism projects  
13 shall be deemed and held to be an essential governmen-  
14 tal function of the state.

15       The West Virginia parkways, economic development  
16 and tourism authority shall consist of seven members,  
17 including the transportation secretary, who shall serve  
18 as chairman of the parkways authority, and six  
19 members, including no less than one from each of the  
20 counties which have land bordering parkway projects,  
21 appointed by the governor, by and with the advice and  
22 consent of the Senate. The appointed members shall be  
23 residents of the state, and shall have been qualified  
24 electors therein for a period of at least one year next  
25 preceding their appointment. Upon the effective date of  
26 this legislation, the governor shall forthwith appoint six  
27 members of the parkways authority for staggered  
28 terms. The terms of the parkways authority members  
29 first taking office on or after the effective date of this  
30 legislation shall expire as designated by the governor at  
31 the time of the nomination, one at the end of the first  
32 year, one at the end of the second year, one at the end  
33 of the third year, one at the end of the fifth year, one  
34 at the end of the sixth year, and one at the end of the  
35 seventh year, after the first day of June, one thousand  
36 nine hundred eighty-nine. As these original appoint-  
37 ments expire, each subsequent appointment shall be for  
38 a full eight-year term. Any member whose term has  
39 expired shall serve until his successor has been duly  
40 appointed and qualified. Any person appointed to fill a  
41 vacancy shall serve only for the unexpired term. Any



42 member shall be eligible for reappointment. The term  
43 of any person serving as a member of the West Virginia  
44 turnpike commission immediately preceding the effective  
45 date of this legislation shall cease and otherwise  
46 expire upon such effective date: *Provided*, That any such  
47 member shall be eligible for reappointment. Each  
48 appointed member of the parkways authority before  
49 entering upon his duties shall take an oath as provided  
50 by section five of article four of the Constitution of the  
51 state of West Virginia.

52 The parkways authority shall elect one of the ap-  
53 pointed members as vice chairman, and shall also elect  
54 a secretary and treasurer who need not be members of  
55 the parkways authority. Four members of the parkways  
56 authority shall constitute a quorum and the vote of a  
57 majority of members present shall be necessary for any  
58 action taken by the parkways authority. No vacancy in  
59 the membership of the parkways authority shall impair  
60 the right of a quorum to exercise all the rights and  
61 perform all the duties of the parkways authority. The  
62 parkways authority shall meet at least monthly and  
63 either the chairman or any four members shall be  
64 empowered to call special meetings for any purpose or  
65 purposes: *Provided*, That notice of any such meeting  
66 shall be given to all members of the parkways authority  
67 not less than ten days prior to said special meetings.

68 Before the issuance of any parkway revenue bonds or  
69 revenue refunding bonds under the provisions of this  
70 article, each appointed member of the parkways  
71 authority shall execute a surety bond in the penal sum  
72 of twenty-five thousand dollars and the secretary and  
73 treasurer shall execute a surety bond in the penal sum  
74 of fifty thousand dollars, each such surety bond to be  
75 conditioned upon the faithful performance of the duties  
76 of his office, to be executed by a surety company  
77 authorized to transact business in the state of West  
78 Virginia as surety and to be approved by the governor  
79 and filed in the office of the secretary of state.

80 The members of the parkways authority shall not be  
81 entitled to compensation for their services, but each  
82 member shall be reimbursed for his actual expenses

83 necessarily incurred in the performance of his duties.  
84 All expenses incurred in carrying out the provisions of  
85 this article shall be payable solely from funds provided  
86 under the authority of this article and no liability or  
87 obligation shall be incurred by the parkways authority  
88 hereunder beyond the extent to which moneys shall have  
89 been provided under the authority of this article.

**§17-16A-4. Transfer of powers, duties, functions, assets  
and liabilities of turnpike commission to  
parkways authority.**

1 (a) The duties, powers and functions of the West  
2 Virginia turnpike commission are hereby transferred to  
3 the parkways authority.

4 (b) All obligations, indebtedness and other liabilities  
5 of, and all rights, assets and other property owned by  
6 or used in the administration of, the West Virginia  
7 turnpike commission as of the first day of June, one  
8 thousand nine hundred eighty-nine, and all personnel of  
9 said turnpike commission as of said date are hereby  
10 assumed by and transferred to the parkways authority,  
11 which is hereby constituted the successor in interest to  
12 said commission in all respects.

13 (c) All books, papers, maps, charts, plans, literature  
14 and other records in the possession of the West Virginia  
15 turnpike commission as of the first day of June, one  
16 thousand nine hundred eighty-nine, shall be delivered or  
17 turned over to the parkways authority.

18 (d) The unexpended balance of appropriations or other  
19 funds available for use of the West Virginia turnpike  
20 commission as of the first day of June, one thousand nine  
21 hundred eighty-nine, is hereby transferred to the  
22 parkways authority for the use of the parkways author-  
23 ity.

**§17-16A-5. Definitions.**

1 As used in this article, the following words and terms  
2 shall have the following meanings, unless the context  
3 shall indicate another or different meaning or intent:

4 (a) The words "parkways authority" mean the West  
5 Virginia parkways, economic development and tourism  
6 authority created by section three of this article, or if  
7 said parkways authority shall be abolished, the board,  
8 body, commission or authority succeeding to the  
9 principal functions thereof or to whom the powers given  
10 by this article to the parkways authority shall be given  
11 by law.

12 (b) The words "parkway project" mean any express-  
13 way, turnpike, trunkline, feeder road, state local service  
14 road or park and forest road which the parkways  
15 authority may at any time determine to construct,  
16 reconstruct, maintain, improve or repair under the  
17 provisions of this article, or any expressway, turnpike  
18 or other road constructed by the West Virginia turnpike  
19 commission pursuant to the authority granted to it  
20 under the laws of this state prior to the first day of June,  
21 one thousand nine hundred eighty-nine, and shall  
22 embrace all bridges, tunnels, overpasses, underpasses,  
23 interchanges, entrance plazas, approaches, toll houses,  
24 service stations and administration, storage and other  
25 buildings, which the parkways authority may deem  
26 necessary for the operation of the parkway project, or  
27 which is used in the operation of a parkway project  
28 constructed prior to the first day of June, one thousand  
29 nine hundred eighty-nine, together with all property,  
30 rights, easements and interests which may be acquired  
31 by the parkways authority for the construction or the  
32 operation of the parkway project or which were  
33 acquired in connection with or are used in the operation  
34 of a parkway project constructed prior to the first day  
35 of June, one thousand nine hundred eighty-nine.

36 (c) The words "tourism project" mean (i) any park or  
37 tourist facility and attraction which the parkways  
38 authority may at any time determine to create, develop,  
39 construct, reconstruct, improve, maintain or repair  
40 under the provisions of this article, and shall embrace  
41 all roads, interchanges, entrance plazas, approaches,  
42 services stations, administration, storage and any other  
43 buildings or service stations, structures which the  
44 parkways authority may deem necessary for the oper-

45 ation of the tourism project, together with all property  
46 rights, easements and interests which may be acquired  
47 by the parkways authority for the construction or  
48 operation of the tourism project; and (ii) the construc-  
49 tion, reconstruction, improvement, maintenance and  
50 repair of any park or tourist facility and attraction  
51 owned by the state as of the first day of June, one  
52 thousand nine hundred eighty-nine.

53 (d) The words "economic development project" mean  
54 any land or water site, structure, facility or equipment  
55 which the parkways authority may at any time deter-  
56 mine to acquire, create, develop, construct, reconstruct,  
57 improve or repair under the provisions of this article to  
58 promote the agricultural, economic or industrial  
59 development of the state, together with all property  
60 rights, easements and interests which may be acquired  
61 by the parkways authority for the development, con-  
62 struction or operation of such project.

63 (e) The words "project" or "projects" mean a parkway  
64 project, economic development project or tourism  
65 project, or any combination thereof.

66 (f) The words "transportation secretary" mean the  
67 secretary of the state department of transportation.

68 (g) The words "West Virginia turnpike commission"  
69 mean the state turnpike commission existing as of the  
70 first day of June, one thousand nine hundred eighty-  
71 nine.

72 (h) The words "tourist facility and attraction" mean  
73 cabins, lodges, recreational facilities, restaurants, and  
74 other revenue producing facilities, any land or water  
75 site, and any information center, visitors' center or rest  
76 stop which the parkways authority determines may  
77 improve, enhance or contribute to the development of  
78 the tourism industry in the state.

79 (i) The word "turnpike" means the West Virginia  
80 Turnpike or any other toll road in the state.

81 (j) The word "expressway" means any road serving  
82 major intrastate and interstate travel, including federal  
83 interstate routes.

84 (k) The word "trunkline" means any road serving  
85 major city to city travel.

86 (l) The words "feeder roads" mean any road serving  
87 community to community travel or collects and feeds  
88 traffic to an expressway or turnpike.

89 (m) The words "local service road" mean any local  
90 arterIALIZED and spur roads which provide land access  
91 and socioeconomic benefits to abutting properties.

92 (n) The words "park and forest roads" mean any road  
93 serving travel within state parks, state forests and  
94 public hunting and fishing areas.

95 (o) The word "cost" as applied to any project, including  
96 without limitation the West Virginia Turnpike in  
97 sections eleven and twenty-two of this article, embraces  
98 the cost of construction, reconstruction, maintenance,  
99 improvement, repair and operation of the project, the  
100 cost of the acquisition of all land, rights-of-way,  
101 property, rights, easements and interests acquired by  
102 the parkways authority for such construction, recon-  
103 struction, maintenance, improvement and repair, the  
104 cost of all machinery, equipment, material and labor  
105 which are deemed essential thereto, the cost of improve-  
106 ments, the cost of financing charges, interest prior to  
107 and during construction and for one year after comple-  
108 tion of construction, the cost of traffic estimates and of  
109 engineering, consultant, accounting, architects', trus-  
110 tees' and legal fees and expenses, plans, specifications,  
111 surveys, estimates of cost and of revenues, other costs  
112 and expenses necessary or incident to determining the  
113 feasibility or practicability of constructing any such  
114 project, administrative expenses and such other costs  
115 and expenses as may be necessary or incident to the  
116 construction of the project, the financing of such  
117 construction and the placing of the project in operation  
118 or to the operation of the project. Any obligation or  
119 expense hereafter incurred by the commissioner of the  
120 department of highways with the approval of the  
121 parkways authority for traffic surveys, borings, prepa-  
122 ration of plans and specifications, and other engineering  
123 and consulting services in connection with the construc-

124 tion of a project shall be regarded as a part of the cost  
125 of such project and shall be reimbursed to the state out  
126 of the proceeds of parkway revenue bonds or revenue  
127 refunding bonds hereinafter authorized.

128 (p) The word "owner" includes all individuals,  
129 copartnerships, associations or corporations having any  
130 title or interest in any property, rights, easements and  
131 interests authorized to be acquired by this article.

132 (q) The words "West Virginia Turnpike" mean the  
133 turnpike from Charleston to a point approximately one  
134 mile south of the intersection of Interstate 77 and U. S.  
135 Route 460 near Princeton in Mercer County, West  
136 Virginia, which road is presently a part of the federal  
137 interstate highway system.

#### **§17-16A-6. Parkways authority's powers.**

1 (a) The parkways authority is hereby authorized and  
2 empowered:

3 (1) To adopt bylaws for the regulation of its affairs  
4 and the conduct of its business;

5 (2) To adopt an official seal and alter the same at  
6 pleasure;

7 (3) To maintain an office at such place or places within  
8 the state as it may designate;

9 (4) To sue and be sued in its own name, plead and be  
10 impleaded. Any and all actions against the parkways  
11 authority shall be brought only in the county in which  
12 the principal office of the parkways authority shall be  
13 located;

14 (5) To construct, reconstruct, improve, maintain,  
15 repair and operate projects at such locations within the  
16 state as may be determined by the parkways authority:  
17 *Provided*, That the parkways authority shall be prohi-  
18 bited from constructing motels or any other type of  
19 lodging facility within five miles of the West Virginia  
20 Turnpike;

21 (6) To issue parkway revenue bonds of the state of  
22 West Virginia, payable solely from revenues, for the

23 purpose of paying all or any part of the cost of any one  
24 or more projects, which costs may include, with respect  
25 to the West Virginia Turnpike, such funds as are  
26 necessary to repay to the state of West Virginia all or  
27 any part of the state funds used to upgrade the West  
28 Virginia Turnpike to federal interstate standards;

29 (7) To issue parkway revenue refunding bonds of the  
30 state of West Virginia, payable solely from revenues, for  
31 any one or more of the following purposes: (i) Construct-  
32 ing improvements, enlargements or extensions to the  
33 project in connection with which the bonds to be  
34 refunded were issued; (ii) paying all or part of the cost  
35 of any additional project or projects; (iii) refunding any  
36 bonds which shall have been issued under the provisions  
37 of this article or any predecessor thereof; and (iv)  
38 repaying to the state all or any part of the state funds  
39 used to upgrade the West Virginia Turnpike to federal  
40 interstate standards;

41 (8) To fix and revise from time to time tolls for transit  
42 over each parkway project constructed by it or by the  
43 West Virginia turnpike commission;

44 (9) To fix and revise from time to time rents, fees or  
45 other charges, of whatever kind or character, for the use  
46 of each tourism project or economic development project  
47 constructed by it or for the use of any building,  
48 structure or facility constructed by it in connection with  
49 a parkway project;

50 (10) To acquire, hold, lease and dispose of real and  
51 personal property in the exercise of its powers and the  
52 performance of its duties under this article;

53 (11) To acquire in the name of the state by purchase  
54 or otherwise, on such terms and conditions and in such  
55 manner as it may deem proper, or by the exercise of the  
56 right of condemnation in the manner hereinafter  
57 provided, such public or private lands, including public  
58 parks, playgrounds or reservations, or parts thereof or  
59 rights therein, rights-of-way, property, rights, ease-  
60 ments and interests, as it may deem necessary for  
61 carrying out the provisions of this article. No compen-  
62 sation shall be paid for public lands, playgrounds, parks,

63 parkways or reservations so taken, and all public  
64 property damaged in carrying out the powers granted  
65 by this article shall be restored or repaired and placed  
66 in its original condition as nearly as practicable;

67 (12) To designate the locations, and establish, limit  
68 and control such points of ingress to and egress from  
69 each project as may be necessary or desirable in the  
70 judgment of the parkways authority to ensure the  
71 proper operation and maintenance of such project, and  
72 to prohibit entrance to such project from any point or  
73 points not so designated;

74 (13) To make and enter into all contracts and agree-  
75 ments necessary or incidental to the performance of its  
76 duties and the execution of its powers under this article,  
77 and to employ consulting engineers, attorneys, account-  
78 tants, architects, construction and financial experts,  
79 trustees, superintendents, managers and such other  
80 employees and agents as may be necessary in its  
81 judgment, and to fix their compensation. All such  
82 expenses shall be payable solely from the proceeds of  
83 parkway revenue bonds or parkway revenue refunding  
84 bonds issued under the provisions of this article, tolls or  
85 from revenues;

86 (14) To make and enter into all contracts, agreements  
87 or other arrangements with any agency, department,  
88 division, board, bureau, commission, authority or other  
89 governmental unit of the state to operate, maintain or  
90 repair any project;

91 (15) To receive and accept from any federal agency  
92 grants for or in aid of the construction of any project,  
93 and to receive and accept aid or contributions from any  
94 source of either money, property, labor or other things  
95 of value, to be held, used and applied only for the  
96 purposes for which such grants and contributions may  
97 be made;

98 (16) To do all acts and things necessary or convenient  
99 to carry out the powers expressly granted in this article;  
100 and

101 (17) To file the necessary petition or petitions pursuant



102 to Title 11, United States Code, Sec. 401 (being section  
103 81 of the act of Congress entitled "An act to establish  
104 a uniform system of bankruptcy throughout the United  
105 States," approved July 1, 1898, as amended) and to  
106 prosecute to completion all proceedings permitted by  
107 Title 11, United States Code, Secs. 401-403 (being  
108 sections 81 to 83, inclusive, of said act of Congress). The  
109 state of West Virginia hereby consents to the application  
110 of said Title 11, United States Code, Secs. 401-403, to  
111 the parkways authority.

112 (b) Nothing in this article shall be construed to  
113 prohibit the issuance of parkway revenue refunding  
114 bonds in a common plan of financing with the issuance  
115 of parkway revenue bonds.

#### §17-16A-7. Parkways authority's incidental powers.

1 The parkways authority shall have authority to  
2 construct grade separations at intersections of any  
3 project with public roads and state highways and to  
4 change and adjust the lines and grades of such roads  
5 and highways so as to accommodate the same to the  
6 design of such grade separation. The cost of such grade  
7 separations and any damage incurred in changing and  
8 adjusting the lines and grades of such roads and  
9 highways shall be ascertained and paid by the parkways  
10 authority as a part of the cost of such project.

11 If the parkways authority shall find it necessary to  
12 change the location of any portion of any public road or  
13 state highway, it shall cause the same to be recon-  
14 structed at such location as the parkways authority shall  
15 deem most favorable and of substantially the same type  
16 and in as good condition as the original road or highway.  
17 The cost of such reconstruction and any damage  
18 incurred in changing the location of any such road or  
19 highway shall be ascertained and paid by the parkways  
20 authority as a part of the cost of such project.

21 Upon the request of the parkways authority, the  
22 commissioner of the state department of highways shall  
23 relocate or discontinue any road or highway over which  
24 he has authority and control which is affected by the  
25 construction of any project.

26 In addition to the foregoing powers, the parkways  
27 authority and its authorized agents and employees may  
28 enter upon any lands, waters and premises in the state  
29 for the purpose of making surveys, soundings, drillings  
30 and examinations as it may deem necessary or conven-  
31 nient for the purposes of this article, and such entry  
32 shall not be deemed a trespass, nor shall an entry for  
33 such purposes be deemed an entry under any condem-  
34 nation proceedings which may be then pending. The  
35 parkways authority shall make reimbursement for any  
36 actual damages resulting to such lands, waters and  
37 premises as a result of such activities.

38 The state of West Virginia hereby consents to the use  
39 of all lands owned by it, including lands lying under  
40 water, which are deemed by the parkways authority to  
41 be necessary for the construction or operation of any  
42 project.

**§17-16A-8. Acquisition of land, property, easements, etc.**

1 The parkways authority is hereby authorized and  
2 empowered to acquire by purchase, whenever it shall  
3 deem such purchase expedient, any land, property,  
4 rights, rights-of-way, franchises, easements and other  
5 interests in lands as it may deem necessary or conven-  
6 nient for the construction or operation of any project upon  
7 such terms and at such price as may be considered by  
8 it to be reasonable and can be agreed upon between the  
9 parkways authority and the owner thereof, and to take  
10 title thereto in the name of the state.

**§17-16A-9. Condemnation of property.**

1 Whenever a reasonable price cannot be agreed upon,  
2 or whenever the owner is legally incapacitated, or is  
3 absent, unknown or unable to convey valid title, the  
4 parkways authority is hereby authorized and empow-  
5 ered to acquire, by the exercise of the power of  
6 condemnation in accordance with and subject to the  
7 provisions of any and all existing laws and statutes  
8 applicable to the exercise of the power of condemnation  
9 of property for public use, any land, property, rights,  
10 rights-of-way, franchises, easements or other property  
11 deemed necessary or convenient for the construction or

12 the efficient operation of any project or necessary in the  
13 restoration of public or private property damaged or  
14 destroyed. In any condemnation proceedings the court  
15 having jurisdiction of the suit, action or proceeding may  
16 make such orders as may be just to the parkways  
17 authority and to the owners of the property to be  
18 condemned and may require an undertaking or other  
19 security to secure such owners against any loss or  
20 damage by reason of the failure of the parkways  
21 authority to accept and pay for the property, but neither  
22 such undertaking or security nor any act or obligation  
23 of the parkways authority shall impose any liability  
24 upon the state or the parkways authority except such as  
25 may be paid from the funds provided under the  
26 authority of this article.

**§17-16A-10. Parkway revenue bonds—Generally.**

1 The parkways authority is hereby authorized to  
2 provide by resolution, at one time or from time to time,  
3 for the issuance of parkway revenue bonds of the state  
4 for the purpose of paying all or any part of the cost of  
5 one or more projects: *Provided*, That this section shall  
6 not be construed as authorizing the issuance of parkway  
7 revenue bonds for the purpose of paying the cost of the  
8 West Virginia Turnpike, which parkway revenue bonds  
9 may be issued only as authorized under section eleven  
10 of this article. The principal of and the interest on such  
11 bonds shall be payable solely from the funds herein  
12 provided for such payment. The bonds of each issue shall  
13 be dated, shall bear interest at such rate or rates as may  
14 be determined by the parkways authority in its sole  
15 discretion, shall mature at such time or times not  
16 exceeding forty years from their date or dates, as may  
17 be determined by the parkways authority, and may be  
18 made redeemable before maturity, at the option of the  
19 parkways authority, at such price or prices and under  
20 such terms and conditions as may be fixed by the  
21 parkways authority prior to the issuance of the bonds.  
22 The parkways authority shall determine the form of the  
23 bonds, including any interest coupons to be attached  
24 thereto, and shall fix the denomination or denominations  
25 of the bonds and the place or places of payment of

26 principal and interest, which may be at any bank or  
27 trust company within or without the state. The bonds  
28 shall be executed by manual or facsimile signature by  
29 the governor and by the chairman of the parkways  
30 authority, and the official seal of the parkways authority  
31 shall be affixed to or printed on each bond, and attested,  
32 manually or by facsimile signature, by the secretary and  
33 treasurer of the parkways authority, and any coupons  
34 attached to any bond shall bear the manual or facsimile  
35 signature of the chairman of the parkways authority. In  
36 case any officer whose signature or a facsimile of whose  
37 signature appears on any bonds or coupons shall cease  
38 to be such officer before the delivery of such bonds, such  
39 signature or facsimile shall nevertheless be valid and  
40 sufficient for all purposes the same as if he had  
41 remained in office until such delivery; and, in case the  
42 seal of the parkways authority has been changed after  
43 a facsimile has been imprinted on such bonds, such  
44 facsimile seal will continue to be sufficient for all  
45 purposes. All bonds issued under the provisions of this  
46 article shall have and are hereby declared to have all  
47 the qualities and incidents of negotiable instruments  
48 under the negotiable instruments law of the state. The  
49 bonds may be issued in coupon or in registered form,  
50 or both, as the parkways authority may determine, and  
51 provision may be made for the registration of any  
52 coupon bonds as to principal alone and also as to both  
53 principal and interest, and for the reconversion into  
54 coupon bonds of any bonds registered as to both  
55 principal and interest. The parkways authority may sell  
56 such bonds in such manner, either at public or at private  
57 sale, and for such price, as it may determine to be in  
58 the best interests of the state.

59 The proceeds of the bonds of each issue shall be used  
60 solely for the payment of the cost of the parkway project  
61 or projects for which such bonds shall have been issued,  
62 and shall be disbursed in such manner and under such  
63 restrictions, if any, as the parkways authority may  
64 provide in the resolution authorizing the issuance of  
65 such bonds or in the trust agreement hereinafter  
66 mentioned securing the same. If the proceeds of the  
67 bonds of any issue, by error of estimates or otherwise,

68 shall be less than such cost, additional bonds may in like  
69 manner be issued to provide the amount of such deficit,  
70 and, unless otherwise provided in the resolution autho-  
71 rizing the issuance of such bonds or in the trust  
72 agreement securing the same, shall be deemed to be of  
73 the same issue and shall be entitled to payment from the  
74 same fund without preference or priority of the bonds  
75 first issued. If the proceeds of the bonds of any issue  
76 shall exceed the cost of the project or projects for which  
77 the same shall have been issued, the surplus shall be  
78 deposited to the credit of the sinking fund for such  
79 bonds.

80 Prior to the preparation of definitive bonds, the  
81 parkways authority may, under like restrictions, issue  
82 interim receipts or temporary bonds, with or without  
83 coupons, exchangeable for definitive bonds when such  
84 bonds shall have been executed and are available for  
85 delivery. The parkways authority may also provide for  
86 the replacement of any bonds which shall become  
87 mutilated or shall be destroyed or lost. Bonds may be  
88 issued under the provisions of this article without  
89 obtaining the consent of any department, division,  
90 commission, board, bureau or agency of the state, and  
91 without any other proceedings or the happening of any  
92 other conditions or things than those proceedings,  
93 conditions or things which are specifically required by  
94 this article.

**§17-16A-11. Parkway revenue bonds—West Virginia  
Turnpike; related projects.**

1 The parkways authority is hereby authorized to  
2 provide by resolution, at one time or from time to time,  
3 for the issuance of parkway revenue bonds of the state  
4 in an aggregate principal amount not to exceed eighty-  
5 three million dollars for the purpose of paying (i) all or  
6 any part of the cost of the West Virginia Turnpike,  
7 which cost may include, but not be limited to, an amount  
8 equal to the state funds used to upgrade the West  
9 Virginia Turnpike to federal interstate standards, and  
10 (ii) to the extent permitted by federal law, all or any  
11 part of the cost of any related parkway project. For  
12 purposes of this section eleven only, a "related parkway

13 project” means any information center, visitors’ center  
14 or rest stop, or any combination thereof, and any  
15 expressway, turnpike, trunkline, feeder road, state local  
16 service road or park and forest road which connects to  
17 or intersects with the West Virginia Turnpike and is  
18 located within seventy-five miles of said turnpike as it  
19 exists on the first day of June, one thousand nine  
20 hundred eighty-nine, or any subsequent expressway,  
21 trunkline, feeder road, state local service road or park  
22 and forest road constructed pursuant to this article:  
23 *Provided*, That nothing herein shall be construed as  
24 prohibiting the parkways authority from issuing  
25 parkway revenue bonds pursuant to section ten of this  
26 article for the purpose of paying all or any part of the  
27 cost of any such related parkway project: *Provided*,  
28 *however*, That none of the proceeds of the issuance of  
29 parkway revenue bonds under this section shall be used  
30 to pay all or any part of the cost of any economic  
31 development project, except as provided in section  
32 twenty-three of this article: *Provided further*, That  
33 nothing herein shall be construed as prohibiting the  
34 parkways authority from issuing additional parkway  
35 revenue bonds to the extent permitted by applicable  
36 federal law for the purpose of constructing, maintaining  
37 and operating any highway constructed in whole or in  
38 part with money obtained from appalachian regional  
39 commission so long as said highway connects to the West  
40 Virginia Turnpike as it existed as of the first day of  
41 June, one thousand nine hundred eighty-nine. Except as  
42 otherwise specifically provided in this section, the  
43 issuance of parkway revenue bonds pursuant to this  
44 section, the maturities and other details thereof, the  
45 rights of the holders thereof, and the rights, duties and  
46 obligations of the parkways authority in respect of the  
47 same, shall be governed by the provisions of this article  
48 insofar as the same may be applicable.

**§17-16A-12. Parkway revenue bonds—Trust agreement.**

1 In the discretion of the parkways authority any bonds  
2 issued under the provisions of this article may be  
3 secured by a trust agreement by and between the  
4 parkways authority and a corporate trustee, which may

5 be any trust company or bank having the powers of a  
6 trust company within or without the state. Any such  
7 trust agreement may pledge or assign the tolls, rents,  
8 fees, charges and other revenues to be received, but shall  
9 not convey or mortgage any project or any part thereof.  
10 Any such trust agreement or any resolution providing  
11 for the issuance of such bonds may contain such  
12 provisions for protecting and enforcing the rights and  
13 remedies of the bondholders as may be reasonable and  
14 proper and not in violation of law, including covenants  
15 setting forth the duties of the parkways authority in  
16 relation to the acquisition of property and the construc-  
17 tion, reconstruction, improvement, maintenance, repair,  
18 operation and insurance of the project or projects in  
19 connection with which such bonds shall have been  
20 authorized, and the custody, safeguarding and applica-  
21 tion of all moneys, and provisions for the employment  
22 of consulting engineers in connection with the construc-  
23 tion or operation of such project or projects. It shall be  
24 lawful for any bank or trust company incorporated  
25 under the laws of the state which may act as depository  
26 of the proceeds of bonds or of revenues to furnish such  
27 indemnifying bonds, or to pledge such securities as may  
28 be required by the parkways authority. Any such trust  
29 agreement may set forth the rights and remedies of the  
30 bondholders and of the trustee, and may restrict the  
31 individual right of action by bondholders as is custom-  
32 ary in trust agreements or trust indentures securing  
33 bonds and debentures of corporations. In addition to the  
34 foregoing, any such trust agreement may contain such  
35 other provisions as the parkways authority may deem  
36 reasonable and proper for the security of the bond-  
37 holders. All expenses incurred in carrying out the  
38 provisions of any such trust agreement may be treated  
39 as a part of the cost of the operation of the project or  
40 projects to which the trust agreement applies.

**§17-16A-13. Tolls, rents, fees, charges and revenues;  
competitive bidding on contracts.**

1 (a) The parkways authority is hereby authorized to  
2 fix, revise, charge and collect tolls for the use of each  
3 parkway project and the different parts or sections  
4 thereof, and to fix, revise, charge and collect rents, fees,

5 charges and other revenues, of whatever kind or  
6 character, for the use of each economic development  
7 project or tourism project, or any part or section thereof,  
8 and to contract with any person, partnership, association  
9 or corporation desiring the use of any part thereof,  
10 including the right-of-way adjoining the paved portion,  
11 for placing thereon telephone, telegraph, electric light,  
12 power or other utility lines, gas stations, garages, stores,  
13 hotels, restaurants and advertising signs, or for any  
14 other purpose except for tracks for railroad or railway  
15 use, and to fix the terms, conditions, rents and rates of  
16 charges for such use. Such tolls, rents, fees and charges  
17 shall be so fixed and adjusted in respect of the aggregate  
18 of tolls, or in respect of the aggregate rents, fees and  
19 charges, from the project or projects in connection with  
20 which the bonds of any issue shall have been issued as  
21 to provide a fund sufficient with other revenues, if any,  
22 to pay (a) the cost of maintaining, repairing and  
23 operating such project or projects and (b) the principal  
24 of and the interest on such bonds as the same shall  
25 become due and payable, and to create reserves for such  
26 purposes. Such tolls, rents, fees and other charges shall  
27 not be subject to supervision or regulation by any other  
28 commission, board, bureau, department or agency of the  
29 state. The tolls, rents, fees, charges and all other  
30 revenues derived from the project or projects in  
31 connection with which the bonds of any issue shall have  
32 been issued, except such part thereof as may be  
33 necessary to pay such cost of maintenance, repair and  
34 operation and to provide such reserves therefor as may  
35 be provided for in the resolution authorizing the  
36 issuance of such bonds or in the trust agreement  
37 securing the same, shall be set aside at such regular  
38 intervals as may be provided in such resolution or such  
39 trust agreement in a sinking fund which is hereby  
40 pledged to, and charged with, the payment of (1) the  
41 interest upon such bonds as such interest shall fall due,  
42 (2) the principal of such bonds as the same shall fall due,  
43 (3) the necessary charges of paying agents for paying  
44 principal and interest, and (4) the redemption price or  
45 the purchase price of bonds retired by call or purchase  
46 as therein provided. The use and disposition of moneys



47 to the credit of such sinking fund shall be subject to the  
48 provisions of the resolution authorizing the issuance of  
49 such bonds or of such trust agreement. Except as may  
50 otherwise be provided in such resolution or such trust  
51 agreement, such sinking fund shall be a fund for all  
52 such bonds without distinction or priority of one over  
53 another. The moneys in the sinking fund, less such  
54 reserve as may be provided in such resolution or trust  
55 agreement, if not used within a reasonable time for the  
56 purchase of bonds for cancellation as above provided,  
57 shall be applied to the redemption of bonds at the  
58 redemption price then applicable.

59 (b) The parkways authority shall cause, as soon as it  
60 is legally able to do so, all contracts to which it is a party  
61 and which relate to the operation, maintenance or use  
62 of any restaurant, motel or other lodging facility, truck  
63 and automobile service facility, food vending facility or  
64 any other service facility located along the West  
65 Virginia Turnpike, to be renewed on a competitive bid  
66 basis. All contracts relating to any facility or services  
67 entered into by the parkways authority with a private  
68 party with respect to any project constructed after the  
69 effective date of this legislation shall be let on a  
70 competitive bid basis only. If the parkways authority  
71 receives a proposal for the development of a project,  
72 such proposal shall be made available to the public in  
73 a convenient location in the county wherein the proposed  
74 facility may be located. The parkways authority shall  
75 publish a notice of the proposal by a Class I legal  
76 advertisement in accordance with the provisions of  
77 article three, chapter fifty-nine of this code. The  
78 publication area shall be the county in which the  
79 proposed facility would be located. Any citizen may  
80 communicate by writing to the parkways authority his  
81 or her opposition to or approval to such proposal within  
82 a period of time not less than forty-five days from the  
83 publication of the notice. No contract for the develop-  
84 ment of a project may be entered into by the parkways  
85 authority until a public hearing is held in the vicinity  
86 of the location of the proposed project with at least  
87 twenty days notice of such hearing by a Class I  
88 publication pursuant to section two, article three,

89 chapter fifty-nine of this code. The parkways authority  
90 shall make written findings of fact prior to rendering  
91 a decision on any proposed project. All studies, records,  
92 documents and other materials which are considered by  
93 the parkways authority in making such findings shall  
94 be made available for public inspection at the time of  
95 the publication of the notice of public hearing and at a  
96 convenient location in the county where the proposed  
97 project may be located. The parkways authority shall  
98 promulgate rules in accordance with chapter twenty-  
99 nine-a of this code for the conduct of any hearing  
100 required by this section. Persons attending any such  
101 hearing shall be afforded a reasonable opportunity to  
102 speak and be heard on the proposed project.

**§17-16A-14. Trust funds.**

1 All moneys received pursuant to the authority of this  
2 article, whether as proceeds from the sale of bonds or  
3 as revenues, shall be deemed to be trust funds, to be held  
4 and applied solely as provided in this article. The  
5 resolution authorizing the issuance of bonds of any issue  
6 or the trust agreement securing such bonds shall  
7 provide that any officer to whom, or any bank or trust  
8 company to which, such moneys shall be paid shall act  
9 as trustee of such moneys and shall hold and apply the  
10 same for the purposes hereof, subject to such regulations  
11 as this article and such resolution or trust agreement  
12 may provide.

**§17-16A-15. Remedies.**

1 Any holder of bonds issued under the provisions of this  
2 article or any of the coupons appertaining thereto, and  
3 the trustee under any trust agreement, except to the  
4 extent the rights herein given may be restricted by such  
5 trust agreement, may, either at law or in equity, by suit,  
6 action, mandamus or other proceeding, protect and  
7 enforce any and all rights under the laws of the state  
8 or granted hereunder or under such trust agreement or  
9 the resolution authorizing the issuance of such bonds,  
10 and may enforce and compel the performance of all  
11 duties required by this article or by such trust agree-

12 ment or resolution to be performed by the parkways  
13 authority or by any officer thereof, including the fixing,  
14 charging and collecting of tolls, rents, fees and charges.

**§17-16A-16. Exemption from taxation.**

1 (a) The exercise of the powers granted by this article  
2 will be in all respects for the benefit of the people of  
3 the state, for the increase of their commerce and  
4 prosperity, and for the improvement of their health and  
5 living conditions, and as the operation and maintenance  
6 of projects by the parkways authority will constitute the  
7 performance of essential governmental functions, the  
8 parkways authority shall not be required to pay any  
9 taxes or assessments upon any project or any property  
10 acquired or used by the parkways authority under the  
11 provisions of this article or upon the income therefrom,  
12 and the bonds issued under the provisions of this article,  
13 their transfer and the income therefrom (including any  
14 profit made on the sale thereof) shall at all times be free  
15 from taxation within the state.

16 (b) In lieu of payment by the parkways authority of  
17 county property taxes and other assessments on restau-  
18 rant and gas service facilities owned by it, or upon any  
19 facility described in subsection (b) of section thirteen  
20 herein which is leased to any private person, corpora-  
21 tion, or entity, the parkways authority shall make an  
22 annual payment as provided herein to the county  
23 commission of such county. Any parkways authority  
24 project which is leased and is exempt from taxation  
25 shall be subject to a payment in lieu of taxes. Said  
26 payment shall be made to the county commission of the  
27 county in which the project is located and shall be in  
28 an amount equal to the property taxes otherwise  
29 payable. The county commission receiving such in lieu  
30 of payment shall distribute such payment to the  
31 different levying bodies in that county in the same  
32 manner as are property taxes. Nothing contained herein  
33 may be construed to prohibit the parkways authority  
34 from collecting such in lieu payment from any private  
35 party by contract or otherwise.

**§17-16A-17. Repair, etc., of damaged property; conveyances, etc., by counties, cities, etc., to parkways authority; maintenance and policing of projects; defrauding parkways authority; evading payment of tolls, rents, fees or charges; trespassing.**

1 All private property damaged or destroyed in carry-  
2 ing out the powers granted by this article shall be  
3 restored or repaired and placed in its original condition  
4 as nearly as practicable or adequate compensation made  
5 therefor out of funds provided under the authority of  
6 this article.

7 All counties, cities, villages, townships and other  
8 political subdivisions and all public agencies and  
9 commissions of the state of West Virginia, notwithstand-  
10 ing any contrary provision of law, are hereby authorized  
11 and empowered to lease, lend, grant or convey to the  
12 parkways authority at its request upon such terms and  
13 conditions as the proper authorities of such counties,  
14 cities, villages, townships, other political subdivisions or  
15 public agencies and commissions of the state may deem  
16 reasonable and fair and without the necessity for any  
17 advertisement, order of court or other action or formal-  
18 ity, other than the regular and formal action of the  
19 authorities concerned, any real property which may be  
20 necessary or convenient to the effectuation of the  
21 authorized purposes of the parkways authority, includ-  
22 ing public roads and other real property already devoted  
23 to public use.

24 Each project when constructed and opened to traffic  
25 or use shall be maintained and kept in good condition  
26 and repair by the parkways authority. The parkways  
27 authority and the superintendent of the department of  
28 public safety may by agreement provide that such  
29 project or projects shall be policed by members of such  
30 department under such terms and conditions as they  
31 may determine, excepting that all costs thereof, either  
32 direct or indirect, including overhead costs attributable  
33 thereto, shall be paid unto such department by the  
34 parkways authority at regular intervals not to exceed  
35 one year.

36       Whoever shall knowingly or intentionally defraud or  
37 attempt to defraud the parkways authority, any of its  
38 tolltakers or other employees in regard to the payment  
39 of tolls, rents, fees or charges established by the  
40 parkways authority for the use of any such project or  
41 evade or attempt to evade or whoever shall aid another  
42 to evade or attempt to evade the payment of such toll,  
43 rent, fee or charge or whoever shall intentionally and  
44 knowingly trespass upon any project shall be guilty of  
45 a misdemeanor; and for every such offense shall upon  
46 conviction thereof be fined not in excess of fifty dollars.  
47 Magistrate courts shall have jurisdiction of misdemea-  
48 nours created by this paragraph concurrently with  
49 circuit courts.

**§17-16A-18. Cessation of tolls.**

1       (a) Except as provided herein, when all bonds issued  
2 under the provisions of this article in connection with  
3 any parkway project or projects and the interest thereon  
4 shall have been paid or a sufficient amount for the  
5 payment of all such bonds and the interest thereon to  
6 the maturity thereof shall have been set aside in trust  
7 for the benefit of the bondholders, such project or  
8 projects, if then in good condition and repair to the  
9 satisfaction of the commissioner of the state department  
10 of highways, shall be transferred to the state depart-  
11 ment of highways and shall thereafter be maintained by  
12 the state department of highways free of tolls: *Provided,*  
13 That the parkways authority may thereafter charge tolls  
14 for the use of any such project and for the reconstruc-  
15 tion, improvement, maintenance and repair thereof,  
16 except as may be limited by applicable federal laws, and  
17 pledge such tolls to the payment of bonds issued under  
18 the provisions of this article in connection with another  
19 project or projects, or any combination thereof, but any  
20 such pledge of tolls of a parkway project to the payment  
21 of bonds issued in connection with another project or  
22 projects shall not be effectual until the principal of and  
23 the interest on the bonds issued in connection with the  
24 first mentioned project shall have been paid or provision  
25 made for their payment.

26       (b) No later than the first day of February, one

27 thousand nine hundred ninety, the parkways authority  
28 shall discontinue, remove and not relocate all toll  
29 collection facilities on the West Virginia Turnpike  
30 except for the three main toll collection facilities  
31 existing on the West Virginia Turnpike as of the  
32 effective date of this legislation: *Provided*, That nothing  
33 herein may be construed to prohibit placement of new  
34 tolls to the extent permitted by federal law for any new  
35 expressway, turnpike, trunkline, feeder road, state local  
36 service road, or park and forest road connected to the  
37 West Virginia Turnpike and constructed after the first  
38 of June, one thousand nine hundred eighty-nine.

**§17-16A-19. Preliminary expenses.**

1 The commissioner of the state department of high-  
2 ways is hereby authorized in his discretion to expend out  
3 of any funds available for the purpose such moneys as  
4 may be necessary for the study of any parkway,  
5 economic development or tourism project or projects and  
6 to use the department of highway's engineering and  
7 other forces, including consulting engineers and traffic  
8 engineers, for the purpose of effecting such study and  
9 to pay for such additional engineering and traffic and  
10 other expert studies as he may deem expedient; and all  
11 such expenses incurred by the state department of  
12 highways prior to the issuance of parkway revenue  
13 bonds or revenue refunding bonds under the provisions  
14 of this article shall be paid by the state department of  
15 highways and charged to the appropriate project or  
16 projects, and the state department of highways shall  
17 keep proper records and accounts showing each amount  
18 so charged. Upon the sale of parkway revenue bonds or  
19 revenue refunding bonds for any project or projects, the  
20 funds so expended by the state department of highways  
21 in connection with such project or projects shall be  
22 reimbursed to the state department of highways from  
23 the proceeds of such bonds.

**§17-16A-20. Parkway projects part of state road system;  
pledge of limited funds by state depart-  
ment of highways in case of deficit.**

1 It is hereby declared that any expressway, turnpike,

2 feeder road, state local service road or park and forest  
3 road or other road, or any subsequent expressway,  
4 turnpike feeder road, state local service road, park and  
5 forest road or other road constructed pursuant to this  
6 article shall be a part of the state road system, although  
7 subject to the provisions of this article and of any bonds  
8 or trust agreements entered into pursuant thereto, and  
9 that the construction of such parkway projects shall be  
10 considered as developments of the state road system.  
11 Any other provisions of this article to the contrary  
12 notwithstanding, in order to encourage the development  
13 of the state road system, the state is authorized in its  
14 discretion to pledge by resolution and agreement  
15 annually to pay from the state road fund, subject to all  
16 prior commitments of such fund which shall be stated  
17 in the resolution and agreement, the amount of any  
18 yearly deficit between the principal and interest  
19 requirements of any such parkway project or portion  
20 thereof hereafter constructed and the amount available  
21 in the hands of the parkways authority to pay such  
22 requirements, up to three fourths of one percent of the  
23 estimated or actual construction cost of such parkway  
24 project or portion thereof for which such pledge is made,  
25 until any bonds issued and interest due upon the basis  
26 of such a pledge have been fully paid and satisfied:  
27 *Provided*, That the state department of highways shall  
28 enter into no agreement with underwriters on any bond  
29 issue for the purpose of constructing or aiding in the  
30 construction of any toll road unless and until there is  
31 filed with the parkways authority a report and finding  
32 of reputable traffic engineers of national standing,  
33 showing that the earnings from the proposed toll road  
34 will be sufficient to provide annual income in an amount  
35 at least large enough to cover the annual cost of retiring  
36 the indebtedness, including interest, sinking fund and  
37 operating costs of such toll highway.

**§17-16A-21. Parkway revenue refunding bonds—  
Generally.**

1 The parkways authority is hereby authorized to  
2 provide by resolution for the issuance of parkway  
3 revenue refunding bonds of the state for the purpose of

4 refunding any bonds then outstanding which shall have  
5 been issued under the provisions of this article, includ-  
6 ing the payment of any redemption premium thereon  
7 and any interest accrued or to accrue to the date of  
8 redemption of such bonds; and, if deemed advisable by  
9 the parkways authority, for the additional purpose of  
10 constructing improvements, extensions or enlargements  
11 of the project or projects in connection with which the  
12 bonds to be refunded shall have been issued: *Provided,*  
13 That this section shall not be construed as authorizing  
14 the issuance of parkway revenue refunding bonds for  
15 the purpose of refunding any bonds then outstanding  
16 which shall have been issued under the provisions of this  
17 article, or any predecessor thereof, in connection with  
18 the construction of the West Virginia Turnpike, which  
19 revenue refunding bonds may be issued only as autho-  
20 rized under section twenty-two of this article. The  
21 parkways authority is further authorized to provide by  
22 resolution for the issuance of parkway revenue bonds of  
23 the state for the combined purpose of two or more of the  
24 following: (a) Refunding any bonds then outstanding  
25 which shall have been issued under the provisions of this  
26 article, including the payment of any redemption  
27 premium thereon and any interest accrued or to accrue  
28 to the date of redemption of such bonds; (b) paying all  
29 or any part of the cost of any additional project or  
30 projects; and (c) repaying to the state all or any part of  
31 the state funds used to upgrade the West Virginia  
32 Turnpike to federal interstate standards. The issuance  
33 of such bonds, the maturities and other details thereof,  
34 the rights of the holders thereof, and the rights, duties  
35 and obligations of the parkways authority in respect of  
36 the same, shall be governed by the provisions of this  
37 article insofar as the same may be applicable.

**§17-16A-22. Parkway revenue refunding bonds—West Virginia Turnpike.**

1 The parkways authority is hereby authorized to  
2 provide by resolution for the issuance of parkway  
3 revenue refunding bonds of the state in an aggregate  
4 principal amount not to exceed sixty million dollars for  
5 the purpose of refunding any bonds which shall have



6 been issued under this article, or any predecessor  
7 thereof, in connection with the construction of the West  
8 Virginia Turnpike, including the payment of any  
9 redemption premium thereon and any interest accrued  
10 or to accrue to the date of redemption of such bonds,  
11 and, to the extent permissible under federal law and if  
12 deemed advisable by the parkways authority, for either  
13 or both of the following purposes: (a) Paying all or any  
14 part of the cost of any additional parkway project or  
15 projects, and (b) repaying to the state all or any part  
16 of the state funds used to upgrade the West Virginia  
17 Turnpike to federal interstate standards: *Provided*, That  
18 any proceeds derived from the issuance of such bonds  
19 which are used on any parkway project other than the  
20 West Virginia Turnpike must be used solely on parkway  
21 projects (i) which are either connected to or intersect  
22 with the West Virginia Turnpike and are within  
23 seventy-five air miles of said Turnpike as it exists on the  
24 first day of June, one thousand nine hundred eighty-  
25 nine, or any subsequent expressway, trunkline, turn-  
26 pike, feeder road, state local service road or park and  
27 forest road constructed pursuant to this article, and (ii)  
28 which involve the upgrading or addition of inter-  
29 changes, the construction of expressways or feeder  
30 roads, or the upgrading or construction of information  
31 centers, visitors' centers, rest stops, or any combination  
32 thereof: *Provided, however*, That none of the proceeds of  
33 the issuance of parkway revenue refunding bonds issued  
34 under this section shall be used to pay all or any part  
35 of the cost of any economic development project, except  
36 as provided in section twenty-three of this article.  
37 Except as otherwise specifically provided in this section,  
38 the issuance of parkway revenue refunding bonds  
39 pursuant to this section, the maturities and other details  
40 thereof, the rights of the holders thereof, and the rights,  
41 duties and obligations of the parkways authority in  
42 respect of the same, shall be governed by the provisions  
43 of this article insofar as the same may be applicable.

**§17-16A-23. Special highway fund; appropriations from fund.**

1 (a) There is hereby created a special fund in the state

2 treasury which shall be designated and known as the  
3 "West Virginia special highway fund." The special  
4 highway fund shall consist of (i) all funds allocated and  
5 disbursed to the state department of highways by the  
6 parkways authority, including without limitation the  
7 proceeds of any parkway revenue bonds or revenue  
8 refunding bonds issued by the parkways authority  
9 pursuant to sections eleven, twenty-one or twenty-two of  
10 this article, in repayment of the amount of state funds  
11 used to upgrade the West Virginia Turnpike to federal  
12 interstate standards, (ii) any appropriations, grants,  
13 gifts, contributions or other revenues received by the  
14 special highway fund from any source, and (iii) all  
15 interest earned on moneys held in the fund. When any  
16 funds are received by the state department of highways  
17 from the parkways authority pursuant to this section,  
18 they shall be paid into the state treasury by the  
19 commissioner of the department of highways and  
20 credited to the special highway fund, and shall be  
21 disbursed in the manner set forth in subsections (b) and  
22 (c) of this section. The special highway fund shall not  
23 be treated by the auditor and treasurer as part of the  
24 state road fund or as part of the general revenues of the  
25 state.

26 (b) The governor shall have the authority to transfer  
27 to the insurance fund created in section eight, article  
28 fifteen, chapter thirty-one of this code, on any date or  
29 dates after the enactment of this section, up to thirty-  
30 five million dollars of the funds received or earned by  
31 the special highway fund, which funds may be used and  
32 applied by the West Virginia economic development  
33 authority in the manner and to the extent set forth in  
34 article fifteen of said chapter thirty-one. On or before  
35 the thirty-first day of December, one thousand nine  
36 hundred ninety-four, the economic development author-  
37 ity shall retransfer to the special highway fund the  
38 thirty-five million dollars advanced to the insurance  
39 fund pursuant to this section. All interest earned on the  
40 thirty-five million dollars while being held in the  
41 insurance fund shall remain in, and be the property of,  
42 said insurance fund.

43 (c) Upon the transfer of thirty-five million dollars to  
44 the insurance fund as provided in subsection (b) of this  
45 section, the Legislature shall annually appropriate all or  
46 any part of the balance of the funds deposited in the  
47 special highway fund for the construction, reconstruction,  
48 improvement, maintenance or repair of any  
49 parkway project or projects: *Provided*, That all of such  
50 funds shall be appropriated to (i) the upgrading or  
51 addition of interchanges; (ii) the construction of express-  
52 ways or feeder roads; or (iii) the upgrading or construc-  
53 tion of information centers, visitors' centers, rest stops,  
54 or any combination thereof, and that all such feeder  
55 roads, expressways, interchanges, information centers,  
56 visitors' centers or rest stops shall connect to the West  
57 Virginia Turnpike and be within seventy-five air miles  
58 of the West Virginia Turnpike as it existed on the  
59 effective date of this legislation, or any subsequent  
60 expressway, turnpike or feeder road constructed  
61 pursuant to this subsection. The appropriation of funds  
62 pursuant to this subsection shall be expended on more  
63 than one project.

**§17-16A-24. Article deemed to provide additional and alternative methods.**

1 This article shall be deemed to provide an additional  
2 and alternative method for the doing of the things  
3 authorized thereby, and shall be regarded as supple-  
4 mental and additional to powers conferred by other  
5 laws, and shall not be regarded as in derogation of any  
6 powers now existing. The issuance of special obligation  
7 bonds under the provisions of this article need not  
8 comply with the requirements of any other law appli-  
9 cable to the issuance of bonds.

**§17-16A-25. Additional powers of parkways authority; issuance of special obligation bonds.**

1 (a) In addition to all powers granted by the foregoing  
2 sections of this article, the parkways authority in  
3 connection with a proceeding prosecuted to completion  
4 under Title 11, United States Code, Secs. 401-403, as  
5 permitted by subdivision (17), section six of this article  
6 is hereby authorized to provide by resolution for the

7 issuance of special obligation bonds of the state for the  
8 purpose of exchanging such special obligation bonds for  
9 all bonds then outstanding which shall have been issued  
10 under the provisions of this article. Special obligation  
11 bonds issued under the provisions of this section shall  
12 not be deemed to constitute a debt of the state or of any  
13 political subdivision thereof or a pledge of the faith and  
14 credit of the state or of any such political subdivision,  
15 but such bonds shall be payable solely from the funds  
16 herein provided therefor from pledged property and  
17 income therefrom as provided in subdivision (1) of this  
18 subsection. All such special obligation bonds shall  
19 contain on the face thereof a statement in accordance  
20 with the preceding sentence. The issuance of such bonds,  
21 the maturities and other details thereof, the rights of the  
22 holders thereof, and the rights, duties and obligations of  
23 the parkways authority in respect of the same shall be  
24 governed by the provisions of this article insofar as the  
25 same may be applicable with the following express  
26 exceptions:

27 (1) The principal of and the interest on such special  
28 obligation bonds shall not be payable from tolls, rents,  
29 fees, charges or revenues of any parkway project but  
30 shall be payable solely from such other property  
31 purchased and pledged as security therefor as the  
32 parkways authority shall determine together with the  
33 income derived therefrom which other property may  
34 include direct obligations of, or obligations the principal  
35 of and the interest on which are guaranteed by, the  
36 United States government or participation certificates  
37 or other obligations issued by or by authority of the  
38 United States government; and

39 (2) Following the issuance of such special obligation  
40 bonds there shall be no obligation to fix, revise, charge  
41 and collect tolls for the use of any parkway project and  
42 any parkway project shall be transferred to the state  
43 department of highways and shall thereafter be main-  
44 tained by the state department of highways free of tolls.  
45 At such time as the special obligation bonds are issued,  
46 then section eighteen of this article shall be of no further  
47 force and effect.

48 (b) Financial, legal, engineering and feasibility  
49 consultants may be employed to perform such services  
50 as the parkways authority shall deem necessary or  
51 desirable in connection with the Title 11 proceedings  
52 mentioned above and the issuance and exchange of the  
53 special obligation bonds.

54 (c) The entire powers herein granted by this section  
55 to the parkways authority may be exercised by the state  
56 department of highways in which event the special  
57 obligation bonds herein authorized shall be executed by  
58 manual or facsimile signature by the governor and by  
59 the commissioner of the department of highways, and  
60 the official seal of the department of highways shall be  
61 affixed to or printed on each bond, and any coupons  
62 attached to such bonds shall bear the manual or  
63 facsimile signature of the commissioner of the state  
64 department of highways. In the event that the state  
65 department of highways shall elect to exercise the  
66 powers granted by this section, it shall file a statement  
67 to that effect in the office of the chairman of the  
68 parkways authority and in the office of the secretary of  
69 state, and upon the issuance of the special obligation  
70 bonds herein provided for, the state department of  
71 highways shall succeed immediately to the principal  
72 functions of the parkways authority and the parkways  
73 authority shall then be abolished.

74 (d) The state department of highways is hereby  
75 empowered to acquire by purchase the parkways  
76 authority and all its rights-of-way, equipment, facilities  
77 and any and all other rights or interest the parkways  
78 authority has or had in any project, from any funds  
79 available to it, and to pay any expenses incident to such  
80 acquisition under the provisions of this article: *Provided,*  
81 That the contribution of the state department of  
82 highways in making such acquisition shall not exceed  
83 the sum of twenty million dollars from all sources of  
84 public moneys of the state of West Virginia, excluding  
85 any funds reimbursed or reimbursable or otherwise  
86 provided or to be provided by the federal government.  
87 No funds derived from the sale of the three hundred  
88 fifty million dollars bond issue authorized by the roads

89 development amendment shall be included in the  
90 acquisition of the West Virginia Turnpike.

**§17-16A-26. Annual report.**

1 The parkways authority shall prepare on an annual  
2 basis and provide to each member of the West Virginia  
3 Legislature who so requests an annual report detailing  
4 the financial condition and operations of the parkways  
5 authority. The parkways authority shall provide to the  
6 joint committee on government and finance any finan-  
7 cial statements as may be required under any trust  
8 agreement to which the parkways authority is a party.

**§17-16A-27. Exit awareness signs.**

1 Consistent with applicable federal laws, rules and  
2 regulations, the parkways authority shall develop and  
3 prepare a uniform roadway sign identifying the avail-  
4 ability of restaurants, gas stations, hotel accommoda-  
5 tions and emergency services available off each exit of  
6 the West Virginia Turnpike. At every tourism project  
7 maintained or operated by the parkways authority and  
8 which is constructed after the effective date of this  
9 legislation, and, to the extent permitted under the terms  
10 of the applicable lease, at every currently existing  
11 service station, gas station, hotel or restaurant, garage  
12 or store maintained, operated or leased by the parkways  
13 authority, the parkways authority shall at no charge or  
14 cost permit the placement of, in a conspicuous place, all  
15 reasonably sized advertising literature prepared and  
16 delivered by hotels, restaurants and other tourist  
17 attractions, whether public or private, located within  
18 the state of West Virginia.

**§17-16A-28. Severability.**

1 If any section, subsection, subdivision, subparagraph,  
2 sentence or clause of this article is adjudged to be  
3 unconstitutional or invalid, such adjudication shall not  
4 affect the validity of the remaining portions of this  
5 article, and, to this end, the provisions of this article are  
6 hereby declared to be severable.

**§17-16A-29. Effective date.**

1 The provisions of this article as amended or added by  
2 this act shall take effect on the first day of June, one  
3 thousand nine hundred eighty-nine.

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## CHAPTER 188

(H. B. 2025—By Delegate Love)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the interagency committee on pesticides.

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

That section three, article twelve-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 12C. INTERAGENCY COMMITTEE ON PESTICIDES.****§19-12C-3. Committee created; membership; chairman; continuation.**

1 (a) There is hereby created an interagency committee  
2 on pesticides to consist of the (1) commissioner of the  
3 department of agriculture, (2) director of the depart-  
4 ment of natural resources, (3) director of the department  
5 of public health, (4) director of the West Virginia  
6 University agricultural experiment station, and (5)  
7 director of the air pollution control commission.

8 The commissioner of agriculture shall be chairman of  
9 this committee. Each member of the committee may  
10 designate some person in his department to serve in his  
11 stead on the committee.

12 (b) After having conducted a performance and fiscal  
13 audit through its joint committee on government  
14 operations, pursuant to section nine, article ten, chapter

15 four of this code, the Legislature hereby finds and  
16 declares that the interagency committee on pesticides  
17 should be continued and reestablished. Accordingly,  
18 notwithstanding the provisions of section four, article  
19 ten, chapter four of this code, the interagency committee  
20 on pesticides shall continue to exist until the first day  
21 of July, one thousand nine hundred ninety-one.

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## CHAPTER 189

(H. B. 2052—By Delegates Love and Ashley)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article sixteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to continuation of the pesticides board of review.

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

That article sixteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a, to read as follows:

### ARTICLE 16A. PESTICIDES.

#### §19-16A-4a. Continuation of board.

1 After having conducted a performance and fiscal  
2 audit through its joint committee on government  
3 operations, pursuant to section nine, article ten, chapter  
4 four of this code, the Legislature hereby finds and  
5 declares that the pesticides board of review should be  
6 continued and reestablished. Accordingly, notwithstand-  
7 ing the provisions of section four, article ten, chapter  
8 four of this code, the pesticides board of review shall  
9 continue to exist until the first day of July, one thousand  
10 nine hundred ninety-one.



## CHAPTER 190

(H. B. 2053—By Delegates Love and Ashley)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of corrections.

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

That section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

#### §25-1-2. Reestablishment of department; findings.

1 After having conducted a performance and fiscal  
2 audit through its joint committee on government  
3 operations, pursuant to section nine, article ten, chapter  
4 four of this code, the Legislature hereby finds and  
5 declares that the department of corrections should be  
6 continued and reestablished. Accordingly, notwithstand-  
7 ing the provisions of section four, article ten, chapter  
8 four of this code, the department of corrections shall  
9 continue to exist until the first day of July, one thousand  
10 nine hundred ninety.

## CHAPTER 191

(H. B. 2054—By Delegates Love and Leggett)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one-d, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing membership in the Ohio River Valley Water Sanitation Commission.

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

That section six, article one-d, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 1D. OHIO RIVER VALLEY WATER SANITATION COMMISSION.**

**§29-1D-6. When article effective; findings; continuation.**

1 This article shall take effect and become operative and  
2 the compact be executed for and on behalf of this state  
3 only from and after the approval, ratification, and  
4 adoption, and entering into thereof by the states of New  
5 York, Pennsylvania, Ohio, and Virginia.

6 After having conducted a performance and fiscal  
7 audit through its joint committee on government  
8 operations, pursuant to section nine, article ten, chapter  
9 four of this code, the Legislature hereby finds and  
10 declares that West Virginia should remain a member of  
11 the compact. Accordingly, notwithstanding the provi-  
12 sions of section four, article ten, chapter four of this  
13 code, West Virginia shall continue to be a member of  
14 this compact until the first day of July, one thousand  
15 nine hundred ninety-four.

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## CHAPTER 192

(H. B. 2618—By Delegates Schoonover and M. Burke)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assessment of corporate property; reports to assessor by corporation.

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

That section twelve, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

## ARTICLE 3. ASSESSMENTS GENERALLY.

## §11-3-12. Assessment of corporate property; reports to assessor by corporations.

1 Each incorporated company, foreign or domestic,  
2 having its principal office or chief place of business in  
3 this state, or owning property subject to taxation in this  
4 state, except railroad, telegraph and express companies,  
5 telephone companies, pipeline, car line companies and  
6 other public utility companies, banking institutions,  
7 national banking associations, building and loan associ-  
8 ations, federal savings and loan associations and  
9 industrial loan companies, shall annually, between the  
10 first day of the assessment year and the first day of  
11 October, make a written report, verified by the oath of  
12 the president or chief accounting officer, to the assessor  
13 of the county in which its principal office or chief place  
14 of business is situated or in which such property subject  
15 to taxation in this state is located if such corporation  
16 does not have a principal office or chief place of business  
17 in this state, showing the following items, viz: (a) The  
18 amount of capital authorized to be employed by it; (b)  
19 the amount of cash capital paid on each share of stock;  
20 (c) the amount of credits and investments other than its  
21 own capital stock held by it on said date, with their true  
22 and actual value; (d) the quantity, location and true and  
23 actual value of all of its real estate, and the tax district  
24 or districts in which it is located; and (e) the kinds,  
25 quantity and true and actual value of all its tangible  
26 property in each tax district in which it is located.

27 The oath required for this section shall be substan-  
28 tially as follows, viz:

29 State of West Virginia, County of \_\_\_\_\_, ss:

30 I, \_\_\_\_\_, president (treasurer or  
31 manager) of (here insert name of corporation), do  
32 solemnly swear (or affirm) that the foregoing is, to the  
33 best of my knowledge and judgment, true in all respects;  
34 that it contains a statement of all the real estate and  
35 personal property, including credits and investments  
36 belonging to said corporation; that the value affixed to  
37 such property is, in my opinion, its true and actual

38 value, by which I mean the price at which it would sell  
 39 if voluntarily offered for sale on such terms as are  
 40 usually employed in selling such property, and not the  
 41 price which might be realized at a forced or auction  
 42 sale; and said corporation has not, to my knowledge,  
 43 during the sixty-day period immediately prior to the  
 44 first day of the assessment year converted any of its  
 45 assets into nontaxable securities or notes or other  
 46 evidence of indebtedness for the purpose of evading the  
 47 assessment of taxes thereon; so help me, God.

48

49 The officer administering such oath shall append  
 50 thereto the following certificate, viz:

51 Subscribed and sworn to before me by  
 52 \_\_\_\_\_ this the \_\_\_\_\_ day of \_\_\_\_\_,  
 53 19\_\_\_\_.

54

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## CHAPTER 193

(Com. Sub. for H. B. 2703—By Delegates Mezzatesta and Murphy)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the homestead property tax exemption; requiring an owner to legally reside in the state for the four consecutive taxable years and have paid taxes on any homestead in this state for the four consecutive taxable years prior to filing of exemption claim in order to receive such exemption and providing an exception thereto; requiring proof of residence; and defining legally resided.

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

That sections two and three, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.**

§11-6B-2. Definitions.

§11-6B-3. Twenty thousand dollar homestead exemption allowed.

**§11-6B-2. Definitions.**

1 For purposes of this article, the term:

2 (1) "Assessed value" means the value of property as  
3 determined under article three of this chapter.

4 (2) "Claimant" means a person who is age sixty-five  
5 or older or who is certified as being permanently and  
6 totally disabled, and who owns a homestead that is used  
7 and occupied by the owner thereof exclusively for  
8 residential purposes.

9 (3) "Homestead" means a single family residential  
10 house, including a modular home, and the land sur-  
11 rounding such structure; or a mobile home regardless  
12 of whether the land upon which such mobile home is  
13 situated is owned or leased.

14 (4) "Legally resided" means the person shall have been  
15 domiciled in this state for more than six consecutive  
16 months of the taxable year.

17 (5) "Owner" means the person who is possessed of the  
18 homestead, whether in fee or for life. A person seized  
19 or entitled in fee subject to a mortgage or deed of trust  
20 securing a debt or liability shall be deemed the owner  
21 until the mortgagee or trustee takes possession, after  
22 which such mortgagee or trustee shall be deemed the  
23 owner. A person who has an equitable estate of freehold,  
24 or is a purchaser of a freehold estate who is in possession  
25 before transfer of legal title shall also be deemed the  
26 owner. Personal property mortgaged or pledged shall,  
27 for the purpose of taxation, be deemed the property of  
28 the party in possession.

29 (6) "Permanently and totally disabled" means a person  
30 who is unable to engage in any substantial gainful  
31 activity by reason of any medically determinable  
32 physical or mental condition which can be expected to  
33 result in death or which has lasted or can be expected  
34 to last for a continuous period of not less than twelve  
35 months.

36 (7) "Sixty-five years of age or older" includes a person  
37 who attains the age of sixty-five on or before the  
38 thirtieth day of June following the July first assessment  
39 date.

40 (8) "Used and occupied exclusively for residential  
41 purposes" means that the property is used as an abode,  
42 dwelling or habitat for more than six consecutive  
43 months of the year by the owner and that the property  
44 is used only as an abode, dwelling or habitat to the  
45 exclusion of any commercial use: *Provided*, That this  
46 six-month period shall not prevent a prior resident from  
47 filing a claim to exemption in accordance with section  
48 three, article six-b, chapter eleven of this code.

49 (9) "Tax year" means the calendar year following the  
50 July first assessment day.

**§11-6B-3. Twenty thousand dollar homestead exemption  
allowed.**

1 (a) *General.*—An exemption from ad valorem prop-  
2 erty taxes shall be allowed for the first twenty thousand  
3 dollars of assessed value of a homestead that is used and  
4 occupied by the owner thereof exclusively for residential  
5 purposes, when such owner is sixty-five years of age or  
6 older or is certified as being permanently and totally  
7 disabled: *Provided*, That the owner has legally resided  
8 in the state of West Virginia for the four consecutive  
9 taxable years and has paid taxes on any homestead in  
10 this state for the four taxable years prior to filing a  
11 claim for exemption: *Provided, however*, That when a  
12 resident of West Virginia establishes residency out of  
13 West Virginia and subsequently returns and reestab-  
14 lishes residency in West Virginia within a period of five  
15 years, such resident may file a claim for exemption  
16 without regard to the requirement of four years  
17 consecutive residency: *Provided further*, That such  
18 resident show proof of residency including, but not  
19 limited to, either a voter's registration card issued in  
20 this state or a motor vehicles registration card issued in  
21 this state. Only one exemption shall be allowed for each  
22 homestead used and occupied exclusively for residential  
23 purposes by the owner thereof, regardless of the number  
24 of qualified owners residing therein.

25     **(b) Attachment of exemption.**—This exemption shall  
26     attach to the homestead occupied by the qualified owner  
27     on the July first assessment date and shall be applicable  
28     to taxes for the following tax year. An exemption shall  
29     not be transferred to another homestead until the  
30     following July first. If the homestead of an owner  
31     qualified under this article is transferred by deed, will  
32     or otherwise, the twenty thousand dollar exemption  
33     shall be removed from the property on the next July  
34     first assessment date unless the new owner qualifies for  
35     the exemption.

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## CHAPTER 194

(S. B. 622—Originating in the Committee on Ways and Means)

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[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections one and two-e, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business and occupation tax; providing definitions relating to net number of dekatherms injected and withdrawn from a storage reservoir and amending definition of storage reservoir; and amending the calculation of the rate of tax imposed on persons engaging or continuing in state in the gas storage business.

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

That sections one and two-e, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

### ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-1. Definitions.

§11-13-2e. Business of gas storage; effective date.

#### §11-13-1. Definitions.

1     **(a) General.**—When used in this article, or in the

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

7 (b) *Terms defined.*

8 (1) "Person" or the term "company," herein used  
9 interchangeably, includes any individual, firm, copart-  
10 nership, joint adventure, association, corporation, trust  
11 or any other group or combination acting as a unit, and  
12 the plural as well as the singular number, unless the  
13 intention to give a more limited meaning is disclosed by  
14 the context.

15 (2) "Sale," "sales" or "selling" includes any transfer of  
16 or title to property or electricity, whether for money or  
17 in exchange for other property.

18 (3) "Taxpayer" means any person liable for any tax  
19 hereunder.

20 (4) "Gross income" means the gross receipts of the  
21 taxpayer, received as compensation for personal services  
22 and the gross receipts of the taxpayer derived from  
23 trade, business, commerce or sales and the value  
24 proceeding or accruing from the sale of tangible  
25 property (real or personal), or service, or both, and all  
26 receipts by reason of the investment of the capital of the  
27 business engaged in, including rentals, royalties, fees,  
28 reimbursed costs or expenses or other emoluments  
29 however designated and including all interest, carrying  
30 charges, fees or other like income, however denomi-  
31 nated, derived by the taxpayer from repetitive carrying  
32 of accounts, in the regular course and conduct of his  
33 business, and extension of credit in connection with the  
34 sale of any tangible personal property or service, and  
35 without any deductions on account of the cost of  
36 property sold, the cost of materials used, labor costs,  
37 taxes, royalties paid in cash or in kind or otherwise,  
38 interest or discount paid or any other expenses  
39 whatsoever.

40 (5) "Gross proceeds of sales" means the value, whether



41 in money or other property, actually proceeding from  
42 the sale of tangible property without any deduction on  
43 account of the cost of property sold or expenses of any  
44 kind.

45 (6) "Business" shall include all activities engaged in  
46 or caused to be engaged in with the object of gain or  
47 economic benefit, either direct or indirect. "Business"  
48 shall include the rendering of gas storage service by any  
49 person for the gain or economic benefit of any person,  
50 including, but not limited to, the storage operator,  
51 whether or not incident to any other business activity.

52 (7) "Gas" means either natural gas unmixed, or any  
53 mixture of natural and artificial gas or any other gas.

54 (8) "Storage reservoir" means that portion of any  
55 subterranean sand or rock stratum or strata into which  
56 gas has been injected for the purpose of storage prior  
57 to the first day of March, one thousand nine hundred  
58 eighty-nine.

59 (9) "Gas storage service" means the injection of gas  
60 into a storage reservoir, the storage of gas for any period  
61 of time in a storage reservoir, or the withdrawal of gas  
62 from a storage reservoir. Such gas may be owned by the  
63 storage operator or any other person.

64 (10) "Net number of dekatherms of gas injected"  
65 means the sum of the daily injection of dekatherms of  
66 gas in excess of the sum of the daily withdrawals of  
67 dekatherms of gas during a tax month.

68 (11) "Net number of dekatherms of gas withdrawn"  
69 means the sum of the daily withdrawal of dekatherms  
70 of gas in excess of the sum of the daily injection of  
71 dekatherms of gas during a tax month.

72 (12) "Gas storage operator" means any person who  
73 operates a storage reservoir or provides a storage  
74 service as defined herein, either as owner or lessee.

75 (13) "Month" or "tax month" means the calendar  
76 month.

77 (14) "Dekatherm" means the thermal energy unit  
78 equal to one million British thermal units (BTU's) or

79 the equivalent of one thousand cubic feet of gas having  
80 a heating content of one thousand BTU's per cubic foot.

81 (15) "Taxable year" means the calendar year, or the  
82 fiscal year ending during such calendar year, upon the  
83 basis of which tax liability is computed under this  
84 article. "Taxable year" means, in case of a return made  
85 for a fractional part of a year under the provisions of  
86 this article, or under regulations promulgated by the tax  
87 commissioner, the period for which such return is made.

**§11-13-2e. Business of gas storage; effective date.**

1 (a) *Rate of tax.*—Upon every person engaging or  
2 continuing within this state in any gas storage business  
3 utilizing one or more gas storage reservoirs located  
4 within this state, the tax imposed by section two of this  
5 article shall be equal to five cents multiplied by the sum  
6 of either (1) the net number of dekatherms of gas  
7 injected into such a gas storage reservoir during a tax  
8 month or (2) the net number of dekatherms of gas  
9 withdrawn from such a gas storage reservoir during a  
10 tax month, whichever is applicable for that month,  
11 whether or not such gas is owned by, or is injected or  
12 withdrawn for, the storage operator or any other person.  
13 Fractional parts of dekatherms shall be included in the  
14 measure of tax as provided in regulations promulgated  
15 by the tax commissioner.

16 (b) *Effective date.*—The measure of tax under this  
17 section shall include gas injected into, or withdrawn  
18 from, a gas storage reservoir after the twenty-eighth  
19 day of February, one thousand nine hundred eighty-  
20 nine.

21 (c) *Administration; installment payments.*—The tax  
22 due under this section shall be administered, collected  
23 and enforced as provided in this article and articles nine  
24 and ten of this chapter. The tax due under this section  
25 shall be remitted in periodic installments as provided in  
26 section four of this article, except that such periodic  
27 installment payments shall be remitted on or before the  
28 twentieth day of the month following the month or  
29 quarter in which the tax accrues.

## CHAPTER 195

(H. B. 2716—By Delegates Whitt and Farley)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sales tax returns and payment; and providing that certain amounts in the drunk driving prevention fund may be used by the department of public safety personal services for the fiscal year one thousand nine hundred ninety.

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

That section sixteen, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### CHAPTER 11. TAXATION.

#### ARTICLE 15. CONSUMERS SALES TAX.

##### §11-15-16. Tax return and payment; exception.

1 The taxes levied by this article shall be due and  
2 payable in monthly installments, on or before the  
3 fifteenth day of the month next succeeding the month  
4 in which the tax accrued. The taxpayer shall, on or  
5 before the fifteenth day of each month, make out and  
6 mail to the tax commissioner a return for the preceding  
7 month, in the form prescribed by the tax commissioner,  
8 showing: (a) The total gross proceeds of his business for  
9 that month; (b) the gross proceeds of his business upon  
10 which the tax is based; (c) the amount of the tax for  
11 which he is liable; and (d) any further information  
12 necessary in the computation and collection of the tax  
13 which the tax commissioner may require. A remittance  
14 for the amount of the tax shall accompany the return:  
15 *Provided*, That notwithstanding the provisions of section  
16 thirty of this article, any such tax collected by the  
17 alcohol beverage control commissioner from persons or  
18 organizations licensed under authority of article seven,

19 chapter sixty of this code shall be paid into a revolving  
20 fund account in the state treasury, designated the drunk  
21 driving prevention fund, to be administered by the  
22 commission on drunk driving prevention, subject to  
23 appropriations by the Legislature: *Provided, however,*  
24 That any balances in the drunk driving prevention fund  
25 on the first day of July, one thousand nine hundred  
26 eighty-nine, and all moneys received into such fund  
27 during the fiscal year commencing the first day of July,  
28 one thousand nine hundred eighty-nine, may, up to a  
29 maximum of seven hundred fifty thousand dollars, be  
30 used by the department of public safety for personal  
31 services, employee benefits and unclassified expendi-  
32 tures for the time period commencing the first day of  
33 July, one thousand nine hundred eighty-nine, and  
34 ending the last day of June, one thousand nine hundred  
35 ninety, subject to appropriation by the Legislature. A  
36 monthly return shall be signed by the taxpayer or his  
37 duly authorized agent.

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## CHAPTER 196

(H. B. 2711—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the personal income tax and updating the meaning of certain terms.

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

That section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 21. PERSONAL INCOME TAX.

#### §11-21-9. Meaning of terms.

1 Any term used in this article shall have the same

2 meaning as when used in a comparable context in the  
3 laws of the United States relating to income taxes,  
4 unless a different meaning is clearly required. Any  
5 reference in this article to the laws of the United States  
6 shall mean the provisions of the Internal Revenue Code  
7 of 1986, as amended, and such other provisions of the  
8 laws of the United States as relate to the determination  
9 of income for federal income tax purposes. All amend-  
10 ments made to the laws of the United States prior to  
11 the first day of January, one thousand nine hundred  
12 eighty-nine, shall be given effect in determining the  
13 taxes imposed by this article for any taxable year  
14 beginning the first day of January, one thousand nine  
15 hundred eighty-eight, or thereafter, but no amendment  
16 to the laws of the United States made on or after the  
17 first day of January, one thousand nine hundred eighty-  
18 nine, shall be given effect.

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## CHAPTER 197

(Com. Sub. for S. B. 189—By Senator Hawse)

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[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact section two, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increase of county excise tax on transfer of real estate; requiring county commission to approve increase; and requiring notice of meeting at which such increase is to be considered.

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

That section two, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.**

**§11-22-2. Rate of tax; when and by whom payable; additional county tax.**

1 Every person who delivers, accepts or presents for  
2 recording any document, or in whose behalf any  
3 document is delivered, accepted or presented for  
4 recording, shall be subject to pay for and in respect to  
5 the transaction or any part thereof, a state excise tax  
6 upon the privilege of transferring title to real estate at  
7 the rate of one dollar and ten cents for each five hundred  
8 dollars' value or fraction thereof as represented by such  
9 document as defined in section one hereof, which state  
10 tax shall be payable at the time of delivery, acceptance  
11 or presenting for recording of such document.

12 Effective January first, one thousand nine hundred  
13 sixty-eight and thereafter, there is hereby imposed an  
14 additional county excise tax for the privilege of  
15 transferring title to real estate at the rate of fifty-five  
16 cents for each five hundred dollars' value or fraction  
17 thereof as represented by such document as defined in  
18 section one hereof, which county tax shall be payable at  
19 the time of delivery, acceptance or presenting for  
20 recording of such document: *Provided*, That after the  
21 first day of July, one thousand nine hundred eighty-nine,  
22 the county may increase said excise tax to an amount  
23 equal to the state excise tax. The additional tax hereby  
24 imposed is declared to be a county tax and to be used  
25 for county purposes: *Provided, however*, That only one  
26 such state tax and one such county tax shall be paid on  
27 any one document and shall be collected in the county  
28 where the document is first admitted to record, and the  
29 same shall be paid by the grantor therein unless the  
30 grantee accepts the same without such tax having been  
31 paid, in which event such tax shall be paid by the  
32 grantee: *Provided further*, That on any transfer of real  
33 property from a trustee or a county clerk transferring  
34 real estate sold for taxes, such tax shall be paid by the  
35 grantee.

36 The county excise tax imposed under this section may  
37 not be increased in any county unless the increase is  
38 approved by a majority vote of the members of the  
39 county commission of such county. Any county commis-  
40 sion intending to increase the excise tax imposed in its  
41 county shall publish a notice of its intention to increase

42 such tax not less than thirty days nor more than sixty  
43 days prior to the meeting at which such increase will  
44 be considered, such notice to be published as a Class I  
45 legal advertisement in compliance with the provisions of  
46 article three, chapter fifty-nine of this code, and the  
47 publication area shall be the county in which such  
48 county commission is located.

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## CHAPTER 198

(H. B. 2712—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections three and three-a, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business franchise tax; updating the meaning of certain terms; expanding and clarifying certain definitions; and providing the tax commissioner authority to determine additional items in capital so that income is properly reflected.

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

That sections three and three-a, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-3. Meaning of terms; specific terms defined.

§11-23-3a. Meaning of terms; general rule.

#### §11-23-3. Meaning of terms; specific terms defined.

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

7 (b) *Terms defined.*

8 (1) *Business income.*—The term “business income”  
9 means income arising from transactions and activity in  
10 the regular course of the taxpayer’s trade or business  
11 and includes income from tangible and intangible  
12 property if the acquisition, management and disposition  
13 of the property constitute integral parts of the taxpay-  
14 er’s regular trade or business operations.

15 (2) *Capital.*—The term “capital” of a taxpayer shall  
16 mean:

17 (A) *Corporations.*—In the case of a corporation,  
18 except an electing small business corporation, the  
19 average of the beginning and ending year balances of  
20 the sum of the following entries from Schedule L of  
21 Federal Form 1120, prepared following generally  
22 accepted accounting principles and as filed by the  
23 taxpayer with the Internal Revenue Service for the  
24 taxable year:

25 (i) The value of all common stock and preferred stock  
26 of the taxpayer;

27 (ii) The amount of paid-in or capital surplus;

28 (iii) The amount of retained earnings, appropriated  
29 and unappropriated;

30 (iv) Less the cost of treasury stock.

31 (B) *S Corporations.*—In the case of an electing small  
32 business corporation, the average of the beginning and  
33 ending year balances of the sum of the following entries  
34 from Schedule L of Federal Form 1120S, prepared  
35 following generally accepted accounting principles and  
36 as filed by the taxpayer with the Internal Revenue  
37 Service for the taxable year:

38 (i) The value of all common stock and preferred stock  
39 of the taxpayer;

40 (ii) The amount of paid-in or capital surplus;

41 (iii) Retained earnings, appropriated and  
42 unappropriated;



43 (iv) The amount of shareholders' undistributed taxa-  
44 ble income;

45 (v) The amount of the accumulated adjustments  
46 account;

47 (vi) The amount of the other adjustments account;

48 (vii) Less the cost of treasury stock.

49 (C) *Partnerships.*—In the case of a partnership, the  
50 average of the beginning and ending year balances of  
51 the value of partner's capital accounts from Schedule L  
52 of Federal Form 1065, prepared following accepted  
53 accounting principles and as filed by the taxpayer with  
54 the Internal Revenue Service for the taxable year.

55 (D) *Additional items in capital.*—The term "capital"  
56 for purposes of this article shall include such adjust-  
57 ments thereto as the tax commissioner deems necessary  
58 to properly reflect capital and such additional items  
59 from the accounts of the taxpayer as the tax commis-  
60 sioner may by regulation prescribe, which fairly  
61 represent the net equity of the taxpayer as defined in  
62 accordance with generally accepted accounting  
63 principles.

64 (E) *Allowance for certain government obligations and*  
65 *obligations secured by residential property.*—As to both  
66 corporations and partnerships, capital shall be multip-  
67 lied by a fraction equal to one minus a fraction:

68 (i) The numerator of which is the average of the  
69 monthly beginning and ending account balances during  
70 the taxable year (account balances to be determined at  
71 cost in the same manner that such obligations, invest-  
72 ments and loans are reported on Schedule L of the  
73 Federal Form 1120 or Federal Form 1065) of the  
74 following:

75 (I) Obligations and securities of the United States, or  
76 of any agency, authority, commission or instrumentality  
77 of the United States and any other corporation or entity  
78 created under the authority of the United States  
79 Congress for the purpose of implementing or furthering  
80 an objective of national policy;

81 (II) Obligations of this state and any political subdi-  
82 vision of this state;

83 (III) Investments or loans primarily secured by  
84 mortgages, or deeds of trust, on residential property  
85 located in this state and occupied by nontransients; and

86 (IV) Loans primarily secured by a lien or security  
87 agreement on residential property in the form of a  
88 mobile home, modular home or double-wide, located in  
89 this state and occupied by nontransients.

90 (ii) The denominator of which is the average of the  
91 monthly beginning and ending account balances of the  
92 total assets of the taxpayer as shown on Schedule L of  
93 Federal Form 1120, as filed by the taxpayer with the  
94 Internal Revenue Service or, in the case of partnerships,  
95 Schedule L of Federal Form 1065, as filed by the  
96 taxpayer with the Internal Revenue Service.

97 (3) *Commercial domicile.*—The term “commercial  
98 domicile” means the principal place from which the  
99 trade or business of the taxpayer is directed or  
100 managed.

101 (4) *Commissioner or tax commissioner.*—The terms  
102 “commissioner” or “tax commissioner” are used inter-  
103 changeably herein and mean the tax commissioner of  
104 the state of West Virginia, or his delegate.

105 (5) *Compensation.*—The term “compensation” means  
106 wages, salaries, commissions and any other form of  
107 remuneration paid to employees for personal services.

108 (6) *Corporation.*—The term “corporation” includes  
109 any corporations, S corporation, joint-stock company  
110 and any association or other organization which is  
111 taxable as a corporation under federal income tax laws  
112 or the income tax laws of this state.

113 (7) *Delegate.*—The term “delegate” in the phrase “or  
114 his delegate,” when used in reference to the tax  
115 commissioner, means any officer or employee of the  
116 state tax department duly authorized by the tax  
117 commissioner directly, or indirectly by one or more  
118 redelegations of authority, to perform the functions

119 mentioned or described in this article or regulations  
120 promulgated thereunder.

121 (8) *Doing business.*—The term “doing business” means  
122 any activity of a corporation or partnership which enjoys  
123 the benefits and protection of the government and laws  
124 of this state, except the activity of agriculture and  
125 farming, which shall mean the production of food, fiber  
126 and woodland products (but not timbering activity) by  
127 means of cultivation, tillage of the soil and by the  
128 conduct of animal, livestock, dairy, apiary, equine or  
129 poultry husbandry, horticulture, or any other plant or  
130 animal production and all farm practices related, usual  
131 or incidental thereto, including the storage, packing,  
132 shipping and marketing, but not including any manu-  
133 facturing, milling or processing of such products by  
134 persons other than the producer thereof.

135 The activity of agriculture and farming shall mean  
136 such activity, as above defined, occurring on not less  
137 than five acres of land and the improvements thereon,  
138 used in the production of the aforementioned activities,  
139 and shall mean the production of at least one thousand  
140 dollars of products per annum through the conduct of  
141 such principal business activities as set forth in section  
142 ten, article one-a, chapter eleven of this code.

143 (9) *Domestic corporation.*—The term “domestic corpo-  
144 ration” means a corporation organized under the laws  
145 of this state, and certain corporations organized under  
146 the laws of the state of Virginia before the twentieth day  
147 of June, one thousand eight hundred sixty-three. Every  
148 other corporation is a foreign corporation.

149 (10) *Federal Form 1120.*—The term “Federal Form  
150 1120” means the annual federal income tax return of  
151 any corporation made pursuant to the United States  
152 Internal Revenue Code of 1986, as amended, or in  
153 successor provisions of the laws of the United States, in  
154 respect to the taxable income of a corporation, and filed  
155 with the federal Internal Revenue Service. In the case  
156 of a corporation that elects to file a federal income tax  
157 return as part of an affiliated group, but files as a  
158 separate corporation under this article, then as to such

159 corporation Federal Form 1120 means its pro forma  
160 Federal Form 1120.

161 (11) *Federal Form 1065*.—The term “Federal Form  
162 1065” means the annual federal income tax return of a  
163 partnership made pursuant to Section 6031 of the  
164 United States Internal Revenue Code of 1986, as  
165 amended or renumbered, or in successor provisions of  
166 the laws of the United States, in respect to the taxable  
167 income of a partnership, and filed with the federal  
168 Internal Revenue Service.

169 (12) *Fiduciary*.—The term “fiduciary” means, and  
170 includes, a guardian, trustee, executor, administrator,  
171 receiver, conservator or any person acting in any  
172 fiduciary capacity for any person.

173 (13) *Financial organization*.—The term “financial  
174 organization” includes any bank, banking association,  
175 trust company, industrial loan company, small loan  
176 company or licensee, building and loan association,  
177 savings and loan association, finance company, invest-  
178 ment company, investment broker or dealer, and any  
179 other similar business organization at least ninety  
180 percent of the assets of which consist of intangible  
181 personal property and at least ninety percent of the  
182 gross receipts of which consist of dividends, interest and  
183 other charges derived from the use of money or credit.

184 (14) *Fiscal year*.—The term “fiscal year” means an  
185 accounting period of twelve months ending on any day  
186 other than the last day of December, and on the basis  
187 of which the taxpayer is required to report for federal  
188 income tax purposes.

189 (15) *Includes and including*.—The term “includes” and  
190 “including” when used in a definition contained in this  
191 article shall not be deemed to exclude other things  
192 otherwise within the meaning of the term being defined.

193 (16) *Parent and subsidiary corporations*.—A corpora-  
194 tion which owns on average during the taxable year  
195 more than fifty percent of the stock of all classes of  
196 another corporation is defined to be the “parent  
197 corporation” and the corporation which is so owned by  
198 the parent is defined to be a “subsidiary corporation.”

199 (17) *Partnership and partner.*—The term “partner-  
200 ship” includes a syndicate, group, pool, joint venture or  
201 other unincorporated organization through or by means  
202 of which any business, financial operation or venture is  
203 carried on, and which is not a trust or estate, a  
204 corporation or a sole proprietorship or an unincorpo-  
205 rated organization which under Section 761 of the  
206 Internal Revenue Code of 1986, as amended, and is not  
207 treated as a partnership for the taxable year for federal  
208 income tax purposes. The term “partner” includes a  
209 member in such a syndicate, group, pool, joint venture  
210 or other unincorporated organization which is a  
211 partnership.

212 (18) *Person.*—The term “person” includes any corpo-  
213 ration or partnership.

214 (19) *Pro forma return.*—The term “pro forma return”  
215 when used in this article means the return which the  
216 taxpayer would have filed with the Internal Revenue  
217 Service had it not elected to file federally as part of a  
218 consolidated group.

219 (20) *Sales.*—The term “sales” means all gross receipts  
220 of the taxpayer that are “business income,” as defined  
221 in this section.

222 (21) *State.*—The term “state” means a state of the  
223 United States, the District of Columbia, the Common-  
224 wealth of Puerto Rico, or any territory or possession of  
225 the United States, and any foreign country or political  
226 subdivision thereof.

227 (22) *Stock.*—The term “stock” includes shares in a  
228 corporation, association or joint-stock company. It shall  
229 not include nonvoting stock which is limited and  
230 preferred as to dividends, or treasury stock. “Stock  
231 owned by a corporation” shall include stock owned  
232 directly by such corporation and stock which is subject  
233 to an option to acquire stock.

234 (23) *Taxable year.*—The term “taxable year” means  
235 the calendar year, or the fiscal year ending during such  
236 calendar year, upon the basis of which tax liability is  
237 computed under this article. “Taxable year” means, in

238 case of a return made for a fractional part of a year  
239 (short taxable year) under the provisions of this article,  
240 or under regulations promulgated by the tax commis-  
241 sioner, the period for which such return is made.

242 (24) *Taxable in another state.*—The term “taxable in  
243 another state” for purposes of apportionment under this  
244 article, means a taxpayer who:

245 (A) Is subject to a net income tax, a franchise tax  
246 measured by net income, a franchise tax for the  
247 privilege of doing business or a corporate stock tax; or

248 (B) Would be subject to a net income tax if such other  
249 state imposed such a tax.

250 (25) *Taxpayer.*—The term “taxpayer” means any  
251 person (as defined in this section) subject to the tax  
252 imposed by this article.

253 (26) *This code.*—The term “this code” means the code  
254 of West Virginia, one thousand nine hundred thirty-one,  
255 as amended.

256 (27) *This state.*—The term “this state” means the state  
257 of West Virginia.

258 (28) *Treasury stock.*—The term “treasury stock”  
259 means shares of a corporation which have been issued  
260 and have been subsequently acquired by and belong to  
261 such corporation, and have not been canceled or restored  
262 to the status of authorized but unissued shares. Treasury  
263 stock is deemed to be issued shares, but not outstanding  
264 shares.

### §11-23-3a. Meaning of terms; general rule.

1 Any term used in this article shall have the meaning  
2 as when used in a comparable context in the laws of the  
3 United States relating to federal income taxes, unless a  
4 different meaning is clearly required by the context or  
5 by definition of this article. Any reference in this article  
6 to the laws of the United States, or to the Internal  
7 Revenue Code, or to the federal income tax law shall  
8 mean the provisions of the laws of the United States as  
9 related to the determination of income for federal  
10 income tax purposes. All amendments made to the laws

11 of the United States prior to the first day of January,  
12 one thousand nine hundred eighty-nine, shall be given  
13 effect in determining the taxes imposed by this article  
14 for the tax period beginning the first day of January,  
15 one thousand nine hundred eighty-eight, and thereafter,  
16 but no amendment to laws of the United States made  
17 on or after the first day of January, one thousand nine  
18 hundred eighty-nine, shall be given effect.

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## CHAPTER 199

(H. B. 2709—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the corporation net income tax and updating the meaning of certain terms.

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

That section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 24. CORPORATION NET INCOME TAX.

#### §11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article shall have the same  
2 meaning as when used in a comparable context in the  
3 laws of the United States relating to federal income  
4 taxes, unless a different meaning is clearly required by  
5 the context or by definition in this article. Any reference  
6 in this article to the laws of the United States shall mean  
7 the provisions of the Internal Revenue Code of 1986, as  
8 amended, and such other provisions of the laws of the  
9 United States as relate to the determination of income  
10 for federal income tax purposes. All amendments made  
11 to the laws of the United States prior to the first day  
12 of January, one thousand nine hundred eighty-nine,  
13 shall be given effect in determining the taxes imposed

14 by this article for any taxable year beginning the first  
15 day of January, one thousand nine hundred eighty-eight,  
16 and thereafter, but no amendment to the laws of the  
17 United States effective on or after the first day of  
18 January, one thousand nine hundred eighty-nine, shall  
19 be given any effect.

20 (b) The term "Internal Revenue Code of 1986" means  
21 the Internal Revenue Code of the United States enacted  
22 by the "Federal Tax Reform Act of 1986" and includes  
23 the provisions of law formerly known as the Internal  
24 Revenue Code of 1954, as amended, and in effect when  
25 the "Federal Tax Reform Act of 1986" was enacted, that  
26 were not amended or repealed by the "Federal Tax  
27 Reform Act of 1986." Except when inappropriate, any  
28 references in any law, executive order, or other  
29 document:

30 (1) To the Internal Revenue Code of 1954 shall include  
31 reference to the Internal Revenue Code of 1986, and

32 (2) To the Internal Revenue Code of 1986 shall include  
33 a reference to the provisions of law formerly known as  
34 the Internal Revenue Code of 1954.

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## CHAPTER 200

(S. B. 481—Originating in the Committee on Ways and Means)

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[Passed April 4, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to the corporation net income tax; providing special rules for motor carriers to apportion their business income; permitting tax commissioner to specify other special formula or formulae; and providing effective date.

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

That article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended,



be amended by adding thereto a new section, designated section seven-a, to read as follows:

## CHAPTER 11. TAXATION.

### ARTICLE 24. CORPORATION NET INCOME TAX.

#### §11-24-7a. Special apportionment rules.

1 (a) *General.*—The Legislature hereby finds that the  
2 general formula set forth in section seven of this article  
3 for apportioning the business income of corporations  
4 taxable in this as well as in another state is inappropriate  
5 for use by certain businesses due to the particular  
6 characteristics of those businesses or the manner in  
7 which such businesses are conducted. Accordingly, the  
8 general formula set forth in section seven of this article  
9 may not be used to apportion business income when a  
10 specific formula established under this section applies  
11 to the business of the taxpayer. The Legislature further  
12 finds that the tax commissioner has the authority under  
13 chapter eleven of this code to promulgate by legislative  
14 regulations special formula or formulae by which a  
15 specified classification of taxpayers is required to  
16 apportion its business income. Accordingly, this section  
17 shall not be construed as prohibiting the tax commis-  
18 sioner from exercising his authority to promulgate  
19 legislative regulations which set forth such other special  
20 formula or formulae and in that regulation requiring a  
21 specified classification of taxpayers to apportion their  
22 business income as provided in that special formula,  
23 instead of apportioning their business income employing  
24 the general formula set forth in section seven of this  
25 article, when he believes that such formula or formulae  
26 will more fairly and more reasonably allocate and  
27 apportion to this state the adjusted federal taxable  
28 income of the taxpayer. Additionally, nothing in this  
29 section shall prevent the tax commissioner from  
30 requiring the use, or the taxpayer from petitioning to  
31 use, as the case may be, some other method of allocation  
32 or apportionment as provided in subsection (h), section  
33 seven of this article. Permission granted to a taxpayer  
34 under subsection (h), section seven of this article to use  
35 another method of allocation or apportionment shall be

36 valid for a period of five consecutive taxable years,  
37 beginning with the taxable year for which such author-  
38 ization is granted, provided there is no material change  
39 of fact or law which materially affects the fairness and  
40 reasonableness of the result reached under such other  
41 method of allocation or apportionment. Upon expiration  
42 of any such authorization the taxpayer may again  
43 petition under section seven of this article to use another  
44 method of apportionment. A material change of fact or  
45 law which materially affects the fairness and reasona-  
46 bleness of the result reached under such other method  
47 of allocation or apportionment automatically revokes  
48 authorization to use that other method beginning with  
49 the taxable year in which the material change of fact  
50 occurred or the taxable year for which a material  
51 change in law first takes effect, whichever occurs first.

52 (b) *Motor carriers.*—Motor carriers of property or  
53 passengers shall apportion the business income compo-  
54 nent of their adjusted federal taxable income to this  
55 state by the use of the ratio which their total vehicle  
56 miles in this state during the taxable year bears to total  
57 vehicle miles of the corporation everywhere during the  
58 taxable year, except as otherwise provided in this  
59 subsection.

60 (1) *Definitions.*—For purposes of this subsection (b):

61 (A) “Motor carrier” means any person engaging in the  
62 transportation of passengers or property or both, for  
63 compensation by motor propelled vehicle over roads in  
64 this state, whether traveling on a scheduled route or  
65 otherwise.

66 (B) “Vehicle mile” means the operation of a motor  
67 carrier over a distance of one mile, whether owned or  
68 operated by a corporation.

69 (2) The provisions of this subsection (b) shall not apply  
70 to a motor carrier:

71 (A) Which neither owns nor rents real or tangible  
72 personal property located in this state, which has made  
73 no pick-ups or deliveries within this state, and which has  
74 traveled less than fifty thousand vehicle miles in this  
75 state during the taxable year; or

76 (B) Which neither owns nor rents any real or tangible  
77 personal property located in this state, except vehicles,  
78 and which makes no more than twelve trips into or  
79 through this state during a taxable year.

80 The mileage traveled under fifty thousand miles or  
81 the mileage traveled in this state during the twelve trips  
82 into or through this state may not represent more than  
83 five percent of the total motor vehicle miles traveled in  
84 all states during the taxable year.

85 (c) The manner in which the taxpayer is required or  
86 permitted to apportion its business income under this  
87 article does not control or otherwise affect how that  
88 taxpayer apportions its capital for purposes of the  
89 business franchise tax imposed by article twenty-three  
90 of this chapter.

91 (d) *Effective date.*—The provisions of this section shall  
92 apply to all taxable years beginning on or after the first  
93 day of January, one thousand nine hundred eighty-nine,  
94 and to all years that begin prior to that date which are  
95 still open to audit and assessment.

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## CHAPTER 201

(Com. Sub. for S. B. 303—By Senators Tucker, Mr. President, J. Manchin,  
Jones and Loehr)

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[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; to amend and reenact section nine, article twelve of said chapter; to amend article thirteen-d of said chapter by adding thereto a new section, designated section three-b; to amend and reenact sections two, four-b, seven, eight-a, nine, nine-b, nine-c, nine-d, eighteen and thirty-three, article fifteen of said chapter; to further amend said article fifteen by adding thereto a new section, designated section eight-b; to amend and reenact sections three-b, three-c, three-d and twenty-

nine, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto two new sections, designated sections two-a and six-a; to amend and reenact section twelve, article twenty-one of said chapter; to amend article twenty-four of said chapter by adding thereto a new section, designated section nine-c; and to amend and reenact section three, article one, chapter seventeen of said code, all relating to the Tax Act of 1989; allowing tax commissioner to be represented by staff attorneys in legal proceedings; limiting the penalty for failure to renew business registration certificates; allowing credit for research and development projects to be applied against corporation net income taxes; amending definitions of terms used in consumers sales tax; making purchaser liable for payment of sales tax due that was not paid to vendor; equalizing sales tax burden on property use in business as between integrated and nonintegrated businesses; providing transition rules; requiring registration of security for payment of sales tax and from nonresident contractors; amending existing exemptions from sales tax and adding several new exemptions; providing methods for claiming exemptions; making issuance of direct pay permits discretionary; combining consumers sales tax and use tax direct pay permit returns; providing rules for filing such returns; dedicating sales tax on aviation fuel to state aeronautical commission for use to obtain federal funds for airports; specifying effective dates; equalizing use tax burden on property used in business as between integrated and nonintegrated businesses; providing methods for claiming use tax exemptions; making issuance of direct pay permits discretionary; combining use tax, direct pay permit and sales tax direct pay permits to be combined and providing return due dates; requiring certain other out-of-state retailers to collect use taxes on sales of property or taxable services to customers in this state; specifying effective dates; providing additional adjustments to federal adjusted gross income for personal income tax purposes; allowing credit against corporation net income taxes for research and development expenditures; amending definition of "road", "public

road” and “highway”; making other technical corrections; and specifying effective dates.

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

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

## **Chapter**

- 11. Taxation.**
- 17. Roads and Highways.**

## **CHAPTER 11. TAXATION.**

### **Article**

- 10. Procedure and Administration.**
- 12. Business Registration Tax.**
- 13D. Business and Occupation Tax Credit for Industrial Expansion and Revitalization and for Research and Development Projects.**
- 15. Consumers Sales Tax.**
- 15.A. Use Tax.**
- 21. Personal Income Tax.**
- 24. Corporation Net Income Tax.**

### **ARTICLE 10. PROCEDURE AND ADMINISTRATION.**

#### **§11-10-10a. Legal services.**

- 1** Notwithstanding anything in this code to the contrary,
- 2** the tax commissioner may utilize any full-time attorney

3 or attorneys employed by the tax department as staff  
4 counsel to institute, prosecute, or defend any suits,  
5 actions, or other legal proceedings, and it shall be in the  
6 sole judgment and discretion of the tax commissioner  
7 whether to utilize such staff attorney or attorneys or the  
8 attorney general, whether on a case by case basis or for  
9 all of the needs of the department for legal services:  
10 *Provided*, That nothing contained herein may be  
11 construed to authorize the administrator to engage, hire  
12 or employ outside counsel without first obtaining the  
13 permission of the attorney general.

#### ARTICLE 12. BUSINESS REGISTRATION TAX.

##### §11-12-9. Penalties.

1 In addition to the provisions of article ten of this  
2 chapter, any person engaging in or prosecuting any  
3 business contrary to the provisions of this article,  
4 whether without obtaining a business registration  
5 certificate therefor before commencing the same, or by  
6 continuing the same after the termination of the  
7 effective period of any such certificate may, in addition  
8 to paying the business registration tax, additions to tax,  
9 penalties and interest, be liable for a penalty of fifty  
10 dollars for each month or fraction thereof during which  
11 he has been in default of the business registration tax.  
12 It shall be the duty of the tax commissioner to collect  
13 the full amount of the business registration tax,  
14 additions to tax, interest, and all penalties imposed:  
15 *Provided*, That in no event may the total penalty for  
16 failure to renew a business registration certificate  
17 exceed fifty dollars per registration certificate.

#### ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZA- TION AND FOR RESEARCH AND DEVELOP- MENT PROJECTS.

##### §11-13D-3b. Application of credit after June 30, 1989.

1 For taxable years ending on and after the first day  
2 of July, one thousand nine hundred eighty-nine, the  
3 credits allowed under section three shall continue to be  
4 applied as provided in section three-a. In addition, the  
5 credit allowed under subsection (f) of section three that

6 remains after its application as provided in section  
7 three-a of this article shall be applied to reduce the tax  
8 imposed by article twenty-four of this chapter: *Provided,*  
9 That this credit may not reduce by more than fifty  
10 percent the amount of the net tax liability of the  
11 taxpayer for the taxable year under article twenty-four  
12 of this chapter, which amount of net tax liability shall  
13 be determined before application of the credit allowed  
14 by article thirteen-c of this chapter.

#### ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. Definitions.

§11-15-4b. Liability of purchaser; assessment and collection.

§11-15-7. Tax on gross proceeds of sales or value of manufactured, etc., products.

§11-15-8a. Contractors.

§11-15-8b. Nonresident contractor—Registration, bond, etc.

§11-15-9. Exemptions.

§11-15-9b. Method for claiming exemptions, refunds of tax, credit against other taxes.

§11-15-9c. Delivery of a certificate of exemption in lieu of tax.

§11-15-9d. Direct pay permits.

§11-15-18. Tax on gasoline and special fuel.

§11-15-33. Effective date.

#### §11-15-2. Definitions.

1 For the purpose of this article:

2 (a) "Persons" means any individual, partnership,  
3 association, corporation, state or its political subdivi-  
4 sions or agency of either, guardian, trustee, committee,  
5 executor or administrator.

6 (b) "Tax commissioner" means the state tax  
7 commissioner;

8 (c) "Gross proceeds" means the amount received in  
9 money, credits, property or other consideration from  
10 sales and services within this state, without deduction  
11 on account of the cost of property sold, amounts paid for  
12 interest or discounts or other expenses whatsoever.  
13 Losses shall not be deducted, but any credit or refund  
14 made for goods returned may be deducted.

15 (d) "Sale," "sales" or "selling" includes any transfer of  
16 the possession or ownership of tangible personal

17 property for a consideration, including a lease or rental,  
18 when the transfer or delivery is made in the ordinary  
19 course of the transferor's business and is made to the  
20 transferee or his agent for consumption or use or any  
21 other purpose.

22 (e) "Vendor" means any person engaged in this state  
23 in furnishing services taxed by this article or making  
24 sales of tangible personal property.

25 (f) "Ultimate consumer" or "consumer" means a  
26 person who uses or consumes services or personal  
27 property.

28 (g) "Business" includes all activities engaged in or  
29 caused to be engaged in with the object of gain or  
30 economic benefit, direct or indirect, and all activities of  
31 the state and its political subdivisions which involve  
32 sales of tangible personal property or the rendering of  
33 services when those service activities compete with or  
34 may compete with the activities of other persons.

35 (h) "Tax" includes all taxes, interest and penalties  
36 levied hereunder.

37 (i) "Service" or "selected service" includes all nonpro-  
38 fessional activities engaged in for other persons for a  
39 consideration, which involve the rendering of a service  
40 as distinguished from the sale of tangible personal  
41 property, but shall not include contracting, personal  
42 services or the services rendered by an employee to his  
43 employer or any service rendered for resale.

44 (j) "Purchaser" means a person who purchases tangi-  
45 ble personal property or a service taxed by this article.

46 (k) "Personal service" includes those:

47 (1) Compensated by the payment of wages in the  
48 ordinary course of employment;

49 (2) Rendered to the person of an individual without,  
50 at the same time, selling tangible personal property,  
51 such as nursing, barbering, shoe shining, manicuring  
52 and similar services.

53 (l) "Taxpayer" means any person liable for the tax  
54 imposed by this article.



55 (m) "Drugs" includes all sales of drugs or appliances  
56 to a purchaser, upon prescription of a physician or  
57 dentist and any other professional person licensed to  
58 prescribe.

59 (n) (1) "Directly used or consumed" in the activities of  
60 manufacturing, transportation, transmission, communi-  
61 cation or the production of natural resources means used  
62 or consumed in those activities or operations which  
63 constitute an integral and essential part of such  
64 activities, as contrasted with and distinguished from  
65 those activities or operations which are simply inciden-  
66 tal, convenient or remote to such activities.

67 (2) Uses of property or consumption of services which  
68 constitute direct use or consumption in the activities of  
69 manufacturing, transportation, transmission, communi-  
70 cation or the production of natural resources includes  
71 only:

72 (A) In the case of tangible personal property, physical  
73 incorporation of property into a finished product  
74 resulting from manufacturing production or the produc-  
75 tion of natural resources;

76 (B) Causing a direct physical, chemical or other  
77 change upon property undergoing manufacturing  
78 production or production of natural resources;

79 (C) Transporting or storing property undergoing  
80 transportation, communication, transmission, manufac-  
81 turing production, or production of natural resources;

82 (D) Measuring or verifying a change in property  
83 directly used in transportation, communication, trans-  
84 mission, manufacturing production or production of  
85 natural resources;

86 (E) Physically controlling or directing the physical  
87 movement or operation of property directly used in  
88 transportation, communication, transmission, manufac-  
89 turing production or production of natural resources;

90 (F) Directly and physically recording the flow of  
91 property undergoing transportation, communication,

92 transmission, manufacturing production or production  
93 of natural resources;

94 (G) Producing energy for property directly used in  
95 transportation, communication, transmission, manufac-  
96 turing production or production of natural resources;

97 (H) Facilitating the transmission of gas, water, steam  
98 or electricity from the point of their diversion to  
99 property directly used in transportation, communica-  
100 tion, transmission, manufacturing production or produc-  
101 tion of natural resources;

102 (I) Controlling or otherwise regulating atmospheric  
103 conditions required for transportation, communication,  
104 transmission, manufacturing production or production  
105 of natural resources;

106 (J) Serving as an operating supply for property  
107 undergoing transmission, manufacturing production or  
108 production of natural resources, or for property directly  
109 used in transportation, communication, transmission,  
110 manufacturing production or production of natural  
111 resources;

112 (K) Maintenance or repair of property directly used  
113 in transportation, communication, transmission, manu-  
114 facturing production or production of natural resources;

115 (L) Storage, removal or transportation of economic  
116 waste resulting from the activities of manufacturing,  
117 transportation, communication, transmission or the  
118 production of natural resources;

119 (M) Pollution control or environmental quality or  
120 protection activity directly relating to the activities of  
121 manufacturing, transportation, communication, trans-  
122 mission or the production of natural resources and  
123 personnel, plant, product or community safety or  
124 security activity directly relating to the activities of  
125 manufacturing, transportation, communication, trans-  
126 mission or the production of natural resources; or

127 (N) Otherwise be used as an integral and essential  
128 part of transportation, communication, transmission,  
129 manufacturing production or production of natural  
130 resources.

130 (3) Uses of property or services which would not  
131 constitute direct use or consumption in the activities of  
132 manufacturing, transportation, transmission, communi-  
133 cation or the production of natural resources includes,  
134 but are not limited to:

135 (A) Heating and illumination of office buildings;

136 (B) Janitorial or general cleaning activities;

137 (C) Personal comfort of personnel;

138 (D) Production planning, scheduling of work, or  
139 inventory control;

140 (E) Marketing, general management, supervision,  
141 finance, training, accounting and administration; or

142 (F) An activity or function incidental or convenient to  
143 transportation, communication, transmission, manufac-  
144 turing production or production of natural resources,  
145 rather than an integral and essential part of such  
146 activities.

147 (o) "Contracting."

148 (1) *In general.*—"Contracting" means and includes the  
149 furnishing of work, or both materials and work, for  
150 another (by a sole contractor, general contractor, prime  
151 contractor or subcontractor) in fulfillment of a contract  
152 for the construction, alteration, repair, decoration or  
153 improvement of a new or existing building or structure,  
154 or any part thereof, or for removal or demolition of a  
155 building or structure, or any part thereof, or for the  
156 alteration, improvement or development of real  
157 property.

158 (2) *Form of contract not controlling.*—An activity that  
159 falls within the scope of the definition of contracting  
160 shall constitute contracting regardless of whether such  
161 contract governing the activity is written or verbal and  
162 regardless of whether it is in substance or form a lump  
163 sum contract, a cost-plus contract, a time and materials  
164 contract (whether or not open-ended), or any other kind  
165 of construction contract.

166 (3) *Special rules.*—For purposes of this definition:

167 (A) The term “structure” includes, but is not limited  
168 to, everything built up or composed of parts joined  
169 together in some definite manner and attached or  
170 affixed to real property, or which adds utility to real  
171 property or any part thereof, or which adds utility to  
172 a particular parcel of property and is intended to  
173 remain there for an indefinite period of time.

174 (B) The term “alteration” means and is limited to  
175 alterations which are capital improvements to a build-  
176 ing or structure or to real property.

177 (C) The term “repair” means and is limited to repairs  
178 which are capital improvements to a building or  
179 structure or to real property.

180 (D) The term “decoration” means and is limited to  
181 decorations which are capital improvements to a  
182 building or structure or to real property.

183 (E) The term “improvement” means and is limited to  
184 improvements which are capital improvements to a  
185 building or structure or to real property.

186 (F) The term “capital improvement” means improve-  
187 ments that are affixed to or attached to and become a  
188 part of a building or structure or the real property or  
189 which add utility to real property or any part thereof  
190 and that last, or are intended to be relatively permanent.  
191 As used herein, “relatively permanent” means lasting at  
192 least a year or longer in duration without the necessity  
193 for regularly scheduled recurring service to maintain  
194 such capital improvement. “Regular recurring service”  
195 means regularly scheduled service intervals of less than  
196 one year.

197 (G) Contracting does not include the furnishing of  
198 work, or both materials and work in the nature of  
199 hookup, connection, installation or other services if such  
200 service is incidental to the retail sale of tangible  
201 personal property from the service provider’s inventory:  
202 *Provided*, That such hookup, connection or installation  
203 of the foregoing is incidental to the sale of the same and  
204 performed by the seller thereof or performed in

205 accordance with arrangements made by the seller  
206 thereof. Examples of transactions that are excluded  
207 from the definition of contracting pursuant hereto  
208 include, but are not limited to, the sale of wall-to-wall  
209 carpeting and the installation of wall-to-wall carpeting,  
210 the sale, hookup, and connection of mobile homes,  
211 window air conditioning units, dishwashers, clothing  
212 washing machines or dryers, other household applian-  
213 ces, drapery rods, window shades, venetian blinds,  
214 canvas awnings, free standing industrial or commercial  
215 equipment and other similar items of tangible personal  
216 property. Repairs made to the foregoing are within the  
217 definition of contracting if such repairs involve perman-  
218 ently affixing to or improving real property or some-  
219 thing attached thereto which extends the life of the real  
220 property or something affixed thereto or allows or is  
221 intended to allow such real property or thing perman-  
222 ently attached thereto to remain in service for a year  
223 or longer.

224 (p) "Manufacturing" means a systematic operation or  
225 integrated series of systematic operations engaged in as  
226 a business or segment of a business which transforms  
227 or converts tangible personal property by physical,  
228 chemical or other means into a different form, compo-  
229 sition or character from that in which it originally  
230 existed.

231 (q) "Transportation" means the act or process of  
232 conveying, as a commercial enterprise, passengers or  
233 goods from one place or geographical location to another  
234 place or geographical location.

235 (r) "Transmission" means the act or process of causing  
236 liquid, natural gas or electricity to pass or be conveyed  
237 from one place or geographical location to another place  
238 or geographical location through a pipeline or other  
239 medium for commercial purposes.

240 (s) "Communication" means all telephone, radio, light,  
241 light wave, radio telephone, telegraph and other  
242 communication or means of communication, whether  
243 used for voice communication, computer data transmis-  
244 sion or other encoded symbolic information transfers

246 and shall include commercial broadcast radio, commer-  
247 cial broadcast television and cable television.

248 (t) "Production of natural resources" means the  
249 performance, by either the owner of the natural  
250 resources or another, of the act or process of exploring,  
251 developing, severing, extracting, reducing to possession  
252 and loading for shipment for sale, profit or commercial  
253 use of any natural resource products and any reclama-  
254 tion, waste disposal or environmental activities asso-  
255 ciated therewith.

**§11-15-4b. Liability of purchaser; assessment and collec-  
tion.**

1 If any purchaser refuses or otherwise does not pay to  
2 the vendor the tax imposed by section three of this  
3 article, or in the case of a sale subject to section nine-  
4 c of this article, a purchaser refuses to sign and present  
5 to the vendor a proper certificate indicating the sale is  
6 not subject to this tax, or signs or presents to the vendor  
7 a false certificate, or after signing and presenting a  
8 proper certificate uses the items purchased in such  
9 manner that the sale would be subject to the tax, he  
10 shall be personally liable for the amount of tax appli-  
11 cable to the transaction or transactions: *Provided*, That  
12 nothing herein relieves any purchaser who owes the tax  
13 and who has not paid the tax imposed by section three  
14 of this article from liability therefor.

15 In such cases the tax commissioner has authority to  
16 make an assessment against such purchaser, based upon  
17 any information within his possession or that may come  
18 into his possession. This assessment and notice thereof  
19 shall be made and given in accordance with sections  
20 seven and eight, article ten of this chapter.

21 This section may not be construed as relieving the  
22 vendor from liability for the tax.

**§11-15-7. Tax on gross proceeds of sales or value of  
manufactured, etc., products.**

1 (a) A person exercising the privilege of producing for  
2 sale, profit or commercial use, any natural resources,  
3 product or manufactured product, and either engaged  
4 in the business of selling such product not otherwise

5 exempted herein, or engaged in a business or activity  
6 in which such natural resource, product or manufac-  
7 tured product is used or consumed by him and such use  
8 or consumption is not otherwise exempt under this  
9 article, shall make returns of the gross proceeds of such  
10 sales or, in the absence of sale, the gross value of the  
11 natural resource, product or manufactured product, so  
12 used or consumed by him, and pay the tax imposed by  
13 this article.

14 (b) The tax commissioner shall promulgate such  
15 uniform and equitable rules as he deems necessary for  
16 determining the gross value upon which the tax imposed  
17 by this article is levied in the absence of a sale, which  
18 value shall correspond as nearly as possible to the gross  
19 proceeds from the sale of similar products of like quality  
20 or character by the same person or by another person.

21 (c) The provisions of this section, as amended by this  
22 act, shall apply to natural resources, products or  
23 manufactured products, used or consumed by the  
24 producer or manufacturer thereof on or after the first  
25 day of May, one thousand nine hundred eighty-nine.

#### §11-15-8a. Contractors.

1 (a) The provisions of this article shall not apply to  
2 contracting services. However, purchases by a contrac-  
3 tor of tangible personal property or taxable services for  
4 use or consumption in the providing of a contracting  
5 service shall be taxable beginning the first day of  
6 March, one thousand nine hundred eighty-nine, except  
7 as otherwise provided in this article.

8 (b) *Transition rules.*—The exemption from payment  
9 of tax on purchases of tangible personal property or  
10 taxable services directly used or consumed in the  
11 activity of contracting, as defined in section two of this  
12 article, which expires as of the first day of March, one  
13 thousand nine hundred eighty-nine, shall nevertheless  
14 remain in effect with respect to:

15 (1) Tangible personal property or taxable services  
16 purchased by a contractor on or after said first day of  
17 March in fulfillment of a written contract for contract-

18 ing, as defined in section two of this article, that was  
19 executed and legally binding on the parties thereto on  
20 or before the fifteenth day of February, one thousand  
21 nine hundred eighty-nine; or in fulfillment of a written  
22 contract entered into after the said fifteenth day of  
23 February pursuant to a written bid for contracting that  
24 was made on or before the said fifteenth day of  
25 February that was binding on the contractor, but only  
26 to the extent that the bid is subsequently incorporated  
27 into a written contract; or

28 (2) Tangible personal property or taxable services  
29 purchased by a contractor on or after the said first day  
30 of March pursuant to a written contract executed on or  
31 before the fifteenth day of February, one thousand nine  
32 hundred eighty-nine, to purchase in specified quantities  
33 identified tangible personal property or specified  
34 taxable services; or

35 (3) Tangible personal property or taxable services  
36 purchased by a contractor for consumption or use in  
37 fulfillment of a written contract entered into before the  
38 first day of September, one thousand nine hundred  
39 eighty-nine, when such contract is for the construction  
40 of a new improvement to real property the construction  
41 or operation of which was approved by a federal or state  
42 regulatory body prior to the first day of February, one  
43 thousand nine hundred eighty-nine, or pursuant to a  
44 federal grant awarded prior to such first day of  
45 February.

46 (c) *Renewals and extensions.*—A renewal of any  
47 contract shall constitute a new contract for purposes of  
48 this section, and the date of entry into a contract  
49 renewal by the parties, the date or dates of tender of  
50 consideration and the time of performance of any  
51 contractual obligations under a renewed contract shall  
52 be treated as the dates for determining application of  
53 this section to the renewed contract. Extensions of time  
54 granted or agreed upon by the parties to a contract for  
55 performance of the contract or for tender of consider-  
56 ation under the contract shall not be treated as contract  
57 renewals. Contracts to which such extensions apply shall  
58 be treated under these transition rules as if the original



59 contractual provisions for performance and tender of  
60 consideration remain in effect.

61 (d) *Definitions.*—For purposes of this section:

62 (1) The term “contract” or “contracts” means written  
63 agreements reciting or setting forth a fixed price  
64 consideration or a consideration based upon cost plus a  
65 stated percentage or a stated monetary increment. This  
66 term shall not mean or include ongoing sales contracts,  
67 contracts whereby any element of the consideration or  
68 the property or services sold or to be rendered in  
69 performance of the contract are undefined, or deter-  
70 mined, as to either nature or quantity, subsequent to the  
71 making of the contract, or any open-ended contract.

72 (2) The term “contract renewal” or “renewal” means  
73 a covenant or agreement entered into or assumed by  
74 parties which have a current contractual relation or  
75 which have had a past contractual relation, whereby the  
76 parties agree to incur obligations beyond those which  
77 they were, or would have been, required, at the  
78 minimum, to carry out under their current or past  
79 contractual relation.

**§11-15-8b. Nonresident contractor—Registration, bond,  
etc.**

1 (a) Every nonresident contractor shall register with  
2 the tax commissioner prior to engaging in the perfor-  
3 mance of a contract in this state.

4 (b) (1) At the time of registration, the contractor shall  
5 deposit with the tax commissioner six percent of the  
6 amount the contractor is to receive for the performance  
7 of the contract which shall be held within a Contractors  
8 Use Tax Fund pending the completion of the contract,  
9 the determination of the taxes due this state under this  
10 article and article fifteen-a of this chapter because of  
11 such contract and the payment of the tax.

12 (2) In lieu of the deposit, the contractor may provide  
13 a corporate surety bond to be approved by the tax  
14 commissioner as to form, sufficiency, value, amount,  
15 stability, and other features necessary to provide a  
16 guarantee of payment of the compensating tax due this  
17 state.

18 (c) In addition, within thirty days after registration,  
19 under this section, the contractor shall file a statement  
20 with the tax commissioner itemizing the machinery,  
21 materials, supplies, and equipment that he has or will  
22 have on hand at the time he begins the fulfillment of  
23 the contract, including where such tangible personal  
24 property has been brought, shipped, or transported from  
25 outside this state upon which neither the tax imposed  
26 by this article nor article fifteen-a of this chapter has  
27 been paid, and shall pay the tax due thereon at the time  
28 of filing and thereafter shall report and pay the taxes  
29 as required by this article and article fifteen-a of this  
30 chapter.

#### §11-15-9. Exemptions.

- 1 The following sales and services are exempt:
- 2 (a) Sales of gas, steam and water delivered to consu-  
3 mers through mains or pipes, and sales of electricity;
- 4 (b) Sales of textbooks required to be used in any of  
5 the schools of this state or in any institution in this state  
6 which qualifies as a nonprofit or educational institution  
7 subject to the West Virginia department of education or  
8 West Virginia board of regents;
- 9 (c) Sales of property or services to the state, its  
10 institutions or subdivisions, and to the United States,  
11 including agencies of federal, state or local governments  
12 for distribution in public welfare or relief work;
- 13 (d) Sales of vehicles which are titled by the depart-  
14 ment of motor vehicles and which are subject to the tax  
15 imposed by section four, article three, chapter seven-  
16 teen-a of this code, or like tax;
- 17 (e) Sales of property or services to churches and bona  
18 fide charitable organizations who make no charge  
19 whatsoever for the services they render: *Provided*, That  
20 the exemption herein granted shall apply only to  
21 services, equipment, supplies, food for meals and  
22 materials directly used or consumed by these organiza-  
23 tions, and shall not apply to purchases of gasoline or  
24 special fuel;

25 (f) Sales of tangible personal property or services to  
26 a corporation or organization which has a current  
27 registration certificate issued under article twelve of  
28 this chapter is exempt from federal income taxes under  
29 section 501(c)(3) or (c)(4) of the Internal Revenue Code  
30 of 1986, as amended, and is:

31 (1) A church or a convention or association of  
32 churches as defined in section 170 of the Internal  
33 Revenue Code of 1986, as amended;

34 (2) An elementary or secondary school which main-  
35 tains a regular faculty and curriculum and has a  
36 regularly enrolled body of pupils or students in attend-  
37 ance at the place in this state where its educational  
38 activities are regularly carried on;

39 (3) A corporation or organization which annually  
40 receives more than one half of its support from any  
41 combination of gifts, grants, direct or indirect charita-  
42 ble contributions, or membership fees; or

43 (4) An organization which has no paid employees and  
44 its gross income from fund raisers, less reasonable and  
45 necessary expenses incurred to raise such gross income  
46 (or the tangible personal property or services purchased  
47 with such net income), is donated to an organization  
48 which is exempt from income taxes under section  
49 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,  
50 as amended;

51 (5) For purposes of this subsection:

52 (A) The term "support" includes, but is not limited to:

53 (i) Gifts, grants, contributions or membership fees;

54 (ii) Gross receipts from fund raisers which include  
55 receipts from admissions, sales of merchandise, perfor-  
56 mance of services or furnishing of facilities in any  
57 activity which is not an unrelated trade or business  
58 (within the meaning of section 513 of the Internal  
59 Revenue Code of 1986, as amended);

60 (iii) Net income from unrelated business activities,

61 whether or not such activities are carried on regularly  
62 as a trade or business;

63 (iv) Gross investment income as defined in section  
64 509(e) of the Internal Revenue Code of 1986, as  
65 amended;

66 (v) Tax revenues levied for the benefit of a corpora-  
67 tion or organization either paid to or expended on behalf  
68 of such organization; and

69 (vi) The value of services or facilities (exclusive of  
70 services or facilities generally furnished to the public  
71 without charge) furnished by a governmental unit  
72 referred to in section 170(c)(1) of the Internal Revenue  
73 Code of 1986, as amended, to an organization without  
74 charge. This term does not include any gain from the  
75 sale or other disposition of property which would be  
76 considered as gain from the sale or exchange of a capital  
77 asset, or the value of an exemption from any federal,  
78 state or local tax or any similar benefit;

79 (B) The term "charitable contribution" means a  
80 contribution or gift to or for the use of a corporation or  
81 organization, described in section 170(c)(2) of the  
82 Internal Revenue Code of 1986, as amended;

83 (C) The term "membership fee" does not include any  
84 amounts paid for tangible personal property or specific  
85 services rendered to members by the corporation or  
86 organization;

87 (6) The exemption allowed by this subsection (f) does  
88 not apply to sales of gasoline or special fuel or to sales  
89 of tangible personal property or services to be used or  
90 consumed in the generation of unrelated business  
91 income as defined in section 513 of the Internal Revenue  
92 Code of 1986, as amended. The provisions of this  
93 subsection as amended by this act shall apply to sales  
94 made after the thirtieth day of June, one thousand nine  
95 hundred eighty-nine: *Provided*, That the exemption  
96 herein granted shall apply only to services, equipment,  
97 supplies and materials used or consumed in the activ-  
98 ities for which such organizations qualify as tax exempt  
99 organizations under the Internal Revenue Code by these

100 organizations and shall not apply to purchases of  
101 gasoline or special fuel;

102 (g) Sales of property or services to persons engaged  
103 in this state in the business of manufacturing, transpor-  
104 tation, transmission, communication or in the produc-  
105 tion of natural resources: *Provided*, That the exemption  
106 herein granted shall apply only to services, machinery,  
107 supplies and materials directly used or consumed in the  
108 businesses or organizations named above, and shall not  
109 apply to purchases of gasoline or special fuel: *Provided*,  
110 *however*, That on and after the first day of July, one  
111 thousand nine hundred eighty-seven, the exemption  
112 provided in this subsection shall apply only to services,  
113 machinery, supplies and materials directly used or  
114 consumed in the activities of manufacturing, transpor-  
115 tation, transmission, communication or the production of  
116 natural resources in the businesses or organizations  
117 named above and shall not apply to purchases of  
118 gasoline or special fuel;

119 (h) An isolated transaction in which any taxable  
120 service or any tangible personal property is sold,  
121 transferred, offered for sale or delivered by the owner  
122 thereof or by his representative for the owner's account,  
123 such sale, transfer, offer for sale or delivery not being  
124 made in the ordinary course of repeated and successive  
125 transactions of like character by such owner or on his  
126 account by such representative: *Provided*, That nothing  
127 contained herein may be construed to prevent an owner  
128 who sells, transfers or offers for sale tangible personal  
129 property in an isolated transaction through an auctio-  
130 neer from availing himself or herself of the exemption  
131 provided herein, regardless where such isolated sale  
132 takes place. The tax commissioner may adopt such  
133 legislative rule pursuant to chapter twenty-nine-a of this  
134 code he deems necessary for the efficient administration  
135 of this exemption;

136 (i) Sales of tangible personal property or of any  
137 taxable services rendered for use or consumption in  
138 connection with the commercial production of an  
139 agricultural product the ultimate sale of which will be  
140 subject to the tax imposed by this article or which would

141 have been subject to tax under this article: *Provided*,  
142 That sales of tangible personal property and services to  
143 be used or consumed in the construction of or permanent  
144 improvement to real property and sales of gasoline and  
145 special fuel shall not be exempt;

146 (j) Sales of tangible personal property to a person for  
147 the purpose of resale in the form of tangible personal  
148 property: *Provided*, That sales of gasoline and special  
149 fuel by distributors and importers shall be taxable  
150 except when the sale is to another distributor for resale:  
151 *Provided, however*, That sales of building materials or  
152 building supplies or other property to any person  
153 engaging in the activity of contracting, as defined in this  
154 article, which is to be installed in, affixed to or  
155 incorporated by such person or his agent into any real  
156 property, building or structure shall not be exempt  
157 under this subsection, except that sales of tangible  
158 personal property to a person engaging in the activity  
159 of contracting pursuant to a written contract with the  
160 United States, this state, or with a political subdivision  
161 thereof, or with a public corporation created by the  
162 Legislature or by another government entity pursuant  
163 to an act of the Legislature, for a building or structure  
164 (or improvement thereto) or other improvement to real  
165 property that is or will be owned and used by the  
166 governmental entity for a governmental or proprietary  
167 purpose, who incorporates such property in such  
168 building, structure or improvement shall, with respect  
169 to such tangible personal property, nevertheless be  
170 deemed to be the vendor of such property to the  
171 governmental entity and any person seeking to qualify  
172 for and assert this exception must do so pursuant to such  
173 legislative rules and regulations as the tax commissioner  
174 may promulgate and upon such forms as the tax  
175 commissioner may prescribe. A subcontractor who,  
176 pursuant to a written subcontract with a prime contrac-  
177 tor who qualifies for this exception, provides equipment,  
178 or materials, and labor to such a prime contractor shall  
179 be treated in the same manner as the prime contractor  
180 is treated with respect to the prime contract under this  
181 exception and the legislative rules and regulations  
182 promulgated by the tax commissioner;

183 (k) Sales of property or services to nationally char-  
184 tered fraternal or social organizations for the sole  
185 purpose of free distribution in public welfare or relief  
186 work: *Provided*, That sales of gasoline and special fuel  
187 shall be taxable;

188 (l) Sales and services, fire fighting or station house  
189 equipment, including construction and automotive,  
190 made to any volunteer fire department organized and  
191 incorporated under the laws of the state of West  
192 Virginia: *Provided*, That sales of gasoline and special  
193 fuel shall be taxable;

194 (m) Sales of newspapers when delivered to consumers  
195 by route carriers;

196 (n) Sales of drugs dispensed upon prescription and  
197 sales of insulin to consumers for medical purposes;

198 (o) Sales of radio and television broadcasting time,  
199 preprinted advertising circulars and newspaper and  
200 outdoor advertising space for the advertisement of goods  
201 or services;

202 (p) Sales and services performed by day-care centers;

203 (q) Casual and occasional sales of property or services  
204 not conducted in a repeated manner or in the ordinary  
205 course of repetitive and successive transactions of like  
206 character by a corporation or organization which is  
207 exempt from tax under subsection (f) of this section on  
208 its purchases of tangible personal property or services:

209 (1) For purposes of this subsection, the term "casual  
210 and occasional sales not conducted in repeated manner  
211 or in the ordinary course of repetitive and successive  
212 transactions of like character" means sales of tangible  
213 personal property or services at fund raisers sponsored  
214 by a corporation or organization which is exempt, under  
215 subsection (f) of this section, from payment of the tax  
216 imposed by this article on its purchases, when such fund  
217 raisers are of limited duration and are held no more  
218 than six times during any twelve-month period and  
219 limited duration means no more than eighty-four  
220 consecutive hours;

221 (2) The provisions of this subsection (q), as amended  
222 by this act, shall apply to sales made after the thirtieth  
223 day of June, one thousand nine hundred eighty-nine;

224 (r) Sales of property or services to a school which has  
225 approval from the West Virginia board of regents to  
226 award degrees, which has its principal campus in this  
227 state, and which is exempt from federal and state  
228 income taxes under section 501(c)(3) of the Internal  
229 Revenue Code of 1986, as amended: *Provided*, That sales  
230 of gasoline and special fuel shall be taxable;

231 (s) Sales of mobile homes to be utilized by purchasers  
232 as their principal year-round residence and dwelling:  
233 *Provided*, That these mobile homes shall be subject to  
234 tax at the three percent rate;

235 (t) Sales of lottery tickets and materials by licensed  
236 lottery sales agents and lottery retailers authorized by  
237 the state lottery commission, under the provisions of  
238 article twenty-two, chapter twenty-nine of this code;

239 (u) Leases of motor vehicles titled pursuant to the  
240 provisions of article three, chapter seventeen-a of this  
241 code to lessees for a period of thirty or more consecutive  
242 days. This exemption shall apply to leases executed on  
243 or after the first day of July, one thousand nine hundred  
244 eighty-seven, and to payments under long-term leases  
245 executed before such date, for months thereof beginning  
246 on or after such date;

247 (v) Notwithstanding the provisions of subsection  
248 (g) of this section or any provisions of this article to the  
249 contrary, sales of property and services to persons  
250 subject to tax under article thirteen, thirteen-a or  
251 thirteen-b of this chapter: *Provided*, That the exemption  
252 herein granted shall apply both to property or services  
253 directly or not directly used or consumed in the conduct  
254 of privileges which are subject to tax under such articles  
255 but shall not apply to purchases of gasoline or special  
256 fuel;

257 (w) Sales of propane to consumers for poultry house  
258 heating purposes, with any seller to such consumer who  
259 may have prior paid such tax in his price, to not pass



260 on the same to the consumer, but to make application  
261 and receive refund of such tax from the tax commis-  
262 sioner, pursuant to rules and regulations which shall be  
263 promulgated by the tax commissioner; and notwith-  
264 standing the provisions of section eighteen of this article  
265 or any other provisions of such article to the contrary;

266 (x) Any sales of tangible personal property or services  
267 purchased after the thirtieth day of September, one  
268 thousand nine hundred eighty-seven, and lawfully paid  
269 for with food stamps pursuant to the federal food stamp  
270 program codified in 7 United States Code, §2011, et seq.,  
271 as amended, or with drafts issued through the West  
272 Virginia special supplemental food program for women,  
273 infants and children codified in 42 United States Code,  
274 §1786;

275 (y) Sales of tickets for activities sponsored by elemen-  
276 tary and secondary schools located within this state;

277 (z) Sales of electronic data processing services and  
278 related software: *Provided*, That for the purposes of this  
279 subsection (z) "electronic data processing services"  
280 means (1) the processing of another's data, including all  
281 processes incident to processing of data such as key-  
282 punching, keystroke verification, rearranging or sorting  
283 of previously documented data for the purpose of data  
284 entry or automatic processing, and changing the  
285 medium on which data is sorted, whether these pro-  
286 cesses are done by the same person or several persons;  
287 and (2) providing access to computer equipment for the  
288 purpose of processing data or examining or acquiring  
289 data stored in or accessible to such computer equipment;

290 (aa) Tuition charged for attending educational  
291 summer camps;

292 (bb) Sales of building materials or building supplies  
293 or other property to an organization qualified under  
294 section 501 (c)(3) or (c)(4) of the Internal Revenue Code  
295 of 1986, as amended, which are to be installed in, affixed  
296 to or incorporated by such organization or its agent into  
297 real property, or into a building or structure which is  
298 or will be used as permanent low-income housing,  
299 transitional housing, emergency homeless shelter,

300 domestic violence shelter or emergency children and  
301 youth shelter if such shelter is owned, managed,  
302 developed or operated by an organization qualified  
303 under section 501(c)(3) or (c)(4) of the Internal Revenue  
304 Code of 1986, as amended;

305 (cc) Dispensing of services performed by one corpora-  
306 tion for another corporation when both corporations are  
307 members of the same controlled group. Control means  
308 ownership, directly or indirectly, of stock possessing  
309 fifty percent or more of the total combined voting power  
310 of all classes of the stock of a corporation entitled to vote  
311 or ownership, directly or indirectly, of stock possessing  
312 fifty percent or more of the value of the corporation;

313 (dd) Food for the following shall be exempt:

314 (1) Food purchased or sold by public or private  
315 schools, school sponsored student organizations, or  
316 school sponsored parent-teacher associations to students  
317 enrolled in such school or to employees of such school  
318 during normal school hours; but not those sales of food  
319 made to the general public;

320 (2) Food purchased or sold by a public or private  
321 college or university or by a student organization  
322 officially recognized by such college or university to  
323 students enrolled at such college or university when  
324 such sales are made on a contract basis so that a fixed  
325 price is paid for consumption of food products for a  
326 specific period of time without respect to the amount of  
327 food product actually consumed by the particular  
328 individual contracting for the sale and no money is paid  
329 at the time the food product is served or consumed;

330 (3) Food purchased or sold by a nonprofit organiza-  
331 tion or a governmental agency under a program funded  
332 by a state or the United States to low-income elderly  
333 persons at or below cost;

334 (4) Food sold in an occasional sale by a charitable or  
335 nonprofit organization including volunteer fire depart-  
336 ments and rescue squads, if the purpose of the sale is  
337 to obtain revenue for the functions and activities of the  
338 organization and the revenue so obtained is actually  
339 expended for that purpose;

340 (5) Food sold by any religious organization at a social  
341 or other gathering conducted by it or under its auspices,  
342 if the purpose in selling the food is to obtain revenue  
343 for the functions and activities of the organization and  
344 the revenue obtained from selling the food is actually  
345 used in carrying on such functions and activities:  
346 *Provided*, That purchases made by such organizations  
347 shall not be exempt as a purchase for resale;

348 (ee) Sales of food by little leagues, midget football  
349 leagues, youth football or soccer leagues and similar  
350 types of organizations including scouting groups and  
351 church youth groups if the purpose in selling the food  
352 is to obtain revenue for the functions and activities of  
353 the organization and the revenues obtained from selling  
354 the food is actually used in supporting or carrying on  
355 functions and activities of the groups: *Provided*, That  
356 such purchases made by such organizations shall not be  
357 exempt as a purchase for resale;

358 (ff) Charges for room and meals by fraternities and  
359 sororities to their members: *Provided*, That such  
360 purchases made by a fraternity or sorority shall not be  
361 exempt as a purchase for resale;

362 (gg) Sales of or charges for the transportation of  
363 passengers in interstate commerce;

364 (hh) Sales of tangible personal property or services to  
365 any person which this state is prohibited from taxing  
366 under the laws of the United States or under the  
367 constitution of this state; and

368 (ii) Sales of tangible personal property or services to  
369 any person who claims exemption from the tax imposed  
370 by this article or article fifteen-a of this chapter  
371 pursuant to the provisions of any other chapter of this  
372 code.

**§11-15-9b. Method for claiming exemptions, refunds of  
tax, credit against other taxes.**

1 (a) Any person having a right or claim to any  
2 exemption set forth in section nine of this article except

3 those exemptions set forth in subsections (a), (b), (c), (d),  
4 (f), (h), (i), (j), (m), (n), (o), (p), (q), (r), (s), (t), (u), (w),  
5 (x), (y), (z), (aa), (cc), (dd), (ee), (ff), (gg), (hh), and (ii) of  
6 said section nine, or the exemption of sales of property  
7 or services to churches under subsection (e) of said  
8 section nine, shall pay to the vendor the tax imposed by  
9 this article and may exercise or assert such exemption  
10 only in accordance with subsection (b) or subsection  
11 (c) of this section.

12 (b) Any person who has paid the tax imposed by this  
13 article and who may lawfully claim exemption from the  
14 tax under a subsection of section nine of this article not  
15 enumerated in subsection (a) of this section may  
16 exercise or assert such claim by filing a claim for refund  
17 of consumers sales and service tax overpayments on  
18 such form and in such manner as the tax commissioner  
19 may require and in accordance with the requirements  
20 of this section. The tax commissioner shall cause a  
21 refund to be made within thirty days of receipt of a  
22 lawful and accurate claim.

23 (c) In lieu of filing a claim for refund of consumers  
24 sales and service tax overpayments, the taxpayer may,  
25 at his option, file a claim for credit on such form and  
26 in such manner as the tax commissioner may require  
27 and credit the amount of consumers sales and service  
28 tax overpayments against certain payments of tax due  
29 in accordance with the requirements of this section as  
30 follows:

31 (1) If the taxpayer is required to remit the tax  
32 imposed under this article or article fifteen-a of this  
33 chapter pursuant to section five or subsection (b) of  
34 section nine-d of this article or subsection (b) of section  
35 three-d of said article fifteen-a, the taxpayer may credit  
36 the amount of consumers sales and service tax overpay-  
37 ments against the remittance of the tax imposed under  
38 said articles otherwise due; or

39 (2) If the taxpayer is subject to the tax imposed under  
40 article thirteen of this chapter, the taxpayer may credit  
41 the amount of consumers sales and service tax overpay-  
42 ments remaining after application of part (1) of this

43 subsection against the taxpayer's quarterly or monthly  
44 remittance of the tax imposed under said article  
45 thirteen otherwise due; or

46 (3) If the taxpayer is subject to the tax imposed under  
47 article twelve-a of this chapter, the taxpayer may credit  
48 the amount of consumers sales and service tax overpay-  
49 ments remaining after application of parts (1) and (2) of  
50 this subsection against the taxpayer's annual or semian-  
51 nual remittance of the tax imposed under said article  
52 twelve-a otherwise due; or

53 (4) If the taxpayer is subject to the tax imposed under  
54 article thirteen-a of this chapter, the taxpayer may  
55 credit the amount of consumers sales and service tax  
56 overpayments remaining after application of parts (1),  
57 (2) and (3) of this subsection against the taxpayer's  
58 quarterly or monthly remittance of the tax imposed  
59 under said article thirteen-a otherwise due; or

60 (5) If the taxpayer is subject to the tax imposed under  
61 article thirteen-b of this chapter, the taxpayer may  
62 credit the amount of consumers sales and service tax  
63 overpayments remaining after application of parts (1),  
64 (2), (3) and (4) of this subsection against the taxpayer's  
65 quarterly or monthly remittance of the tax imposed  
66 under said article thirteen-b otherwise due; or

67 (6) If the taxpayer is subject to the tax imposed under  
68 article twenty-four of this chapter, the taxpayer may  
69 credit the amount of consumers sales and service tax  
70 overpayments remaining after application of parts (1),  
71 (2), (3), (4) and (5) of this subsection against the  
72 taxpayer's installment of estimated tax imposed under  
73 said article twenty-four and otherwise due under section  
74 seventeen, article twenty-four of this chapter; or

75 (7) If the taxpayer is subject to the tax imposed under  
76 article twenty-one of this chapter, the taxpayer may  
77 credit the amount of consumers sales and service tax  
78 overpayments remaining after application of parts (1),  
79 (2), (3), (4), (5) and (6) of this subsection against the  
80 taxpayer's installment of estimated tax imposed under  
81 said article twenty-one and otherwise due under section  
82 fifty-six, article twenty-one of this chapter; or

83 (8) If the taxpayer is subject to the tax imposed under  
84 article twenty-three of this chapter, the taxpayer may  
85 credit the amount of consumers sales and service tax  
86 overpayments remaining after application of parts (1),  
87 (2), (3), (4), (5), (6) and (7) of this subsection against the  
88 taxpayer's annual remittance of the tax imposed under  
89 said article twenty-three and otherwise due; or

90 (9) If the taxpayer is required to deduct and withhold  
91 tax under article twenty-one of this chapter, the  
92 taxpayer may credit the amount of consumers sales and  
93 service tax overpayments remaining after application of  
94 parts (1), (2), (3), (4), (5), (6), (7) and (8) of this  
95 subsection against the taxpayer's monthly remittance of  
96 the tax withheld under said article twenty-one and  
97 otherwise due.

98 (d) Any person asserting or exercising a claim of  
99 exemption from the tax imposed by this article under  
100 subsections (b) or (c) of this section shall file with the  
101 tax commissioner an application for exemption in such  
102 form as the tax commissioner shall prescribe and such  
103 affidavits, invoices, sales slips, records or documents as  
104 the tax commissioner may require to prove or verify the  
105 taxpayer's right and entitlement to such exemption. The  
106 tax commissioner may inspect or examine the records,  
107 books, papers, documents, affidavits, sales slips and  
108 invoices of a taxpayer or any other person to verify the  
109 truth and accuracy of any report or return or to  
110 ascertain whether the tax imposed by this article has  
111 been paid.

112 In addition to the powers of the tax commissioner set  
113 forth in article ten of this chapter, as a further means  
114 of obtaining the records, books, papers, documents,  
115 affidavits, sales slips or invoices of a taxpayer or any  
116 other person and ascertaining the amount of taxes paid  
117 or due under this article or any report, form, document  
118 or affidavit required under this article, the commis-  
119 sioner shall have the power to examine witnesses under  
120 oath; and if any witness shall fail or refuse at the request  
121 of the commissioner to grant access to the books,  
122 records, papers, documents, affidavits, sales slips or  
123 invoices requested by the commissioner, the commis-

124 sioner shall certify the facts and the names to the circuit  
125 court of the county having jurisdiction over the party  
126 and such court shall thereupon issue a subpoena duces  
127 tecum to such party to appear before the commissioner,  
128 at a place designated within the jurisdiction of such  
129 court, on a day fixed.

130 (e) All claims for refund of consumers sales and  
131 service tax overpayments under subsection (b) of this  
132 section shall be filed within the time limitation for filing  
133 claims for refund set forth in section fourteen, article  
134 ten of this chapter. Any claim for such refund or claim  
135 of entitlement to such refund made or asserted after the  
136 said time limitation shall be null and void, and if the  
137 consumers sales and service tax overpayment has not  
138 otherwise been credited against tax remittances in  
139 accordance with this section, the said claims shall be  
140 forfeited.

141 (f) Any credit of consumers sales and service tax  
142 overpayments against taxes under subsection (c) of this  
143 section shall be taken within one year after the payment  
144 of the said consumers sales and service tax by the  
145 consumer to the vendor. Any such credit or claim of  
146 entitlement to such credit made or asserted more than  
147 one year after the payment of such tax by the consumer  
148 to the vendor shall be null and void, and such consumers  
149 sales and service tax overpayments shall be forfeited  
150 unless refunded under subsection (b) of this section.

151 (g) Any assignment of the right or entitlement to a  
152 refund or credit arising under this section shall be  
153 subject to strict proof, and any assignee claiming a right  
154 or entitlement to an assigned refund or credit shall  
155 submit an affidavit in such form as the tax commis-  
156 sioner shall prescribe signed by the assignor acknowl-  
157 edging the assignment. The assignee shall attest to the  
158 assignment and the terms thereof on his signed appli-  
159 cation filed under subsection (d) of this section for  
160 refund or credit, and will be subject to the penalties  
161 provided under West Virginia law for perjury for any  
162 falsehood set forth therein and will be subject to the  
163 penalties set forth in article nine of this chapter for any  
164 violation thereof. Except as provided in this subsection

165 (g), no payment of a refund arising under this section  
166 shall be made to any person other than the taxpayer  
167 making the original overpayment of consumers sales  
168 and service tax.

169 (h) No refund shall be due and no credit shall be  
170 allowed under this section unless the taxpayer or  
171 assignee shall have filed a claim for refund or a claim  
172 for credit, as appropriate, with the tax commissioner in  
173 accordance with this section.

174 (i) Any claim for a refund of consumers sales and  
175 service tax overpayments or for a tax credit for  
176 consumers sales and service tax overpayments which is  
177 not timely filed or not filed in proper form or in  
178 accordance with the requirements of this section shall  
179 not be construed to constitute a moral obligation of the  
180 state of West Virginia for payment. No overpayment of  
181 consumers sales and service tax made under this section  
182 shall be subject to subsection (d), section seventeen,  
183 article ten of this chapter or subdivision (1), subsection  
184 (e), section seventeen, article ten of this chapter.

185 (j) The provisions of this section become effective after  
186 the thirtieth day of June, one thousand nine hundred  
187 eighty-seven.

**§11-15-9c. Delivery of a certificate of exemption in lieu  
of tax.**

1 Persons having a right or claim to any exemption set  
2 forth in subsections (a), (b), (c), (d), (f), (h), (i), (j), (m),  
3 (n), (o), (p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc),  
4 (dd), (ee), (ff), (gg), (hh), and (ii) of section nine of this  
5 article shall, in lieu of paying the tax imposed by this  
6 article, execute a certificate of exemption in such form  
7 as the tax commissioner may require, and such executed  
8 exemption certificate shall be delivered to the vendor in  
9 such manner as the tax commissioner may require:  
10 *Provided*, That the tax commissioner may identify  
11 exemptions for which exemption certificates are not  
12 required and as soon as practical may specify by  
13 regulation exemptions for which exemption certificates  
14 are not required.



**§11-15-9d. Direct pay permits.**

1 (a) Notwithstanding any other provision of this  
2 article, the tax commissioner may, pursuant to rules and  
3 regulations promulgated by him in accordance with  
4 article three, chapter twenty-nine-a of this code,  
5 authorize a person (as defined in section two) that is a  
6 user, consumer, distributor or lessee to which sales or  
7 leases of tangible personal property are made or services  
8 provided, to pay any tax levied by this article or article  
9 fifteen-a of this chapter directly to the tax commissioner  
10 and waive the collection of the tax by that person's  
11 vendor. No such authority shall be granted or exercised  
12 except upon application to the tax commissioner and  
13 after issuance by the tax commissioner of a direct pay  
14 permit. Upon issuance of such direct pay permit,  
15 payment of the tax imposed or assertion of the exemp-  
16 tions allowed by this article or article fifteen-a of this  
17 chapter on sales and leases of tangible personal property  
18 and sales of taxable services from the vendors thereof  
19 shall be made directly to the tax commissioner by the  
20 permit holder.

21 (b) On or before the fifteenth day of each month, every  
22 permit holder shall make and file with the tax commis-  
23 sioner a consumer sales and use tax direct pay permit  
24 return for the preceding month in the form prescribed  
25 by the tax commissioner showing the total value of the  
26 tangible personal property so used, the amount of  
27 taxable services purchased, the amount of consumers  
28 sales and use taxes due from the permit holder, which  
29 amount shall be paid to the tax commissioner with such  
30 return, and such other information as the tax commis-  
31 sioner deems necessary: *Provided*, That if the amount of  
32 consumers sales and use taxes due averages less than  
33 one hundred dollars per month, the tax commissioner  
34 may permit the filing of quarterly returns in lieu of  
35 monthly returns and the amount of tax shown thereon  
36 to be due shall be remitted on or before the fifteenth day  
37 following the close of the calendar quarter; and if the  
38 amount due averages less than fifty dollars per calendar  
39 quarter, the tax commissioner may permit the filing of  
40 an annual direct pay permit return and the amount of

41 tax shown thereon to be due shall be remitted on or  
42 before the last day of January each year. The tax  
43 commissioner, upon written request by the permit  
44 holder, may grant a reasonable extension of time, upon  
45 such terms as the tax commissioner may require, for the  
46 making and filing of direct pay permit returns and  
47 paying the tax due. Interest on such tax shall be  
48 chargeable on every such extended payment at the rate  
49 specified in section seventeen, article ten of this chapter.

50 (c) A permit issued pursuant to this section shall  
51 continue to be valid until expiration of the taxpayers  
52 registration year under article twelve of this chapter.  
53 This permit shall automatically be renewed when the  
54 taxpayers business registration certificate is issued for  
55 the next succeeding fiscal year, unless the permit is  
56 surrendered by the holder or canceled for cause by the  
57 tax commissioner.

58 (d) Persons who hold a direct payment permit which  
59 has not been canceled shall not be required to pay the  
60 tax to the vendor as otherwise provided in this article  
61 or article fifteen-a of this chapter. Such persons shall  
62 notify each vendor from whom tangible personal  
63 property is purchased or leased or from whom services  
64 are purchased of their direct payment permit number  
65 and that the tax is being paid directly to the tax  
66 commissioner. Upon receipt of such notice, such vendor  
67 shall be absolved from all duties and liabilities imposed  
68 by this chapter for the collection and remittance of the  
69 tax with respect to sales of tangible personal property  
70 and sales of services to such permit holder. Vendors who  
71 make sales upon which the tax is not collected by reason  
72 of the provisions of this section shall maintain records  
73 in such manner that the amount involved and identity  
74 of each such purchaser may be ascertained.

75 (e) Upon the expiration, cancellation or surrender of  
76 a direct payment permit, the provisions of this chapter,  
77 without regard to this section, shall thereafter apply to  
78 the person who previously held such permit, and such  
79 person shall promptly so notify in writing vendors from  
80 whom tangible personal property or services are  
81 purchased or leased of such cancellation or surrender.

82 Upon receipt of such notice, the vendor shall be subject  
83 to the provisions of this chapter, without regard to this  
84 section, with respect to all sales, distributions, leases or  
85 storage of tangible personal property, thereafter made  
86 to or for such person.

**§11-15-18. Tax on gasoline and special fuel.**

1 (a) *General.*—All sales of gasoline or special fuel by  
2 distributors or importers, except when to another  
3 distributor for resale in this state, when delivery is  
4 made in this state, shall be subject to the tax imposed  
5 by this article, notwithstanding any provision of this  
6 article to the contrary. Sales of gasoline or special fuel  
7 by a person who paid the tax imposed by this article on  
8 his purchases of fuel, shall not thereafter be again taxed  
9 under the provisions of this article. This section shall be  
10 construed so that all gallons of gasoline or special fuel  
11 sold and delivered, or delivered, in this state are taxed  
12 one time.

13 (b) *Measure of tax.*—The measure of tax on sales of  
14 gasoline or special fuel by distributors or importers  
15 shall be the average wholesale price as defined and  
16 determined in subsection (c), section thirteen, article  
17 fifteen-a of this chapter. For purposes of maintaining  
18 revenue for highways, and recognizing that the tax  
19 imposed by this article is generally imposed on gross  
20 proceeds from sales to ultimate consumers, whereas the  
21 tax on gasoline and special fuel herein is imposed on the  
22 average wholesale price of such gasoline and special  
23 fuel; in no case, for the purposes of taxation under this  
24 article, shall such average wholesale price be deemed to  
25 be less than ninety-seven cents per gallon of gasoline or  
26 special fuel for all gallons of gasoline and special fuel  
27 sold during the reporting period, notwithstanding any  
28 provision of this article to the contrary.

29 (c) *Definitions.*—For purposes of this section:

30 (1) "Aircraft" shall include any airplane or helicopter  
31 that lands in this state on a regular or routine basis, and  
32 transports passengers or freight.

33 (2) "Aircraft fuel" shall mean gasoline and special  
34 fuel suitable for use in any aircraft engine.

35 (3) "Distributor" shall mean and include every person:

36 (A) Who produces, manufactures, processes or other-  
37 wise alters gasoline or special fuel in this state for use  
38 or for sale; or

39 (B) Who engages in this state in the sale of gasoline  
40 or special fuel for the purpose of resale or for distribu-  
41 tion; or

42 (C) Who receives gasoline or special fuel into the  
43 cargo tank of a tank wagon in this state for use or sale  
44 by such person.

45 (4) "Gasoline" shall mean and include any product  
46 commonly or commercially known as gasoline, regard-  
47 less of classification, suitable for use as fuel in an  
48 internal combustion engine, except special fuel as  
49 hereinafter defined, including any product obtained by  
50 blending together any one or more products, with or  
51 without other products, if the resultant product is  
52 capable of the same use.

53 (5) "Importer" shall mean and include every person,  
54 resident or nonresident, other than a distributor, who  
55 receives gasoline or special fuel outside this state for use,  
56 sale or consumption within this state, but shall not  
57 include the fuel in the supply tank of a motor vehicle  
58 that is not a motor carrier.

59 (6) "Motor carrier" shall mean and include: (A) Any  
60 passenger vehicle which has seats for more than nine  
61 passengers in addition to the driver, any road tractor,  
62 tractor truck or any truck having more than two axles,  
63 which is operated or caused to be operated, by any  
64 person on any highway in this state using gasoline or  
65 special fuel; and (B) any aircraft, barge or other  
66 watercraft, or locomotive transporting passengers or  
67 freight in or through this state.

68 (7) "Motor vehicle" shall mean and include automo-  
69 biles, motor carriers, motor trucks, motorcycles and all  
70 other vehicles or equipment, engines or machines which  
71 are operated or propelled by combustion of gasoline or  
72 special fuel.

73 (8) "Retail dealer of gasoline or special fuel" shall  
74 mean and include any person not a distributor, who sells  
75 gasoline or special fuel from a fixed location in this state  
76 to users.

77 (9) "Special fuel" shall mean and include any gas or  
78 liquid, other than gasoline, used or suitable for use as  
79 fuel in an internal combustion engine. The term "special  
80 fuel" shall include products commonly known as natural  
81 or casinghead gasoline and shall include gasoline and  
82 special fuel for heating any private residential dwelling,  
83 building or other premises; but shall not include any  
84 petroleum product or chemical compound such as  
85 alcohol, industrial solvent, heavy furnace oil, lubricant,  
86 etc., not commonly used nor practicably suited for use  
87 as fuel in an internal combustion engine.

88 (10) "Supply tank" shall mean any receptacle on a  
89 motor vehicle from which gasoline or special fuel is  
90 supplied for the propulsion of the vehicle or equipment  
91 located thereon, exclusive of a cargo tank. A supply tank  
92 includes a separate compartment of a cargo tank used  
93 as a supply tank, and any auxiliary tank or receptacle  
94 of any kind or cargo tank, from which gasoline or  
95 special fuel is supplied for the propulsion of the vehicle,  
96 whether or not such tank or receptacle is directly  
97 connected to the fuel supply line of the vehicle.

98 (11) "Tank wagon" shall mean and include any motor  
99 vehicle or vessel with a cargo tank or cargo tanks  
100 ordinarily used for making deliveries of gasoline or  
101 special fuel, or both, for sale or use.

102 (12) "Taxpayer" shall mean any person liable for the  
103 tax imposed by this article.

104 (13) "User" shall mean any person who purchases  
105 gasoline or special fuel for use or consumption.

106 (d) *Tax due.*—The tax on sales of gasoline and special  
107 fuel shall be paid by each taxpayer on or before the  
108 twenty-fifth day of each month, by check, bank draft,  
109 certified check or money order, payable to the tax  
110 commissioner for the amount of tax due for the

111 preceding month, notwithstanding any provision of this  
112 article to the contrary.

113 (e) *Monthly return.*—On or before the twenty-fifth day  
114 of each month, the taxpayer shall make and file a return  
115 for the preceding month showing such information as  
116 the tax commissioner may require, notwithstanding any  
117 provision of this article to the contrary.

118 (f) *Compliance.*—To facilitate ease of administration  
119 and compliance by taxpayers, the tax commissioner may  
120 require distributors, importers and other persons liable  
121 for the tax imposed by this article on sales of gasoline  
122 or special fuel, to file a combined return and make a  
123 combined payment of the tax due under this article on  
124 sales of gasoline and special fuel, and the tax due under  
125 article fourteen of this chapter, on gasoline and special  
126 fuel. In order to encourage use of a combined return  
127 each month and the making of a single payment each  
128 month for both taxes, the due date of the return and tax  
129 due under article fourteen of this chapter is hereby  
130 changed from the last day of each month to the twenty-  
131 fifth day of each month, notwithstanding any provision  
132 in article fourteen of this chapter to the contrary.

133 (g) *Dedication of tax to highways.*—All tax collected  
134 under the provisions of this section after deducting the  
135 amount of any refunds lawfully paid, shall be deposited  
136 in the “road fund” in the state treasurer’s office, and  
137 shall be used only for the purpose of construction,  
138 reconstruction, maintenance and repair of highways,  
139 and payment of principal and interest on state bonds  
140 issued for highway purposes: *Provided*, That notwith-  
141 standing any provision to the contrary, any tax collected  
142 on the sale of aircraft fuel shall be deposited in the state  
143 treasurer’s office and transferred to the state aeronaut-  
144 ical commission to be used for the purpose of matching  
145 federal funds available for the reconstruction, mainte-  
146 nance and repair of public airports and airport  
147 runways.

148 (h) *Construction.*—This section shall not be construed  
149 as taxing any sale of gasoline or special fuel which this  
150 state is prohibited from taxing under the constitution of

151 this state or the constitution or laws of the United  
152 States.

153 (i) *Effective date.*—The provisions of chapter one  
154 hundred seventy-nine of the Acts of the Legislature, one  
155 thousand nine hundred eighty-three, shall take effect on  
156 the first day of April, one thousand nine hundred eighty-  
157 three. The amendments to this section made by the  
158 Legislature in the Regular Session, one thousand nine  
159 hundred eighty-nine, shall be effective on the first day  
160 of July, one thousand nine hundred eighty-nine.

#### §11-15-33. Effective date.

1 (a) The provisions of this article as amended or added  
2 by Senate Bill No. 1 took effect on the first day of  
3 March, one thousand nine hundred eighty-nine, and  
4 apply to all sales made on or after that date: *Provided*,  
5 That if an effective date was expressly provided in a  
6 provision of such act, that specific effective date  
7 controlled in lieu of this general effective date provision.

8 (b) The provisions of this article as amended or added  
9 by this act shall take effect on the first day of July, one  
10 thousand nine hundred eighty-nine, and apply to all  
11 sales made on or after that date: *Provided*, That if an  
12 effective date is expressly provided in such provision,  
13 that specific effective date shall control in lieu of this  
14 general effective date provision.

#### ARTICLE 15A. USE TAX.

§11-15A-2a. Tax on value of property used or consumed in this state.

§11-15A-3b. Method for claiming exemptions, refunds of tax, credit against other taxes.

§11-15A-3c. Delivery of a certificate of exemption in lieu of tax.

§11-15A-3d. Direct pay permits.

§11-15A-6a. Collection by certain other retailers.

§11-15A-29. Effective date.

#### §11-15A-2a. Tax on value of property used or consumed in this state.

1 (a) Except as otherwise provided, a person who  
2 produces for sale, profit or commercial use, any natural  
3 resource, product or manufactured product, and uses or  
4 consumes such natural resource, product or manufac-

5 tured product, in this state shall make returns of the  
6 gross value of the natural resource, product or manu-  
7 factured product, so used or consumed by him in this  
8 state, and pay the tax imposed by this article, when such  
9 use or consumption is not otherwise exempt under this  
10 article.

11 (b) The tax commissioner shall promulgate such  
12 uniform and equitable rules as he deems necessary for  
13 determining the gross value upon which the tax imposed  
14 by this article is levied in the absence of a sale, which  
15 value shall correspond as nearly as possible to the gross  
16 proceeds from the sale of similar products of like quality  
17 or character by the same person or by another person.

18 (c) A person who purchases or leases machinery or  
19 equipment or other tangible personal property for use  
20 in another state and then uses or consumes such  
21 property in this state shall pay the tax imposed by this  
22 article on the value of the property so used or consumed  
23 in this state. The tax commissioner shall promulgate  
24 such uniform and equitable rules as he deems necessary  
25 for determining the measure of the tax imposed by this  
26 article with respect to such property.

27 (d) The provisions of this section shall apply to  
28 property used or consumed in this state on or after the  
29 first day of May, one thousand nine hundred eighty-nine.

**§11-15A-3b. Method for claiming exemptions, refunds of  
tax, credit against other taxes.**

1 (a) Any person having a right or claim to an exemp-  
2 tion from the tax imposed by this article by reason of  
3 any exemption set forth in section nine, article fifteen  
4 of this chapter except those exemptions set forth in  
5 subsections (a), (b), (c), (d), (f), (h), (i), (j), (m), (n), (o),  
6 (p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd),  
7 (ee), (ff) (gg), (hh) and (ii) of said section nine, shall pay  
8 to the vendor the tax imposed by this article and may  
9 exercise or assert such exemption only in accordance  
10 with subsection (b) or subsection (c) of this section.

11 (b) Any person who has paid the tax imposed by this  
12 article and who may lawfully claim under section three



13 of this article any exemption set forth under a subsec-  
14 tion of section nine of article fifteen not enumerated in  
15 subsection (a) of this section may exercise or assert such  
16 claim by filing a claim for refund of use tax overpay-  
17 ments on such form and in such manner as the tax  
18 commissioner may require and in accordance with the  
19 requirements of this section.

20 (c) In lieu of filing a claim for refund of use tax  
21 overpayments, the taxpayer may, at his option, file a  
22 claim for credit on such form and in such manner as  
23 the tax commissioner may require and credit the  
24 amount of use tax overpayments against certain pay-  
25 ments of tax due in accordance with the requirements  
26 of this section as follows:

27 (1) If the taxpayer is required to remit the tax  
28 imposed under this article or article fifteen of this  
29 chapter pursuant to section five or subsection (b) of  
30 section nine-d of said article fifteen or subsection (b) of  
31 section three-d of this article, the taxpayer may credit  
32 the amount of use tax overpayments against the  
33 remittance of the tax imposed under said articles  
34 otherwise due; or

35 (2) If the taxpayer is subject to the tax imposed under  
36 article thirteen of this chapter, the taxpayer may credit  
37 the amount of use tax overpayments remaining after  
38 application of part (1) of this subsection against the  
39 taxpayer's quarterly or monthly remittance of the tax  
40 imposed under said article thirteen otherwise due; or

41 (3) If the taxpayer is subject to the tax imposed under  
42 article twelve-a of this chapter, the taxpayer may credit  
43 the amount of use tax overpayments remaining after  
44 application of parts (1) and (2) of this subsection against  
45 the taxpayer's annual or semiannual remittance of the  
46 tax imposed under said article twelve-a otherwise due;  
47 or

48 (4) If the taxpayer is subject to the tax imposed under  
49 article thirteen-a of this chapter, the taxpayer may  
50 credit the amount of use tax overpayments remaining  
51 after application of parts (1), (2) and (3) of this  
52 subsection against the taxpayer's quarterly or monthly

53 remittance of the tax imposed under said article  
54 thirteen-a otherwise due; or

55 (5) If the taxpayer is subject to the tax imposed under  
56 article thirteen-b of this chapter, the taxpayer may  
57 credit the amount of use tax overpayments remaining  
58 after application of parts (1), (2), (3) and (4) of this  
59 subsection against the taxpayer's quarterly or monthly  
60 remittance of the tax imposed under said article  
61 thirteen-b otherwise due; or

62 (6) If the taxpayer is subject to the tax imposed under  
63 article twenty-four of this chapter, the taxpayer may  
64 credit the amount of use tax overpayments remaining  
65 after application of parts (1), (2), (3), (4) and (5) of this  
66 subsection against the taxpayer's installment of esti-  
67 mated tax imposed under said article twenty-four and  
68 otherwise due under section seventeen, article twenty-  
69 four of this chapter; or

70 (7) If the taxpayer is subject to the tax imposed under  
71 article twenty-one of this chapter, the taxpayer may  
72 credit the amount of use tax overpayments remaining  
73 after application of parts (1), (2), (3), (4), (5) and (6) of  
74 this subsection against the taxpayer's installment of  
75 estimated tax imposed under said article twenty-one and  
76 otherwise due under section fifty-six, article twenty-one  
77 of this chapter; or

78 (8) If the taxpayer is subject to the tax imposed under  
79 article twenty-three of this chapter, the taxpayer may  
80 credit the amount of use tax overpayments remaining  
81 after application of parts (1), (2), (3), (4), (5), (6) and  
82 (7) of this subsection against the taxpayer's annual  
83 remittance of the tax imposed under said article twenty-  
84 three and otherwise due; or

85 (9) If the taxpayer is required to deduct and withhold  
86 tax under article twenty-one of this chapter, the  
87 taxpayer may credit the amount of use tax overpay-  
88 ments remaining after application of parts (1), (2), (3),  
89 (4), (5), (6), (7) and (8) of this subsection against the  
90 taxpayer's monthly remittance of the tax withheld  
91 under said article twenty-one and otherwise due.

92 (d) Any person asserting or exercising a claim of  
93 exemption from the tax imposed by this article under  
94 subsections (b) or (c) of this section shall file with the  
95 tax commissioner an application for exemption in such  
96 form as the tax commissioner shall prescribe and such  
97 affidavits, invoices, sales slips, records or documents as  
98 the tax commissioner may require to prove or verify the  
99 taxpayer's right and entitlement to such exemption. The  
100 tax commissioner may inspect or examine the records,  
101 books, papers, documents, affidavits, sales slips and  
102 invoices of a taxpayer or any other person to verify the  
103 truth and accuracy of any report or return or to  
104 ascertain whether the tax imposed by this article or  
105 article fifteen of this chapter has been paid.

106 In addition to the powers of the tax commissioner set  
107 forth in article ten of this chapter, as a further means  
108 of obtaining the records, books, papers, documents,  
109 affidavits, sales slips or invoices of a taxpayer or any  
110 other person and ascertaining the amount of taxes paid  
111 or due under this article or article fifteen of this chapter  
112 or any report, form, document or affidavit required  
113 under this article or article fifteen of this chapter, the  
114 commissioner shall have the power to examine witnesses  
115 under oath; and if any witness shall fail or refuse at the  
116 request of the commissioner to grant access to the books,  
117 records, papers, documents, affidavits, sales slips or  
118 invoices requested by the commissioner, the commis-  
119 sioner shall certify the facts and the names to the circuit  
120 court of the county having jurisdiction of the party, and  
121 such court shall thereupon issue a subpoena duces tecum  
122 to such party to appear before the commissioner, at a  
123 place designated within the jurisdiction of such court,  
124 on a day fixed.

125 (e) All claims for refund of use tax overpayments  
126 under subsection (b) of this section shall be filed within  
127 the time limitation for filing claims for refund set forth  
128 in section fourteen, article ten of this chapter. Any claim  
129 for such refund or claim of entitlement to such refund  
130 made or asserted after the said time limitation shall be  
131 null and void, and if the use tax overpayment has not  
132 otherwise been credited against tax remittances in

133 accordance with this section, the said claims shall be  
134 forfeited.

135 (f) Any credit of use tax overpayments against taxes  
136 under subsection (c) of this section shall be taken within  
137 one year after the payment of the tax by the taxpayer  
138 to the vendor. Any such credit or claim of entitlement  
139 to such credit made or asserted more than one year after  
140 the payment of such tax by the taxpayer to the vendor  
141 shall be null and void, and such tax overpayments shall  
142 be forfeited.

143 (g) Any assignment of the right or entitlement to a  
144 refund or credit arising under this section shall be  
145 subject to strict proof, and any assignee claiming a right  
146 or entitlement to an assigned refund or credit shall  
147 submit an affidavit in such form as the tax commis-  
148 sioner shall prescribe signed by the assignor acknowl-  
149 edging the assignment. The assignee shall attest to the  
150 assignment and the terms thereof of his signed appli-  
151 cation filed under subsection (e) of this section for  
152 refund or credit, and will be subject to the penalties  
153 provided under West Virginia law for perjury for any  
154 falsehood set forth therein and will be subject to the  
155 penalties set forth in article nine of this chapter for any  
156 violation thereof. Except as provided in this subsection  
157 (h), no payment of a refund arising under this section  
158 shall be made to any person other than the taxpayer  
159 making the original overpayment of consumers sales  
160 and service tax.

161 (h) No refund shall be due and no credit shall be  
162 allowed unless the taxpayer or assignee shall have filed  
163 a claim for refund or a claim for credit, as appropriate,  
164 with the tax commissioner in accordance with this  
165 section.

166 (i) Any claim for a refund of use tax overpayments or  
167 a tax credit for use tax overpayments which is not  
168 timely filed or not filed in proper form or in accordance  
169 with the requirements of this section shall not be  
170 construed to constitute a moral obligation of the state  
171 of West Virginia for payment. No overpayment of use  
172 tax made under this section shall be subject to subsec-

173 tion (d), section seventeen, article ten of this chapter, or  
174 subdivision (1), subsection (e), section seventeen, article  
175 ten of this chapter.

176 (j) The provisions of this section become effective after  
177 the thirtieth day of June, one thousand nine hundred  
178 eighty-seven.

**§11-15A-3c. Delivery of a certificate of exemption in lieu  
of tax.**

1 Persons having a right or claim under section three  
2 of this article, to any exemption set forth in subsections  
3 (a), (b), (c), (d), (f), (h), (i), (j), (m), (n), (o), (p), (q), (r),  
4 (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd), (ee), (ff), (gg),  
5 (hh) and (ii), section nine, article fifteen of this chapter  
6 shall, in lieu of paying the tax imposed by this article,  
7 execute a certificate of exemption in such form as the  
8 tax commissioner may require, and such executed  
9 exemption certificate shall be delivered to the vendor in  
10 such manner as the tax commissioner may require:  
11 *Provided*, That the tax commissioner may identify  
12 exemptions for which exemption certificates are not  
13 required and as soon as practical may specify by  
14 regulation exemptions for which exemption certificates  
15 are not required.

**§11-15A-3d. Direct pay permits.**

1 (a) Notwithstanding any other provision of this  
2 article, the tax commissioner may, pursuant to rules and  
3 regulations promulgated by him in accordance with  
4 article three, chapter twenty-nine-a of this code,  
5 authorize a person (as defined in section two of article  
6 fifteen) that is a user, consumer, distributor or lessee to  
7 which sales or leases of tangible personal property are  
8 made or services provided to pay any tax levied by this  
9 article or article fifteen of this chapter directly to the  
10 tax commissioner and waive the collection of the tax by  
11 that person's vendor. No such authority shall be granted  
12 or exercised except upon application to the tax commis-  
13 sioner and after issuance by the tax commissioner of a  
14 direct pay permit. Upon issuance of such direct pay  
15 permit, payment of the tax imposed or assertion of the  
16 exemptions allowed by this article or article fifteen of  
17 this chapter on sales and leases of tangible personal

18 property and sales of taxable services from the vendors  
19 thereof shall be made directly to the tax commissioner  
20 by the permit holder.

21 (b) On or before the fifteenth day of each month, every  
22 permit holder shall make and file with the tax commis-  
23 sioner a consumers sales and use tax direct pay permit  
24 return for the preceding month in the form prescribed  
25 by the tax commissioner showing the total value of the  
26 tangible personal property so used, the amount of  
27 taxable services purchased, the amount of tax due from  
28 the permit holder, which amount shall be paid to the tax  
29 commissioner with such return, and such other informa-  
30 tion as the tax commissioner deems necessary: *Provided,*  
31 That if the amount of consumers sales and use taxes due  
32 averages less than one hundred dollars per month, the  
33 tax commissioner may permit the filing of quarterly  
34 returns in lieu of monthly returns and the amount of tax  
35 shown thereon to be due shall be remitted on or before  
36 the fifteenth day following the close of the calendar  
37 quarter; and if the amount due averages less than fifty  
38 dollars per calendar quarter, the tax commissioner may  
39 permit the filing of an annual direct pay permit return  
40 and the amount of tax shown thereon to be due shall be  
41 remitted on or before the last day of January each year.  
42 The tax commissioner, upon written request filed by the  
43 permit holder before the due date of the return, may  
44 grant a reasonable extension of time, upon such terms  
45 as the tax commissioner may require, for the making  
46 and filing of direct pay permit returns and paying the  
47 tax due. Interest on such tax shall be chargeable on  
48 every such extended payment at the rate specified in  
49 section seventeen, article ten of this chapter.

50 (c) A permit issued pursuant to this section shall  
51 continue to be valid until expiration of the taxpayer's  
52 registration year under article twelve of this chapter.  
53 This permit shall automatically be renewed when the  
54 taxpayer's business registration certificate is issued for  
55 the next succeeding fiscal year, unless the permit is  
56 surrendered by the holder or canceled for cause by the  
57 tax commissioner.

58 (d) Persons who hold a direct payment permit which

59 has not been canceled shall not be required to pay the  
60 tax to the vendor as otherwise provided in this article  
61 or article fifteen of this chapter. Such persons shall  
62 notify each vendor from whom tangible personal  
63 property is purchased or leased or from whom services  
64 are purchased of their direct payment permit number  
65 and that the tax is being paid directly to the tax  
66 commissioner. Upon receipt of such notice, such vendor  
67 shall be absolved from all duties and liabilities imposed  
68 by this chapter for the collection and remittance of the  
69 tax with respect to sales, distributions, leases or storage  
70 of tangible personal property and sales of services to  
71 such permit holder. Vendors who make sales upon  
72 which the tax is not collected by reason of the provisions  
73 of this section shall maintain records in such manner  
74 that the amount involved and identity of each such  
75 purchaser may be ascertained.

76 (e) Upon the expiration, cancellation or surrender of  
77 a direct payment permit, the provisions of this chapter,  
78 without regard to this section, shall thereafter apply to  
79 the person who previously held such permit, and such  
80 person shall promptly so notify in writing vendors from  
81 whom tangible personal property or services are  
82 purchased of such cancellation or surrender. Upon  
83 receipt of such notice, the vendor shall be subject to the  
84 provisions of this chapter, without regard to this section,  
85 with respect to all sales of tangible personal property  
86 or taxable services, thereafter made to or for such  
87 person.

**§11-15A-6a. Collection by certain other retailers.**

1 (a) *Duty to collect tax.*—For purposes of this article  
2 and for collection of use tax required under section six  
3 of this article, a retailer engaging in business in this  
4 state also means and includes any of the following:

5 (1) Any retailer soliciting orders from persons located  
6 in this state for the sale of tangible personal property  
7 or taxable services by means of a telecommunication or  
8 television shopping system which utilizes a telephone or  
9 mail ordering system, including toll free telephone  
10 numbers, reverse charge telephone systems or other

11 telephone ordering systems and which is intended by the  
12 retailer to be broadcast by cable television or other  
13 means of broadcasting, to consumers located in this  
14 state: *Provided*, That such retailer has physical presence  
15 in this state in the form of employees, offices, agents or  
16 sales outlets in this state, or any other presence that  
17 provides the necessary minimum contacts for a consti-  
18 tutionally sufficient nexus for a state to require such a  
19 retailer to collect and remit use taxes.

20 (2) Any retailer who solicits orders from persons  
21 located in this state for the sale of tangible personal  
22 property or taxable services by means of advertising  
23 that is broadcast from, printed at, or distributed from,  
24 a location in this state if the advertising is primarily  
25 intended to be disseminated to consumers located in this  
26 state and is only secondarily or incidentally dissemi-  
27 nated to bordering jurisdictions. For purposes of this  
28 paragraph, advertising which is broadcast from a radio  
29 or television station located in this state or is printed in  
30 or distributed by a newspaper published in this state is  
31 rebuttably presumed to be primarily intended for  
32 dissemination to consumers located in this state:  
33 *Provided*, That such retailer has physical presence in  
34 this state in the form of employees, offices, agents or  
35 sales outlets in this state, or any other presence that  
36 provides the necessary minimum contacts for a consti-  
37 tutionally sufficient nexus for a state to require such a  
38 retailer to collect and remit use taxes.

39 (3) Any retailer soliciting orders from persons located  
40 in this state for the sale of tangible personal property  
41 or taxable services by mail if the solicitations are  
42 substantial and recurring and if the retailer economi-  
43 cally benefits from any banking, financing, debt  
44 collection, telecommunication or marketing activities  
45 occurring in this state or economically benefits from the  
46 location in this state of an authorized installation,  
47 servicing or repair facility, regardless of whether such  
48 facility is owned or operated by such retailer or by a  
49 related or unrelated person: *Provided*, That such retailer  
50 has physical presence in this state in the form of  
51 employees, offices, agents or sales outlets in this state,



52 or any other presence that provides the necessary  
53 minimum contacts for a constitutionally sufficient nexus  
54 for a state to require such a retailer to collect and remit  
55 use taxes.

56 (4) Any retailer having a franchisee or licensee  
57 operating in this state under the retailer's trade name,  
58 if the franchisee or licensee is required to collect the tax  
59 imposed by this article or article fifteen of this chapter:  
60 *Provided*, That such retailer has physical presence in  
61 this state in the form of employees, offices, agents or  
62 sales outlets in this state, or any other presence that  
63 provides the necessary minimum contacts for a consti-  
64 tutionally sufficient nexus for a state to require such a  
65 retailer to collect and remit use taxes.

66 (5) Any retailer who, pursuant to a contract with a  
67 cable television operator located in this state, solicits  
68 from persons located in this state orders for the sale of  
69 tangible personal property or taxable services by means  
70 of advertising which is transmitted or distributed over  
71 a cable television system in this state: *Provided*, That  
72 such retailer has physical presence in this state in the  
73 form of employees, offices, agents or sales outlets in this  
74 state, or any other presence that provides the necessary  
75 minimum contacts for a constitutionally sufficient nexus  
76 for a state to require such a retailer to collect and remit  
77 use taxes.

78 (b) *Exemption from payment of business registration*  
79 *tax.*—Any retailer required to collect use tax under the  
80 provisions of subsection (a) of this section shall be  
81 required to obtain a business registration certificate, as  
82 provided in article twelve of this chapter, but shall be  
83 exempt from payment of the tax levied by subsection (b),  
84 section three of said article twelve, unless the retailer  
85 has sufficient presence in this state so that required  
86 payment of the tax does not violate any provision of the  
87 constitution or laws of this state or of the United States.

88 (c) *Effective date.*—The provisions of this section shall  
89 become effective the first day of July, one thousand nine  
90 hundred eighty-nine, and apply to sales of tangible  
91 personal property or taxable services made on or after  
92 that date.

**§11-15A-29. Effective date.**

1 (a) The provisions of this article as amended or added  
2 by Senate Bill No. 1 took effect on the first day of  
3 March, one thousand nine hundred eighty-nine, and  
4 apply to all purchases made or used in this state on or  
5 after that date: *Provided*, That if an effective date was  
6 expressly provided in a provision of such act, that  
7 specific effective date controlled in lieu of this general  
8 effective date provision.

9 (b) The provisions of this article as amended or added  
10 by this act shall take effect on the first day of July, one  
11 thousand nine hundred eighty-nine, and apply to all  
12 purchases made or used in this state on or after that  
13 date: *Provided*, That if an effective date is expressly  
14 provided in such provision, that specific effective date  
15 shall control in lieu of this general effective date  
16 provision.

**ARTICLE 21. PERSONAL INCOME TAX.****§11-21-12. West Virginia adjusted gross income of resident individual.**

1 (a) *General.*—The West Virginia adjusted gross  
2 income of a resident individual means his federal  
3 adjusted gross income as defined in the laws of the  
4 United States for the taxable year with the modifica-  
5 tions specified in this section.

6 (b) *Modifications increasing federal adjusted gross*  
7 *income.*—There shall be added to federal adjusted gross  
8 income unless already included therein the following  
9 items:

10 (1) Interest income on obligations of any state other  
11 than this state, or of a political subdivision of any such  
12 other state unless created by compact or agreement to  
13 which this state is a party;

14 (2) Interest or dividend income on obligations or  
15 securities of any authority, commission or instrumental-  
16 ity of the United States, which the laws of the United  
17 States exempt from federal income tax but not from  
18 state income taxes;

19 (3) Income taxes imposed by this state or any other  
20 taxing jurisdiction, to the extent deductible in determin-  
21 ing federal adjusted gross income and not credited  
22 against federal income tax: *Provided*, That this modifi-  
23 cation shall not be made for taxable years beginning  
24 after the thirty-first day of December, one thousand nine  
25 hundred eighty-six;

26 (4) Interest on indebtedness incurred or continued to  
27 purchase or carry obligations or securities the income  
28 from which is exempt from tax under this article, to the  
29 extent deductible in determining federal adjusted gross  
30 income;

31 (5) Interest on a depository institution tax-exempt  
32 savings certificate which is allowed as an exclusion from  
33 federal gross income under section 128 of the Internal  
34 Revenue Code, for the federal taxable year;

35 (6) The amount allowed as a deduction from federal  
36 gross income under section 221 of the Internal Revenue  
37 Code by married couples who file a joint federal return  
38 for the federal taxable year: *Provided*, That this  
39 modification shall not be made for taxable years  
40 beginning after the thirty-first day of December, one  
41 thousand nine hundred eighty-six;

42 (7) The deferral value of certain income that is not  
43 recognized for federal tax purposes, which value shall  
44 be an amount equal to a percentage of the amount  
45 allowed as a deduction in determining federal adjusted  
46 gross income pursuant to the accelerated cost recovery  
47 system under section 168 of the Internal Revenue Code  
48 for the federal taxable year, with the percentage of the  
49 federal deduction to be added as follows with respect to  
50 the following recovery property: Three-year property—  
51 no modification; five-year property—ten percent; ten-  
52 year property—fifteen percent; fifteen-year public  
53 utility property—twenty-five percent; and fifteen-year  
54 real property—thirty-five percent: *Provided*, That this  
55 modification shall not apply to any person whose federal  
56 deduction is determined by the use of the straight line  
57 method: *Provided, however*, That this modification shall  
58 not be made for taxable years beginning after the thirty-  
59 first day of December, one thousand nine hundred

60 eighty-six; and

61 (8) The amount of a lump sum distribution for which  
62 the taxpayer has elected under section 402(e) of the  
63 Internal Revenue Code of 1986, as amended, to be  
64 separately taxed for federal income tax purposes.

65 (c) *Modifications reducing federal adjusted gross*  
66 *income.*—There shall be subtracted from federal ad-  
67 justed gross income to the extent included therein:

68 (1) Interest income on obligations of the United States  
69 and its possessions to the extent includible in gross  
70 income for federal income tax purposes;

71 (2) Interest or dividend income on obligations or  
72 securities of any authority, commission or instrumental-  
73 ity of the United States or of the state of West Virginia  
74 to the extent includible in gross income for federal  
75 income tax purposes but exempt from state income  
76 taxes under the laws of the United States or of the state  
77 of West Virginia, including federal interest or dividends  
78 paid to shareholders of a regulated investment company,  
79 under section 852 of the Internal Revenue Code for  
80 taxable years ending after the thirtieth day of June, one  
81 thousand nine hundred eighty-seven;

82 (3) Any gain from the sale or other disposition of  
83 property having a higher fair market value on the first  
84 day of January, one thousand nine hundred sixty-one,  
85 than the adjusted basis at said date for federal income  
86 tax purposes: *Provided*, That the amount of this  
87 adjustment is limited to that portion of any such gain  
88 which does not exceed the difference between such fair  
89 market value and such adjusted basis: *Provided*,  
90 *however*, That if such gain is considered a long-term  
91 capital gain for federal income tax purposes, the  
92 modification shall be limited to forty percent of such  
93 portion of the gain: *Provided further*, That this modifi-  
94 cation shall not be made for taxable years beginning  
95 after the thirty-first day of December, one thousand nine  
96 hundred eighty-six;

97 (4) The amount of any refund or credit for overpay-  
98 ment of income taxes imposed by this state, or any other  
99 taxing jurisdiction, to the extent properly included in  
100 gross income for federal income tax purposes;

101 (5) Annuities, retirement allowances, returns of  
102 contributions and any other benefit received under the  
103 West Virginia public employees retirement system, the  
104 West Virginia state teachers retirement system and all  
105 forms of military retirement, including regular armed  
106 forces, reserves and national guard, including any  
107 survivorship annuities derived therefrom, to the extent  
108 includible in gross income for federal income tax  
109 purposes: *Provided*, That notwithstanding any provi-  
110 sions in this code to the contrary this modification shall  
111 be limited to the first two thousand dollars of benefits  
112 received under the West Virginia public employees  
113 retirement system, the West Virginia state teachers  
114 retirement system and all forms of military retirement  
115 including regular armed forces, reserves and national  
116 guard, including any survivorship annuities derived  
117 therefrom, to the extent includible in gross income for  
118 federal income tax purposes for taxable years beginning  
119 after the thirty-first day of December, one thousand nine  
120 hundred eighty-six; and the first two thousand dollars  
121 of benefits received under any federal retirement system  
122 to which Title 4 USC § 111 applies: *Provided, however*,  
123 That the total modification under this paragraph shall  
124 not exceed two thousand dollars per person receiving  
125 such retirement benefits and this limitation shall apply  
126 to all returns or amended returns filed after the last day  
127 of December, one thousand nine hundred eighty-eight;

128 (6) Retirement income received in the form of pen-  
129 sions and annuities after the thirty-first day of De-  
130 cember, one thousand nine hundred seventy-nine, under  
131 any West Virginia police, West Virginia firemen's  
132 retirement system or the West Virginia department of  
133 public safety death, disability and retirement fund,  
134 including any survivorship annuities derived therefrom,  
135 to the extent includible in gross income for federal  
136 income tax purposes;

137 (7) Federal adjusted gross income in the amount of

138 eight thousand dollars received from any source after  
139 the thirty-first day of December, one thousand nine  
140 hundred eighty-six, by any person who has attained the  
141 age of sixty-five on or before the last day of the taxable  
142 year, or by any person certified by proper authority as  
143 permanently and totally disabled, regardless of age, on  
144 or before the last day of the taxable year, to the extent  
145 includible in federal adjusted gross income for federal  
146 tax purposes: *Provided*, That if a person has a medical  
147 certification from a prior year and he is still perman-  
148 ently and totally disabled, a copy of the original  
149 certificate is acceptable as proof of disability. A copy of  
150 the form filed for the federal disability income tax  
151 exclusion is acceptable: *Provided, however*, That

152 (i) Where the total modification under subdivisions  
153 (1), (2), (5) and (6) of this subsection is eight thousand  
154 dollars per person or more, no deduction shall be  
155 allowed under this subdivision; and

156 (ii) Where the total modification under subdivisions  
157 (1), (2), (5) and (6) of this subsection is less than eight  
158 thousand dollars per person, the total modification  
159 allowed under this subdivision for all gross income  
160 received by such person shall be limited to the differ-  
161 ence between eight thousand dollars and the sum of  
162 modifications under such subdivisions;

163 (8) Federal adjusted gross income in the amount of  
164 eight thousand dollars received from any source after  
165 the thirty-first day of December, one thousand nine  
166 hundred eighty-six, by the surviving spouse of any  
167 person who had attained the age of sixty-five or who had  
168 been certified as permanently and totally disabled, to  
169 the extent includible in federal adjusted gross income  
170 for federal tax purposes: *Provided*, That

171 (i) Where the total modification under subdivisions  
172 (1), (2), (5), (6) and (7) of this subsection is eight  
173 thousand dollars or more, no deduction shall be allowed  
174 under this subdivision; and

175 (ii) Where the total modification under subdivisions  
176 (1), (2), (5), (6) and (7) of this subsection is less than

177 eight thousand dollars per person, the total modification  
178 allowed under this subdivision for all gross income  
179 received by such person shall be limited to the differ-  
180 ence between eight thousand dollars and the sum of such  
181 subdivisions;

182 (9) Any pay or allowances received, after the thirty-  
183 first day of December, one thousand nine hundred  
184 seventy-nine, by West Virginia residents who have not  
185 attained the age of sixty-five, as compensation for active  
186 service in the armed forces of the United States:  
187 *Provided*, That such deduction shall be limited to an  
188 amount not to exceed four thousand dollars: *Provided*,  
189 *however*, That this modification shall not be made for  
190 taxable years beginning after the thirty-first day of  
191 December, one thousand nine hundred eighty-six;

192 (10) Gross income to the extent included in federal  
193 adjusted gross income under section 86 of the Internal  
194 Revenue Code for federal income tax purposes:  
195 *Provided*, That this modification shall not be made for  
196 taxable years beginning after the thirty-first day of  
197 December, one thousand nine hundred eighty-six;

198 (11) The amount of any lottery prize awarded by the  
199 West Virginia state lottery commission, to the extent  
200 properly included in gross income for federal income tax  
201 purposes; and

202 (12) Any other income which this state is prohibited  
203 from taxing under the laws of the United States.

204 (d) *Modification for West Virginia fiduciary adjust-*  
205 *ment.*—There shall be added to or subtracted from  
206 federal adjusted gross income, as the case may be, the  
207 taxpayer's share, as beneficiary of an estate or trust, of  
208 the West Virginia fiduciary adjustment determined  
209 under section nineteen of this article.

210 (e) *Partners and S corporation shareholders.*—The  
211 amounts of modifications required to be made under this  
212 section by a partner or an S corporation shareholder,  
213 which relate to items of income, gain, loss or deduction  
214 of a partnership or an S corporation, shall be deter-  
215 mined under section seventeen of this article.

216 (f) *Husband and wife*.—If husband and wife deter-  
217 mine their federal income tax on a joint return but  
218 determine their West Virginia income taxes separately,  
219 they shall determine their West Virginia adjusted gross  
220 incomes separately as if their federal adjusted gross  
221 incomes had been determined separately.

#### ARTICLE 24. CORPORATION NET INCOME TAX.

##### §11-24-9c. Research and development credit against primary tax.

1 A credit shall be allowed against the primary tax  
2 imposed by this article, which shall be the research and  
3 development credit as provided in sections three and  
4 three-b, article thirteen-d of this chapter for taxable  
5 years beginning after the thirty-first day of December,  
6 one thousand nine hundred eighty-eight: *Provided*, That  
7 the amount of this credit may not reduce by more than  
8 fifty percent the amount of the net tax liability of the  
9 taxpayer for the taxable year: *Provided, however*, That  
10 one-tenth of the entire amount of the eligible investment,  
11 upon which the credit is predicated pursuant to sections  
12 three and three-b, article thirteen-d of this chapter,  
13 taken as a deduction in determining its federal taxable  
14 income for the taxable year shall be an adjustment  
15 increasing federal taxable income under section six of  
16 this article: *Provided further*, That the taxpayer may at  
17 its option elect in lieu of claiming the credit allowable  
18 by this section to not increase its federal taxable income  
19 under section six of this article and thereby take as a  
20 full deduction under this article for the taxable year the  
21 amount of its eligible investment in research and  
22 development for the taxable year, which was taken as  
23 a deduction on its federal return for such taxable year.

#### CHAPTER 17. ROADS AND HIGHWAYS.

##### ARTICLE 1. DEFINITIONS.

##### §17-1-3. “Road”; “public road”; “highway.”

1 The words or terms “road,” “public road,” or “high-  
2 way” shall be deemed to include, but shall not be limited  
3 to, the right-of-way, roadbed and all necessary culverts,



4 sluices, drains, ditches, waterways, embankments,  
5 slopes, retaining walls, bridges, tunnels and viaducts  
6 necessary for the maintenance of travel, dispatch of  
7 freight and communication between individuals and  
8 communities; and such public road or highway shall be  
9 taken to include any road to which the public has access  
10 and which it is not denied the right to use, or any road  
11 or way leading from any other public road over the land  
12 of another person, and which shall have been established  
13 pursuant to law. Any road shall be conclusively pre-  
14 sumed to have been established when it has been used  
15 by the public for a period of ten years or more, and  
16 public moneys or labor have been expended thereon,  
17 whether there be any record of its conveyance, dedica-  
18 tion or appropriation to public use or not. In the absence  
19 of any other mark or record, the center of the traveled  
20 way shall be taken as the center of the road and the  
21 right-of-way shall be designated therefrom an equal  
22 distance on each side, but a road may be constructed on  
23 any part of the located right-of-way when it is deemed  
24 advisable so to do.

25 The Legislature notes that there are public highways  
26 that run over the surface of this land, over and through  
27 the navigable streams, rivers and waterways on this  
28 earth and above the surface of this earth in the form  
29 of highways in the sky, commonly known as airways.  
30 The Legislature finds that each of these types of public  
31 highways are essential to the development of this state  
32 and that the health and safety of each of the citizens of  
33 this state are affected daily by the availability of each  
34 of these three types of public highways, and that it is  
35 the best interests of the people of this state that each  
36 of these be recognized and included within the meaning  
37 of public highways. The Legislature further recognizes  
38 that airports are an important and integral part of the  
39 public highways existing above the surface of this state,  
40 and that airports are necessary to access such highways,  
41 and therefore airports, including runways, taxiways,  
42 parking ramps, access roads and air traffic control  
43 facilities located at airports, are hereby declared to be  
44 part of the public highway system of this state.

## CHAPTER 202

(H. B. 2604—By Mr. Speaker, Mr. Chambers)

[Passed March 30, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven, ten and seventeen-b, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eleven, article seven, chapter twenty-one-a of said code; to amend and reenact sections nineteen and twenty-one, article ten, chapter twenty-one-a of said code; and to further amend said article ten by adding thereto a new section, designated section twenty-two, all relating to unemployment compensation.

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

That sections seven, ten and seventeen-b, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section eleven, article seven, chapter twenty-one-a of said code be amended and reenacted; that sections nineteen and twenty-one, article ten of said chapter be amended and reenacted; and that said article ten be further amended by adding thereto a new section, designated section twenty-two, all to read as follows:

### CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

#### Article

- 5. Employer Coverage and Responsibility.
- 7. Claim Procedure.
- 10. General Provisions.

#### ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-7. Joint and separate accounts.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

§21A-5-17b. Comity in collection of past-due payments and overpayments.

#### §21A-5-7. Joint and separate accounts.

- 1 (1) The commissioner shall maintain a separate

2 account for each employer, and shall credit his account  
3 with all contributions paid by him prior to July first,  
4 one thousand nine hundred sixty-one. On and after July  
5 first, one thousand nine hundred sixty-one, the commis-  
6 sioner shall maintain a separate account for each  
7 employer, and shall credit said employer's account with  
8 all contributions of such employer in excess of seven  
9 tenths of one percent of taxable wages; and on and after  
10 July first, one thousand nine hundred seventy-one, the  
11 commissioner shall maintain a separate account for each  
12 employer, and shall credit said employer's account with  
13 all contributions of such employer in excess of four  
14 tenths of one percent of taxable wages: *Provided*, That  
15 any adjustment made in any employer's account after  
16 the computation date shall not be used in the computa-  
17 tion of the balance of an employer until the next  
18 following computation date: *Provided, however*, That  
19 nothing in this chapter shall be construed to grant an  
20 employer or individual in his service prior claims or  
21 rights to the amounts paid by him into the fund, either  
22 on his behalf or on behalf of such individuals. The  
23 account of any employer which had been inactive for a  
24 period of four consecutive calendar years shall be  
25 terminated for all purposes.

26 (2) Benefits paid to an eligible individual for regular  
27 and extended total or partial unemployment beginning  
28 after the effective date of this article shall be charged  
29 to the account of the last employer with whom he has  
30 been employed as much as thirty working days, whether  
31 or not such days are consecutive: *Provided*, That no  
32 employer's account shall be charged with benefits paid  
33 to any individual who has been separated from a  
34 noncovered employing unit in which he was employed  
35 as much as thirty days, whether or not such days are  
36 consecutive: *Provided, however*, That no employer's  
37 account shall be charged with more than fifty percent  
38 of the benefits paid to an eligible individual as extended  
39 benefits under the provisions of article six-a of this  
40 chapter: *Provided further*, That state and local govern-  
41 ment employers shall be charged with one hundred  
42 percent of the benefits paid to an eligible individual as  
43 extended benefits. Beginning on July one, one thousand

44 nine hundred eighty-four, benefits paid to an individual  
45 are to be charged to the accounts of his employers in  
46 the base period, the amount of such charges, chargeable  
47 to the account of each such employer, to be that portion  
48 of the total benefits paid such individual as the wages  
49 paid him by such employer in the base period are to the  
50 total wages paid him during his base period for insured  
51 work by all his employers in the base period. For the  
52 purposes of this section, no base period employer's  
53 account shall be charged for benefits paid under this  
54 chapter to a former employee, provided such base period  
55 employer furnishes separation information within  
56 fourteen days from the date the notice was mailed or  
57 delivered, which results in a disqualification under the  
58 provision set forth in subsection one, section three,  
59 article six, or subsection two, section three, article six  
60 of this chapter or would have resulted in a disqualifi-  
61 cation under such subsection except for a subsequent  
62 period of covered employment by another employing  
63 unit. Further, no contributory base period employer's  
64 experience rating account shall be charged for benefits  
65 paid under this chapter to an individual who has been  
66 continuously employed by that employer on a part-time  
67 basis, if the part-time employment continues while the  
68 individual is separated from other employment and is  
69 otherwise eligible for benefits. One half of extended  
70 benefits paid to an individual after July one, one  
71 thousand nine hundred eighty-four, and subsequent  
72 years are to be charged to the accounts of his employers,  
73 except state and local government employers, in the  
74 base period in the same manner provided for the  
75 charging of regular benefits. Effective the first day of  
76 January, one thousand nine hundred eighty-eight, the  
77 entire state share of extended benefits paid to an  
78 individual shall be charged to the accounts of his base  
79 period employers. The provisions of this section permit-  
80 ting the noncharging of contributory employers' ac-  
81 counts have no application to benefit charges imposed  
82 upon reimbursable employers.

83 (3) The commissioner shall, for each calendar year  
84 hereafter, classify employers in accordance with their  
85 actual experience in the payment of contributions on

86 their own behalf and with respect to benefits charged  
87 against their accounts, with a view of fixing such  
88 contribution rates as will reflect such experiences. For  
89 the purpose of fixing such contribution rates for each  
90 calendar year, the books of the department shall be  
91 closed on July thirty-one of the preceding calendar year,  
92 and any contributions thereafter paid, as well as  
93 benefits thereafter paid with respect to compensable  
94 weeks ending on or before June thirty of the preceding  
95 calendar year, shall not be taken into account until the  
96 next annual date for fixing contribution rates: *Provided,*  
97 That if an employer has failed to furnish to the  
98 commissioner on or before July thirty-one of such  
99 preceding calendar year the wage information for all  
100 past periods necessary for the computation of the  
101 contribution rate, such employer's rate shall be, if it is  
102 immediately prior to such July thirty-one, less than  
103 three and three-tenths percent, increased to three and  
104 three-tenths percent: *Provided, however,* That any  
105 payment made or any information necessary for the  
106 computation of a reduced rate furnished on or before the  
107 termination of an extension of time for such payment or  
108 reporting of such information granted pursuant to a  
109 regulation of the commissioner authorizing such exten-  
110 sion, shall be taken into account for the purposes of  
111 fixing contribution rates: *Provided further,* That when  
112 the time for filing any report or making any payment  
113 required hereunder falls on Saturday, Sunday, or a legal  
114 holiday, the due date shall be deemed to be the next  
115 succeeding business day: *And provided further,* That  
116 whenever, through mistake or inadvertence, erroneous  
117 credits or charges are found to have been made to or  
118 against the reserved account of any employer, the rate  
119 shall be adjusted as of January one of the calendar year  
120 in which such mistake or inadvertence is discovered, but  
121 payments, made under any rate assigned prior to  
122 January one of such year, shall not be deemed to be  
123 erroneously collected.

124 (4) The commissioner may prescribe regulations for  
125 the establishment, maintenance and dissolution of joint  
126 accounts by two or more employers, and shall do so  
127 in accordance with such regulations and upon application

128 by two or more employers to establish such an account,  
129 or to merge their several individual accounts in a joint  
130 account, maintain such joint account as if it constituted  
131 a single employer's account.

132 (5) State and local government employers are hereby  
133 authorized to enter into joint accounts and to maintain  
134 such joint account or accounts as if it or they constituted  
135 a single employer's account or accounts.

136 (6) Effective on and after July one, one thousand nine  
137 hundred eighty-one, if an employer has failed to furnish  
138 to the commissioner on or before August thirty-one of  
139 one thousand nine hundred eighty, and each year  
140 thereafter, with the exception of one thousand nine  
141 hundred eighty-one, which due date shall be September  
142 thirty, one thousand nine hundred eighty-one, the wage  
143 information for all past periods necessary for the  
144 computation of the contribution rate, such employer's  
145 rate shall be, if it is immediately prior to July one, one  
146 thousand nine hundred eighty-one, less than seven and  
147 five-tenths percent, increased to seven and five-tenths  
148 percent.

**§21A-5-10. Experience ratings; decreased rates; adjust-  
ment of accounts and rates; debit balance  
account rates.**

1 On and after July one, one thousand nine hundred  
2 eighty-one, an employer's payment shall remain two and  
3 seven-tenths percent, until:

4 (1) There have elapsed thirty-six consecutive months  
5 immediately preceding the computation date throughout  
6 which an employer's account was chargeable with  
7 benefits.

8 (2) His payments credited to his account for all past  
9 years exceed the benefits charged to his account by an  
10 amount equal to at least the percent of his average  
11 annual payroll as shown in Column B of Table II. His  
12 rate shall be the amount appearing in Column C of  
13 Table II on line with the percentage in Column B.

14 When the total assets of the fund as of January one  
15 of a calendar year equal or exceed one hundred percent

16 but are less than one hundred twenty-five percent of the  
 17 average benefit payments from the trust fund for the  
 18 three preceding calendar years, an employer's rate shall  
 19 be the amount appearing in Column D of Table II on  
 20 line with the percentage in Column B.

21 When the total assets of the fund as of January one  
 22 of a calendar year equal or exceed one hundred twenty-  
 23 five percent but are less than one hundred fifty percent,  
 24 an employer's rate shall be the amount appearing in  
 25 Column E of Table II on line with the percentage in  
 26 Column B.

27 When the total assets of the fund as of January one  
 28 of a calendar year equal or exceed one hundred fifty  
 29 percent, an employer's rate shall be the amount  
 30 appearing in Column F of Table II on line with the  
 31 percentage in Column B.

32

TABLE II

33	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F
34		Percentage of				
35		Average				
36		Annual Payroll				
37		By which				
38	Rate	Credits Exceed	Employer's			
39	Class	Charges	Rate			
40	(1)	0.0 to 6.0	4.5	3.5	2.5	1.5
41	(2)	6.0	4.1	3.1	2.1	1.1
42	(3)	7.0	3.9	2.9	1.9	0.9
43	(4)	8.0	3.7	2.7	1.7	0.7
44	(5)	9.0	3.5	2.5	1.5	0.5
45	(6)	10.0	3.3	2.3	1.3	0.3
46	(7)	10.5	3.1	2.1	1.1	0.1
47	(8)	11.0	2.9	1.9	0.9	0.0
48	(9)	11.5	2.7	1.7	0.7	0.0
49	(10)	12.0	2.5	1.5	0.5	0.0
50	(11)	12.5	2.3	1.3	0.3	0.0
51	(12)	13.0	2.1	1.1	0.1	0.0
52	(13)	14.0	1.9	0.9	0.0	0.0
53	(14)	16.0	1.7	0.7	0.0	0.0
54	(15)	18.0 and over	1.5	0.5	0.0	0.0

55 All employer accounts in which charges for all past  
 56 years exceed credits for such past years shall be

57 adjusted effective June thirty, one thousand nine  
58 hundred sixty-seven, so that as of said date, for the  
59 purpose of determining such employer's rate of contri-  
60 bution, the credits for all past years shall be deemed to  
61 equal the charges to such accounts.

62 Effective on and after the computation date of June  
63 thirty, one thousand nine hundred eighty-four, the  
64 noncredited contribution identified in section seven of  
65 this article shall not be added to the employer's debit  
66 balance to determine the employer contribution rate.

67 Effective on and after the computation date of June  
68 thirty, one thousand nine hundred sixty-seven, all  
69 employers with a debit balance account in which the  
70 benefits charged to their account for all past years  
71 exceed the payments credited to their account for such  
72 past years by an amount up to and including ten percent  
73 of their average annual payroll, shall make payments to  
74 the unemployment compensation fund at the rate of  
75 three percent of wages paid by them with respect to  
76 employment; except that effective on and after July one,  
77 one thousand nine hundred eighty-one, all employers  
78 with a debit balance account in which the benefits  
79 charged to their account for all past years exceed the  
80 payments credited to their account for such past years  
81 by an amount up to and including five percent of their  
82 average annual payroll, shall make payments to the  
83 unemployment compensation fund at the rate of five and  
84 five-tenths percent of wages paid by them with respect  
85 to employment.

86 Effective on or after July one, one thousand nine  
87 hundred eighty-one, all employers with a debit balance  
88 account in which the benefits charged to their account  
89 for all past years exceed the payments credited to their  
90 account for such past years by an amount in excess of  
91 five percent but less than ten percent of their average  
92 annual payroll, shall make payments to the unemploy-  
93 ment compensation fund at the rate of six and five-  
94 tenths percent of wages paid by them with respect to  
95 employment.

96 Effective on and after the computation date of June



97 thirty, one thousand nine hundred sixty-seven, all  
98 employers with a debit balance account in which the  
99 benefits charged to their account for all past years  
100 exceed the payments credited to their account for such  
101 past years by an amount of ten percent or above of their  
102 average annual payroll, shall make payments to the  
103 unemployment compensation fund at the rate of three  
104 and three-tenths percent of wages paid by them with  
105 respect to employment; except that effective on and  
106 after July one, one thousand nine hundred eighty-one,  
107 such payments to the unemployment compensation fund  
108 shall be at the rate of seven and five-tenths percent of  
109 wages paid by them with respect to employment or at  
110 such other rate authorized by this article.

111 "Debit balance account" for the purpose of this section  
112 means an account in which the benefits charged for all  
113 past years exceed the payments credited for such past  
114 years.

115 "Credit balance account" for the purposes of this  
116 section means an account in which the payments  
117 credited for all past years exceed the benefits charged  
118 for such past years.

119 Once a debit balance account rate is established for  
120 an employer's account for a year, it shall apply for the  
121 entire year.

122 "Due date" means the last day of the month next  
123 following a calendar quarter. In determining the  
124 amount in the fund on any due date, contributions  
125 received, but not benefits paid, for such month next  
126 following the end of a calendar quarter shall be  
127 included.

128 (a) Notwithstanding any other provision of this  
129 section, every employer subject to the provisions of this  
130 chapter shall, in addition to any other tax provided for  
131 in this section, pay contributions at the rate of one  
132 percent surtax on wages paid by him with respect to  
133 employment, beginning January first, one thousand nine  
134 hundred eighty-one, until such time that the commis-  
135 sioner determines that the fund assets equal or exceed  
136 the average benefits payments from the fund for the

137 preceding three calendar years at which time such  
138 surtax shall be discontinued, and the commissioner shall  
139 so notify the employers subject to the provisions of this  
140 chapter.

141 (b) Notwithstanding any other provision of this  
142 section, every debit balance employer subject to the  
143 provisions of this chapter, and any foreign corporation  
144 or business entity engaged in the construction trades  
145 which has not been an employer in the state of West  
146 Virginia for thirty-six consecutive months ending on the  
147 computation date, shall, in addition to any other tax  
148 provided for in this section, pay contributions at the rate  
149 of one percent surtax on wages paid by him with respect  
150 to employment for a period of eight years, beginning  
151 January first, one thousand nine hundred eighty-six.

152 (c) Effective June thirty, one thousand nine hundred  
153 eighty-five, and each computation date thereafter, the  
154 reserve balance of a debit balance employer shall be  
155 reduced to fifteen percent if such balance exceeds fifteen  
156 percent. The amount of noncredited tax shall be reduced  
157 by an amount equal to the eliminated charges. If the  
158 eliminated charges exceed the amount of noncredited  
159 tax, the noncredited tax shall be reduced to zero.

**§21A-5-17b. Comity in collection of past-due payments  
and overpayments.**

1 The courts of this state shall recognize and enforce  
2 liabilities for unemployment contributions imposed by  
3 other states which extend a like comity to this state. The  
4 commissioner in the name of this state is hereby  
5 empowered to sue in the courts of any other jurisdiction  
6 which extends such comity, to collect unemployment  
7 contributions and interest due this state. The officials of  
8 other states which by statute or otherwise extend a like  
9 comity to this state may sue in the courts of this state,  
10 to collect for such contributions and interest and  
11 penalties if any, due such state; in any such case the  
12 commissioner of employment security of this state may  
13 through his legal assistant or assistants institute and  
14 conduct such suit for such other state.

15 Notwithstanding any other provisions of this chapter,

16 the commissioner may recover an overpayment of  
17 benefits paid to any individual under this state or  
18 another state law or under an unemployment benefit  
19 program of the United States.

#### ARTICLE 7. CLAIM PROCEDURE.

##### §21A-7-11. Benefits pending appeal.

1 Benefits found payable by decision of a deputy, appeal  
2 tribunal, the board or court shall be immediately paid  
3 in accordance therewith up to the week in which a  
4 subsequent appellate body renders a decision, by order,  
5 finding that benefits were not or are not payable. If, at  
6 any appeal stage, benefits are found to be payable which  
7 were found before such appeal stage to be not payable,  
8 the commissioner shall immediately reinstate the  
9 payment benefits. If the final decision in any case  
10 determines that a claimant was not lawfully entitled to  
11 benefits paid to him pursuant to a prior decision, such  
12 amount of benefits so paid shall be deemed overpaid.  
13 The commissioner shall recover such amount by civil  
14 action or in any manner provided in this code for the  
15 collection of past-due payment and shall withhold, in  
16 whole or in part, as determined by the commissioner,  
17 any future benefits payable to the individual and credit  
18 such amount against the overpayment until it is repaid  
19 in full. If the final decision in any case determines that  
20 the claimant was not lawfully entitled to the benefits  
21 paid to him pursuant to a prior order, any benefits so  
22 paid pursuant to such prior order shall not be charge-  
23 able to the employer's account.

24 (a) Whenever the commissioner finds that a claimant  
25 has received back pay at his customary wage rate from  
26 his employer such employee shall be liable to repay the  
27 benefits, if any, paid to such individual for the time he  
28 was unemployed. In any case in which, under this  
29 section, an employee is liable to repay benefits to the  
30 commissioner, such sum shall be collectible by civil  
31 action in the name of the commissioner.

32 (b) Whenever an employer subject to this chapter is  
33 required to make a payment of back pay to an individual  
34 who has received unemployment compensation benefits

35 during the same period covered by the back pay award,  
36 the employer shall withhold an amount equal to the  
37 unemployment compensation benefits and shall repay  
38 the amount withheld to the unemployment compensation  
39 trust fund. If an employer fails to comply with this  
40 section, the commissioner shall have the right to recover  
41 from the employer the amount of unemployment  
42 compensation benefits which should have been withheld  
43 by a civil action.

#### ARTICLE 10. GENERAL PROVISIONS.

§21A-10-19. Disclosure of information to child support agencies.

§21A-10-21. Recovery of benefits paid through error; limitation.

§21A-10-22. Disclosure of information to department of housing and urban development.

#### §21A-10-19. Disclosure of information to child support agencies.

1 (1) The department of employment security shall  
2 disclose, upon request, to officers or employees of any  
3 state or local child support enforcement agency, to  
4 employees of the secretary of health and human services,  
5 any wage information with respect to an identified  
6 individual which is contained in its records.

7 The term "state or local child support enforcement  
8 agency" means any agency of a state or political  
9 subdivision thereof operating pursuant to a plan  
10 described in sections 453 and 454 of the Social Security  
11 Act, which has been approved by the secretary of health  
12 and human services under Part D, Title IV of the Social  
13 Security Act.

14 (2) The requesting agency shall agree that such  
15 information is to be used only for the purpose of  
16 establishing and collecting child support obligations  
17 from, and locating, individuals owing such obligations  
18 which are being enforced pursuant to a plan described  
19 in sections 453 and 454 of the Social Security Act which  
20 has been approved by the secretary of health and human  
21 services under Part D, Title IV of the Social Security  
22 Act.

23 (3) The information shall not be released unless the

24 requesting agency agrees to reimburse the costs  
25 involved for furnishing such information.

26 (4) In addition to the requirements of this section, all  
27 other requirements with respect to confidentiality of  
28 information obtained in the administration of this  
29 chapter and the sanctions imposed on improper disclo-  
30 sure shall apply to the use of such information by  
31 officers and employees of child support agencies.

**§21A-10-21. Recovery of benefits paid through error;  
limitation.**

1 A person who, by reason of error, irrespective of the  
2 nature of said error, has received a sum as a benefit  
3 under this chapter, shall either have such sum deducted  
4 from a future benefit payable to him or shall repay to  
5 the commissioner the amount which he has received.  
6 Collection shall be made in the same manner as  
7 collection of past due payment: *Provided*, That such  
8 collection or deduction of benefits shall be barred after  
9 the expiration of two years.

**§21A-10-22. Disclosure of information to department of  
housing and urban development.**

1 (1) The department of employment security shall  
2 disclose, upon request, to officers and employees of the  
3 department of housing and urban development and to  
4 representatives of public housing agencies, any wage  
5 information with respect to an identified individual  
6 which is contained in its records. The term "public  
7 housing agencies" means any agency described in  
8 section 3(b)(6) of the United States Housing Act of 1937.

9 (2) The requesting agency shall agree that such  
10 information is to be used only for the purpose of  
11 determining an individual's eligibility for benefits, or  
12 the amount of benefits under any housing assistance  
13 program of the department of housing and urban  
14 development.

15 (3) The information shall not be released unless the  
16 requesting agency agrees to reimburse the costs  
17 involved for furnishing such information.

18 (4) In addition to the requirements of this section, all  
19 other requirements with respect to confidentiality of  
20 information obtained in the administration of this  
21 chapter and the sanctions imposed on improper disclosure shall apply to the use of such information by  
22 officers and employees of any public housing agency or  
23 the department of housing and urban development.  
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## CHAPTER 203

(S. B. 40—By Senator Tucker, Mr. President)

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[Passed March 6, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one hundred six, article three, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of sum certain.

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

That section one hundred six, article three, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 3. COMMERCIAL PAPER.

#### PART 1. SHORT TITLE, FORM AND INTERPRETATION.

#### §46-3-106. Sum certain.

- 1 (1) The sum payable is a sum certain even though it  
2 is to be paid:
  - 3 (a) With stated interest or by stated installments; or
  - 4 (b) With stated different rates of interest before and  
5 after default or a specified date; or
  - 6 (c) With a stated discount or addition if paid before  
7 or after the date fixed for payment; or
  - 8 (d) With exchange or less exchange, whether at a  
9 fixed rate or at the current rate; or
  - 10 (e) With costs of collection or an attorney's fee or both  
12 upon default; or

- 12 (f) With a variable interest rate; or  
13 (g) With the current interest rate; or  
14 (h) With a bank interest rate: *Provided*, That the name  
15 and location of the bank are stated on the instrument.  
16 (2) Nothing in this section shall validate any term  
17 which is otherwise illegal.

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## CHAPTER 204

(Com. Sub. for S. B. 41—By Senator Tucker, Mr. President)

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[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four hundred one and four hundred seven, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article one, chapter fifty-nine of said code, all relating to uniform commercial code; secured transactions; redefining the place of filing to perfect security interests; raising filing fees; establishment of an account to maintain the uniform commercial code program; and creation of rule and fee setting authority of the secretary of state.

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

That sections four hundred one and four hundred seven, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

### Chapter

46. Uniform Commercial Code.

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

## CHAPTER 46. UNIFORM COMMERCIAL CODE.

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS  
AND CHATTEL PAPERS.**

§46-9-401. Place of filing; erroneous filing; removal of collateral.

§46-9-407. Information from filing officer; central indexing system for recording security interest in farm products; contents.

**§46-9-401. Place of filing; erroneous filing; removal of collateral.**

1 (1) The proper place to file in order to perfect a  
2 security interest is as follows:

3 (a) When the collateral is consumer goods, then in the  
4 office of the secretary of state and in the office of the  
5 clerk of the county commission of the debtor's residence  
6 or if the debtor is not a resident of this state then in  
7 the office of the clerk of the county commission where  
8 the goods are kept;

9 (b) When the collateral is timber to be cut or is  
10 minerals or the like (including oil and gas) or accounts  
11 subject to the provisions of subsection five, section one  
12 hundred three of this article, or when the financing  
13 statement is filed as a fixture filing subject to the  
14 provisions of section three hundred thirteen of this  
15 article, and the collateral is goods which are or are to  
16 become fixtures, then in the office where a mortgage on  
17 the real estate would be filed or recorded;

18 (c) In all other cases, in the office of the secretary of  
19 state.

20 (2) A filing which is made in good faith in an  
21 improper place or not in all of the places required by  
22 this section is nevertheless effective with regard to any  
23 collateral as to which the filing complied with the  
24 requirements of this article and is also effective with  
25 regard to collateral covered by the financing statement  
26 against any person who has knowledge of the contents  
27 of such financing statement.

28 (3) A filing which is made in the proper county  
29 continues effective after a change to another county of  
30 the debtor's residence or place of business or the location  
31 of the collateral, whichever controlled the original filing.



32 A change in the use of the collateral does not impair the  
33 effectiveness of the original filing.

34 (4) The rules stated in section one hundred three of  
35 this article determine whether filing is necessary in this  
36 state.

37 (5) Notwithstanding the preceding subsections, and  
38 subject to the provisions of subsection three, section  
39 three hundred two of this article, the proper place to file  
40 in order to perfect a security interest in collateral,  
41 including fixtures, of a transmitting utility is the office  
42 of the secretary of state. This filing constitutes a fixture  
43 filing as to the collateral described therein which is or  
44 is to become fixtures.

45 (6) For the purposes of this section, the residence of  
46 an organization is its place of business if it has one or  
47 its chief executive office if it has more than one place  
48 of business.

**§46-9-407. Information from filing officer; central indexing system for recording security interest in farm products; contents.**

1 (1) If the person filing any financing statement,  
2 termination statement, statement of assignment, or  
3 statement of release, furnishes the filing officer a copy  
4 thereof, the filing officer shall upon request note upon  
5 the copy the file number and date and hour of the filing  
6 of the original and deliver or send the copy to such  
7 person.

8 (2) Upon request of any person, the secretary of state  
9 shall issue his certificate showing whether there is on  
10 file in his office on the date and hour stated therein, any  
11 presently effective financing statement naming a  
12 particular debtor and any statement of assignment  
13 thereof and if there is, giving the date and hour of filing  
14 of each such statement and the names and addresses of  
15 each secured party therein. The uniform fee for such a  
16 certificate shall be three dollars if the request for the  
17 certificate is in the standard form prescribed by the  
18 secretary of state and otherwise shall be five dollars plus  
19 fifty cents for each financing statement and for each

20 statement of assignment reported therein. Upon request  
21 the filing officer shall furnish a copy of any filed  
22 financing statement or statement of assignment for a  
23 uniform fee of fifty cents per page.

24 (3) The secretary of state shall develop and implement  
25 a central indexing system containing the information  
26 filed with his office pursuant to subsection four, section  
27 three hundred seven of this article. Under this system,  
28 the secretary shall record the date and time of filing and  
29 compile the information into a master list organized  
30 according to farm products. The list shall be organized  
31 within each farm product category in alphabetical order  
32 according to the last name of the borrower, or in the  
33 case of borrowers doing business other than as individ-  
34 uals, the first word in the name of such borrower in  
35 numerical order according to the social security or  
36 taxpayer identification number of the borrower, geogra-  
37 phically by county and by crop year. The master list  
38 shall also contain the name and address of the secured  
39 party, the name and address of the borrower, a  
40 description of the farm products, including amount  
41 where applicable, subject to the security interest, and a  
42 reasonable description of the real estate, including the  
43 county where or upon which the farm products are  
44 located.

45 (4) The secretary of state shall maintain a list of all  
46 buyers of farm products, commission merchants and  
47 selling agents who register with the secretary of state  
48 indicating an interest in receiving the lists described in  
49 subsection five of this section.

50 (5) The secretary of state shall distribute on a regular  
51 basis as determined by the secretary of state to each  
52 buyer, commission merchant and selling agent regis-  
53 tered under subsection four, a copy in written or printed  
54 form of those portions of the master list which the buyer,  
55 commission merchant or selling agent has indicated an  
56 interest in receiving.

57 (6) Upon the request of any person, the secretary of  
58 state shall provide within twenty-four hours an oral  
59 confirmation of the filing of the form described in

60 subsection four, section three hundred seven of this  
61 article, followed by a written confirmation.

62 (7) All fees and moneys collected by the secretary of  
63 state pursuant to the provisions of this article shall be  
64 deposited by the secretary of state in a separate fund  
65 in the state treasury and shall be expended solely for  
66 the purposes of this article, unless otherwise provided  
67 by appropriation or other action of the Legislature.

68 (8) The secretary of state shall, pursuant to the  
69 provisions of article three, chapter twenty-nine-a of this  
70 code, promulgate rules and set fees, not otherwise  
71 provided for by general law, to carry out the duties  
72 associated with this article.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;  
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

**ARTICLE 1. FEES AND ALLOWANCES.**

**§59-1-2. Fees to be charged by secretary of state.**

1	Except as may be otherwise provided in article one,	
2	chapter thirty-one of this code, the secretary of state	
3	shall charge for services rendered in his office the	
4	following fees to be paid by the person to whom the	
5	service is rendered at the time it is done:	
6	For each certificate of incorporation or copy	
7	thereof, including restatements of any such	
8	certificates issued on new agreements, and/	
9	or consolidations or all certificates of merger	
10	or consolidation or certificates authorizing a	
11	foreign corporation to do business within this	
12	state .....	\$10.00
13	For each certified copy of certificate of incorpo-	
14	ration, not to exceed ten pages.....	10.00
15	If such copy contains in excess of ten pages, for	
16	each additional page .....	.20
17	For filing and recording a trademark.....	5.00
18	For each certificate of change of name, of	
19	increase or decrease of authorized capital	
20	stock, of change of principal office, or of	
21	amendment to certificate of incorporation.....	5.00

22	For recording a power of attorney and certificate thereof .....	3.00
23		
24	For any other certificate, whether required by law or made at the request of any person .....	5.00
25		
26	The foregoing fees shall include the tax on the great seal or the less seal impressed on any such document, as well as the filing, recording and indexing of the same.	
27		
28		
29		
30	For endorsing and filing reports of corporations, and all other papers, which shall include the indexing of the same, for each report or paper filed .....	1.00
31		
32		
33		
34	For any search, not less than .....	1.00
35	For searches of more than one hour, for each hour or fraction thereof consumed in making such search .....	5.00
36		
37		
38	The cost of the search shall be in addition to the cost of any certificate issued pursuant thereto or based thereon.	
39		
40		
41	For entering statement of satisfaction of conditional sale contract .....	1.00
42		
43	For filing each financing, continuation or termination statement or other statement or writing permitted to be filed under chapter forty-six of the code .....	3.00
44		
45		
46		
47	For recording any paper for which no specific fee is prescribed .....	1.00
48		
49	Or at the rate, for each one hundred words recorded, of .....	.20
50		
51	For issuing commission to a notary public, or to a commissioner of deeds, which shall include the tax on the state seal thereon and other charges .....	5.00
52		
53		
54		
55	For a testimonial .....	1.50
56	For a copy of any paper, if one sheet .....	1.00

57	For each sheet of copy after the first.....	.75
58	For issuing a commission to a commissioner in	
59	any other state .....	5.00
60	For any other work or service not herein	
61	enumerated, such fee as may be elsewhere	
62	prescribed.	

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## CHAPTER 205

(Com. Sub. for S. B. 509—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter seventeen-e, establishing the Uniform Commercial Driver's License Act; definitions; setting forth limitations on the number of commercial driver's licenses; providing for notification by the driver; setting forth employer responsibilities; requiring a commercial driver's license; establishing exemptions to the commercial driver's license requirements; setting commercial driver license qualification standards; providing for third party testing; indemnification of driver examiners; waiver of skills test; limitations on issuance of license; establishing a commercial driver's instruction permit; setting forth the application requirements and information needed for a commercial driver's license; providing for classifications, endorsements and restrictions; establishing an applicant record check; providing for the notification of license issuance; establishing expiration of license and license renewal procedures; establishing disqualification offenses and cancellation of a commercial motor vehicle license; prohibiting a commercial driver from operating with any alcohol in their system; establishing implied consent requirements for commercial motor vehicle drivers; providing for notification of traffic convictions; requiring driving record information to be furnished;

providing for rule-making authority; providing for authority to enter agreements; providing for reciprocity; setting forth a severability and savings clause; establishing effective dates; providing for funding for the commercial driver's license, providing for fees and establishing a special revolving fund; providing enforcement; and criminal penalties.

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

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter seventeen-e, to read as follows:

## CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

### ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

- §17E-1-1. Short title.
- §17E-1-2. Statement of intent and purpose.
- §17E-1-3. Definitions.
- §17E-1-4. Limitation on number of driver's licenses.
- §17E-1-5. Notification required by driver.
- §17E-1-6. Employer responsibilities.
- §17E-1-7. Commercial driver's license required.
- §17E-1-8. Exemptions to the commercial driver's license requirements.
- §17E-1-9. Commercial driver license qualification standards.
- §17E-1-10. Application for commercial driver's license.
- §17E-1-11. Commercial driver's license.
- §17E-1-12. Classifications, endorsements and restrictions.
- §17E-1-13. Disqualification and cancellation.
- §17E-1-14. Commercial drivers prohibited from operating with any alcohol in system.
- §17E-1-15. Implied consent requirements for commercial motor vehicles drivers.
- §17E-1-16. Notification of traffic convictions.
- §17E-1-17. Driving record information to be furnished.
- §17E-1-18. Rule-making authority.
- §17E-1-19. Authority to enter agreements.
- §17E-1-20. Reciprocity.
- §17E-1-21. Severability and savings clause.
- §17E-1-22. Effective dates.
- §17E-1-23. Funding for the commercial driver's license fees.
- §17E-1-24. Enforcement.
- §17E-1-25. Penalties.

#### §17E-1-1. Short title.

- 1 This article may be cited as the "Uniform Commercial
- 2 Driver's License Act."

**§17E-1-2. Statement of intent and purpose.**

1 The purpose of this article is to implement the federal  
2 commercial motor vehicle safety act of 1986 (Title XII  
3 of Public Law 99570) and reduce or prevent commercial  
4 motor vehicle accidents, fatalities and injuries by:

5 (a) Permitting commercial drivers to hold only one  
6 license;

7 (b) Disqualifying commercial drivers who have  
8 committed certain serious traffic offenses; and

9 (c) Strengthening licensing and testing standards.

10 This article is a remedial law and shall be liberally  
11 construed to promote the public health, safety and  
12 welfare. Where this article is silent, the general driver  
13 licensing provisions apply.

**§17E-1-3. Definitions.**

1 Notwithstanding any other provision of this code, the  
2 following definitions apply to this article:

3 "Alcohol" means:

4 (a) Any substance containing any form of alcohol,  
5 including, but not limited to, ethanol, methanol,  
6 propanol and isopropanol;

7 (b) Beer, ale, port or stout and other similar fer-  
8 mented beverages (including sake or similar pro-  
9 ducts) of any name or description containing one half of  
10 one percent or more of alcohol by volume, brewed or  
11 produced from malt, wholly or in part, or from any  
12 substitute therefor;

13 (c) Distilled spirits or that substance known as ethyl  
14 alcohol, ethanol, or spirits of wine in any form (including  
15 all dilutions and mixtures thereof from whatever source  
16 or by whatever process produced); or

17 (d) Wine of not less than one half of one percent of  
18 alcohol by volume.

19 "Alcohol concentration" means:

20 (a) The number of grams of alcohol per one hundred  
21 milliliters of blood; or

22 (b) The number of grams of alcohol per two hundred  
23 ten liters of breath; or

24 (c) The number of grams of alcohol per sixty-seven  
25 milliliters of urine.

26 "Commercial driver license" means a license issued in  
27 accordance with the requirements of this article to an  
28 individual which authorizes the individual to drive a  
29 class of commercial motor vehicle.

30 "Commercial driver license information system" is the  
31 information system established pursuant to the federal  
32 commercial motor vehicle safety act to serve as a  
33 clearinghouse for locating information related to the  
34 licensing and identification of commercial motor vehicle  
35 drivers.

36 "Commercial driver instruction permit" means a  
37 permit issued pursuant to subsection (e), section nine of  
38 this article.

39 "Commercial motor vehicle" means a motor vehicle  
40 designed or used to transport passengers or property:

41 (a) If the vehicle has a gross vehicle weight rating as  
42 determined by federal regulation;

43 (b) If the vehicle is designed to transport sixteen or  
44 more passengers, including the driver; or

45 (c) If the vehicle is transporting hazardous materials  
46 and is required to be placarded in accordance with 49  
47 C.F.R. part 172, sub-part F.

48 "Commissioner" means the commissioner of motor  
49 vehicles of this state.

50 "Controlled substance" means any substance so  
51 classified under the provisions of chapter sixty-a of this  
52 code (uniform controlled substances act) and includes  
53 all substances listed on Schedules I through V, article  
54 two of said chapter sixty-a, as they may be revised from  
55 time to time.



56 "Conviction" means the final judgment in a judicial or  
57 administrative proceeding or a verdict or finding of  
58 guilty, a plea of guilty, a plea of nolo contendere, an  
59 implied admission of guilt or a forfeiture of bond or  
60 collateral upon a charge of a disqualifying offense, as  
61 a result of proceedings upon any violation of the  
62 requirement of this article.

63 "Department" means the department of motor  
64 vehicles.

65 "Disqualification" means a prohibition against driving  
66 a commercial motor vehicle.

67 "Drive" means to drive, operate or be in physical  
68 control of a motor vehicle in any place open to the  
69 general public for purposes of vehicular traffic. For  
70 purposes of sections twelve, thirteen and fourteen of this  
71 article "drive" includes operation or physical control of  
72 a motor vehicle anywhere in this state.

73 "Driver" means any person who drives, operates or is  
74 in physical control of a commercial motor vehicle, in any  
75 place open to the general public for purposes of  
76 vehicular traffic, or who is required to hold a commer-  
77 cial driver license.

78 "Driver license" means a license issued by a state to  
79 an individual which authorizes the individual to drive  
80 a motor vehicle of a specific class.

81 "Employee" means a person who is employed by an  
82 employer to drive a commercial motor vehicle, including  
83 independent contractors. An employee who is employed  
84 by himself or herself as a commercial motor vehicle  
85 driver must comply with both the requirements of this  
86 article pertaining to employees and employers.

87 "Employer" means any person, including the United  
88 States, a state, or a political subdivision of a state, who  
89 owns or leases a commercial motor vehicle, or assigns  
90 a person to drive a commercial motor vehicle.

91 "Farm vehicle" includes a motor vehicle or combina-  
92 tion vehicle registered to the farm owner or entity  
93 operating the farm and used exclusively in the transpor-

94 tation of agricultural or horticultural products, lives-  
95 tock, poultry and dairy products from the farm or  
96 orchard on which they are raised or produced to  
97 markets, processing plants, packing houses, canneries,  
98 railway shipping points and cold storage plants and in  
99 the transportation of agricultural or horticultural  
100 supplies and machinery to such farms or orchards to be  
101 used thereon.

102 "Farmer" includes, but is not limited to, owner,  
103 tenant, lessee, occupant or person in control of the  
104 premises used substantially for agricultural or horticultural  
105 pursuits, who is at least eighteen years of age with  
106 two years licensed driving experience.

107 "Farmer vehicle driver" means the person employed  
108 and designated by the "farmer" to drive a "farm vehicle"  
109 as long as driving is not his sole or principal function  
110 on the farm, who is at least eighteen years of age with  
111 two years licensed driving experience.

112 "Gross vehicle weight rating" means the value  
113 specified by the manufacturer as the maximum loaded  
114 weight of a single or a combination (articulated) vehicle,  
115 or registered gross weight, whichever is greater. The  
116 gross vehicle weight rating of a combination (articu-  
117 lated) vehicle (commonly referred to as the "gross  
118 combination weight rating") is the gross vehicle weight  
119 rating of the power unit plus the gross vehicle weight  
120 rating of the towed unit or units.

121 "Hazardous materials" has the meaning as that found  
122 in Section 103 of the Hazardous Materials Transporta-  
123 tion Act (49 App. U.S.C. 1801 et seq.).

124 "Motor vehicle" means every vehicle which is self-  
125 propelled, and every vehicle which is propelled by  
126 electric power obtained from overhead trolley wires but  
127 not operated upon rails.

128 "Out-of-service order" means a temporary prohibition  
129 against driving a commercial motor vehicle.

130 "Serious traffic violation" means:

131 (a) Operating a motor vehicle under the influence of

132 alcohol or a controlled substance in violation of the  
133 provisions of section two, article five, chapter seventeen-  
134 c of this code;

135 (b) Failure to stop and render aid and provide  
136 required information after involvement in a motor  
137 vehicle accident resulting in death, injury or property  
138 damage, as provided in section five, article three,  
139 chapter seventeen-b and sections one through five,  
140 inclusive, article four, chapter seventeen-c of this code;

141 (c) A felony in the commission of which a motor  
142 vehicle is used; as stated in subsection (2), section five,  
143 article three, chapter seventeen-b of this code;

144 (d) Excessive speeding defined as fifteen miles per  
145 hour in excess of all posted limits;

146 (e) Reckless driving as defined in section three, article  
147 five, chapter seventeen-c of this code including erratic  
148 lane changes and following the vehicle ahead too closely;

149 (f) A violation of state or local law relating to motor  
150 vehicle traffic control (other than a parking violation)  
151 arising in connection with a fatal traffic accident.  
152 Vehicle weight and vehicle defects are excluded as  
153 serious traffic violations;

154 (g) Violation of an out-of-service order; or

155 (h) Any other serious violations as may be determined  
156 by the U. S. Secretary of Transportation.

157 "State" means a state of the United States and the  
158 District of Columbia.

159 "At fault traffic accident" means for the purposes of  
160 waiving the road test, a determination, by the official  
161 filing the accident report, of fault as evidenced by an  
162 indication of contributing circumstances in the accident  
163 report.

**§17E-1-4. Limitation on number of driver's licenses.**

1 No person who drives a commercial motor vehicle  
2 may have more than one driver license at one time  
3 except during the ten-day period beginning on the date  
4 the person is issued a driver's license.

3 except during the ten-day period beginning on the date  
4 the person is issued a driver's license.

**§17E-1-5. Notification required by driver.**

1 (a) *Notification of convictions.*

2 (1) *To state.*—Any driver of a commercial motor  
3 vehicle holding a driver's license issued by this state,  
4 who is convicted of violating any state law or local  
5 ordinance relating to motor vehicle traffic control, in  
6 any other state or federal, provincial, territorial or  
7 municipal laws of Canada, other than parking viola-  
8 tions, shall notify the West Virginia department of  
9 motor vehicles in the manner specified by the commis-  
10 sioner within thirty days of the date of conviction.

11 (2) *To employers.*—Any driver of a commercial motor  
12 vehicle holding a driver's license issued by this state,  
13 who is convicted of violating any state law or local  
14 ordinance relating to motor vehicle traffic control in this  
15 state or any other state or federal provincial, territorial  
16 or municipal laws of Canada, other than parking  
17 violations, must notify his or her employer in writing of  
18 the conviction within thirty days of the date of  
19 conviction.

20 (b) *Notification of suspensions, revocations, cancella-*  
21 *tions and expiration.*—Each driver whose driver's  
22 license is suspended, revoked, canceled, or expired, by  
23 any state, who loses the privilege to drive a commercial  
24 motor vehicle in any state for any period, or who is  
25 disqualified from driving a commercial motor vehicle  
26 for any period, must notify his or her employer of that  
27 fact before the end of the business day following the day  
28 the driver received notice of that fact.

29 (c) *Notification of previous employment.*—Each person  
30 who applies to be a commercial motor vehicle driver  
31 must provide the employer, at the time of the applica-  
32 tion, with the following information for the ten years  
33 preceding the date of application:

34 (1) A list of the names and addresses of the applicant's  
35 previous employers for which the applicant was a driver  
36 of a commercial motor vehicle;

37 (2) The dates between which the applicant drove for  
38 each employer; and

39 (3) The reason for leaving that employer.

40 The applicant must certify that all information  
41 furnished is true and complete. An employer may  
42 require an applicant to provide additional information.

**§17E-1-6. Employer responsibilities.**

1 (a) Each employer must require the applicant to  
2 provide the information specified in section five of this  
3 article.

4 (b) No employer may knowingly allow, permit, or  
5 authorize a driver to drive a commercial motor vehicle  
6 during any period:

7 (1) In which the driver has a driver's license sus-  
8 pended, revoked, or canceled by a state; has lost the  
9 privilege to drive a commercial motor vehicle in a state,  
10 or has been disqualified from driving a commercial  
11 motor vehicle; or

12 (2) In which the driver has more than one driver's  
13 license at one time except during the ten-day period  
14 beginning on the date the employee is issued a driver's  
15 license.

**§17E-1-7. Commercial driver's license required.**

1 (a) On or after the first day of April, one thousand  
2 nine hundred ninety-two, except when driving under a  
3 commercial driver's instruction permit accompanied by  
4 the holder of a commercial driver's license valid for the  
5 vehicle being driven, no person may drive a commercial  
6 motor vehicle unless the person holds a commercial  
7 driver's license and applicable endorsements valid for  
8 the vehicle they are driving.

9 (b) No person may drive a commercial motor vehicle  
10 while their driving privilege is suspended, revoked,  
11 canceled, or expired, while subject to a disqualification,  
12 or in violation of an out-of-service order.

13 (c) Drivers of a commercial motor vehicle must have  
14 a commercial driver's license in their possession at all  
15 times while driving.

**§17E-1-8. Exemptions to the commercial driver's license requirements.**

1 (a) *Farmers*.—Bona fide farmers or farm vehicle  
2 drivers, as defined, operating a vehicle otherwise  
3 covered by the commercial driver's license requirements  
4 may be exempted from the provisions of this article only  
5 if the vehicle used is:

6 (1) Driven by a farmer or farm vehicle driver;

7 (2) Used only to transport either agricultural pro-  
8 ducts, farm machinery, farm supplies, to or from a  
9 farm;

10 (3) Not used in the operation of a common or contract  
11 motor carrier; and

12 (4) Used within one hundred fifty miles of the  
13 qualifying farm.

14 Farmers who wish to be exempted from the commer-  
15 cial driver's license requirements must apply to the  
16 department of motor vehicles for a certificate of  
17 exemption.

18 (b) *Military personnel*.—Military personnel, including  
19 the national guard and reserve, will be exempt from the  
20 provision of this article, only:

21 (1) When in uniform; and

22 (2) Operating equipment owned by the United States  
23 department of defense, except during declared emergen-  
24 cies or disaster situations; and

25 (3) On duty; and

26 (4) In possession of a valid classified military driver's  
27 license for the class of vehicle being driven.

28 (c) *Fire fighting and rescue equipment*.—Operators of  
29 vehicles authorized to hold an "authorized emergency  
30 vehicle permit" for use of red signal lights only are  
31 exempt from the provision of this article while the  
32 "authorized emergency vehicle permit" is in force.  
33 Vehicles in this class include, but are not limited to, fire  
34 fighters and rescue equipment:

35 (1) Owned and operated by state, county and munic-  
36 ipal fire departments.

37 (2) Owned and operated by state, county and munic-  
38 ipal civil defense organizations.

39 (3) Owned and operated by a manufacturer engaged  
40 in a type of business that requires fire fighter equip-  
41 ment to protect the safety of their plants and its  
42 employees.

43 (4) Owned and operated by volunteer fire  
44 departments.

45 (d) The Commercial Motor Vehicles Safety Act of  
46 1986 exempts vehicles used exclusively for personal use  
47 such as recreation vehicles and rental trucks used only  
48 to transport the driver's personal or household property.

**§17E-1-9. Commercial driver license qualification standards.**

1 (a) On or after the first day of July, one thousand nine  
2 hundred eighty-nine, the conversion process will phase  
3 out the existing West Virginia chauffeur's license which  
4 shall expire by the first day of April, one thousand nine  
5 hundred ninety-two. At the expiration of a chauffeur's  
6 license between the first day of July, one thousand nine  
7 hundred eighty-nine, and the first day of April, one  
8 thousand nine hundred ninety-two, an individual must  
9 either qualify for a commercial driver's license or renew  
10 with an operator's license. Anyone holding an operator's  
11 license on the first day of July, one thousand nine  
12 hundred eighty-nine, who either drives a commercial  
13 motor vehicle or expects to drive a commercial motor  
14 vehicle must qualify for a commercial driver's license  
15 by the first day of April, one thousand nine hundred  
16 ninety-two.

17 Those who qualify for a commercial driver's license  
18 after the first day of July, one thousand nine hundred  
19 eighty-nine, will be issued a provisional commercial  
20 driver's license. The provisional commercial driver's  
21 license will be valid until the driver's history record has  
22 been checked and recorded with the national commer-

23 cial driver's license information system. If the record  
24 checks indicate no disqualifying problem, the qualified  
25 driver will be issued a full commercial driver's license  
26 at no additional fee. All provisional commercial driver  
27 licenses will expire no later than the first day of April,  
28 one thousand nine hundred ninety-two.

29 (b) (1) *General.*—No person may be issued a commer-  
30 cial driver's license unless that person is a resident of  
31 this state and has passed a knowledge and skills test for  
32 driving a commercial motor vehicle which complies  
33 with minimum federal standards established by federal  
34 regulations enumerated in 49 C.F.R. part 383, sub-parts  
35 G and H, and has satisfied all other requirements of the  
36 Federal Commercial Motor Vehicle Safety Act in  
37 addition to other requirements imposed by state law or  
38 federal regulations. The tests will be administered by  
39 the department of public safety according to rules  
40 promulgated by the commissioner.

41 (2) *Third party testing.*—The commissioner may  
42 authorize a person, including an agency of this or  
43 another state, an employer, private individual or  
44 institution, department, agency or instrumentality of  
45 local government, to administer the skills test specified  
46 by this section: *Provided*, That (i) the test is the same  
47 which would otherwise be administered by the state and  
48 (ii) the party has entered into an agreement with the  
49 state which complies with the requirements of 49 C.F.R.  
50 part 383.75.

51 (3) *Indemnification of driver examiners.*—No person  
52 who has been officially trained and certified by the state  
53 as a driver examiner, who administers any such driving  
54 test, and no other person, firm or corporation by whom  
55 or with which such person is employed or is in any way  
56 associated, may be criminally liable for the administra-  
57 tion of such tests, or civilly liable in damages to the  
58 person tested or other persons or property unless for  
59 gross negligence or willful or wanton injury.

60 (4) Monitoring of third party testing will be carried  
61 out by the department of public safety according to rules  
62 promulgated by the commissioner.



63 (c) *Waiver of skills test.*—The commissioner may  
64 waive the skills test specified in this section for a  
65 commercial driver license applicant who meets the  
66 requirements of 49 C.F.R. part 383.77 and those  
67 requirements specified by the commissioner.

68 (d) *Limitations on issuance of license.*—A commercial  
69 driver's license or commercial driver's instruction  
70 permit may not be issued to a person while the person  
71 is subject to a disqualification from driving a commer-  
72 cial motor vehicle, or while the person's driver's license  
73 is suspended, revoked or canceled in any state; nor may  
74 a commercial driver's license be issued by any other  
75 state unless the person first surrenders all such licenses  
76 to the department, which must be returned to the  
77 issuing state(s) for cancellation.

78 (e) *Commercial driver's instruction permit.*—(1) A  
79 commercial driver's instruction permit may be issued to  
80 an individual who holds a valid operator or Class "D"  
81 driver license who has passed the vision and written  
82 tests required for issuance of a commercial driver  
83 license. (2) The commercial instruction permit may not  
84 be issued for a period to exceed six months. Only one  
85 renewal or reissuance may be granted within a two-year  
86 period. The holder of a commercial driver's instruction  
87 permit may drive a commercial motor vehicle on a  
88 highway only when accompanied by the holder of a  
89 commercial driver license valid for the type of vehicle  
90 driven who occupies a seat beside the individual for the  
91 purpose of giving instruction or testing. (3) A commer-  
92 cial driver's instruction permit may only be issued to an  
93 individual who is at least eighteen years of age and has  
94 held an operator's or junior operator's license for at least  
95 two years. (4) The applicant for a commercial driver's  
96 instruction permit must also be otherwise qualified to  
97 hold a commercial driver's license.

#### §17E-1-10. Application for commercial driver's license.

1 (a) The application for a commercial driver's license  
2 or commercial driver's instruction permit must include  
3 at least the following:

- 4 (1) The full name and current mailing and residential  
5 address of the person;
  - 6 (2) A physical description of the person including sex,  
7 height, weight, eye and hair color;
  - 8 (3) Date of birth;
  - 9 (4) The applicant's social security number;
  - 10 (5) The person's signature;
  - 11 (6) The person's color photograph;
  - 12 (7) Certifications including those required by 49  
13 C.F.R. part 383.71(a);
  - 14 (8) Any other information required by the commis-  
15 sioner; and
  - 16 (9) A consent to release driving record information.
- 17 (b) When a licensee changes his or her name, mailing  
18 address or residence, an application for a duplicate  
19 license must be made.
- 20 (c) No person who has been a resident of this state for  
21 thirty days or more may drive a commercial motor  
22 vehicle under the authority of a commercial driver's  
23 license issued by another jurisdiction.

**§17E-1-11. Commercial driver's license.**

- 1 The commercial driver's license must be marked  
2 "commercial driver's license" or "CDL," and must be, to  
3 the maximum extent practicable, tamper proof. It must  
4 include, but not be limited to, the following information:
- 5 (a) The name and residential address of the person;
  - 6 (b) The person's color photograph;
  - 7 (c) A physical description of the person including sex,  
8 height, weight, eye and hair color;
  - 9 (d) Date of birth;
  - 10 (e) The person's signature;
  - 11 (f) The class or type of commercial motor vehicle or  
12 vehicles which the person is authorized to drive together  
13 with any endorsement(s) or restriction(s);

- 14 (g) The name of this state;
- 15 (h) The dates between which the license is valid; and
- 16 (i) Social security number.

§17E-1-12. **Classifications, endorsements and restrictions.**

1 Commercial driver's licenses may be issued, with the  
2 following classifications, endorsements, and restrictions;  
3 the holder of a valid commercial driver's license may  
4 drive all vehicles in the class for which that license is  
5 issued, and all lesser classes of vehicles and vehicles  
6 which require an endorsement, unless the proper  
7 endorsement appears on the license:

8 (a) *Classifications:*

9 Class A—Any combination of vehicles with a gross  
10 vehicle weight rating of twenty-six thousand one pounds  
11 or more, provided the gross vehicle weight rating of the  
12 vehicle(s) being towed is in excess of ten thousand  
13 pounds or is a semi-trailer or a trailer with two or more  
14 axles.

15 Class B—Any single vehicle with a gross vehicle  
16 weight rating of twenty-six thousand one pounds or  
17 more, and any such vehicle towing a vehicle not in  
18 excess of ten thousand pounds or is a semi-trailer or a  
19 trailer with two or more axles.

20 Class C—Any single vehicle with a gross vehicle  
21 weight rating of less than twenty-six thousand one  
22 pounds or any such vehicle towing a vehicle with a gross  
23 vehicle weight rating not in excess of ten thousand  
24 pounds comprising:

25 (1) Vehicles designed to transport sixteen or more  
26 passengers, including the driver; and

27 (2) Vehicles used in the transportation of hazardous  
28 materials which requires the vehicle to be placarded  
29 under 49 C.F.R., part 172, sub-part F.

30 Class D—Automobiles, pickup trucks, and all other  
31 motor vehicles not specified in Class A, B, and C.

32 (b) *Endorsements and restrictions:*

33 "H" Authorizes the driver to drive a vehicle transport-  
34 ing hazardous materials.

35 "K" Restricts the driver to vehicles not equipped with  
36 airbrakes.

37 "T" Authorizes driving double and triple trailers.

38 "P" Authorizes driving vehicles carrying passengers.

39 "N" Authorizes driving tank vehicles.

40 "X" Represents a combination of hazardous materials  
41 and tank vehicle endorsements.

42 (c) *Applicant record check.*—Before issuing a commer-  
43 cial driver's license, the commissioner must obtain  
44 driving record information through the commercial  
45 driver's license information system, the national driver  
46 register and from each state in which the person has  
47 been licensed.

48 (d) *Notification of license issuance.*—Within ten days  
49 after issuing a commercial driver's license, the commis-  
50 sioner shall notify the commercial driver's license  
51 information system of that fact, providing all informa-  
52 tion required to ensure identification of the person.

53 (e) *Expiration of license.*—The commercial driver's  
54 license shall expire four years from date of issuance.

55 Commercial driver's licenses held by any person in the  
56 armed forces which expire while that person is on active  
57 duty shall remain valid for thirty days from the date on  
58 which that person reestablishes residence in West  
59 Virginia.

60 Any person applying to renew a commercial driver's  
61 license which has been expired for two years or more  
62 must follow the procedures for an initial issuance of a  
63 commercial driver's license, including the testing  
64 provisions.

65 (f) *License renewal procedures.*—When applying for  
66 renewal of a commercial driver's license, the applicant  
67 must complete the application form, providing updated

68 information and required certifications. If the applicant  
69 wishes to retain a hazardous materials endorsement, the  
70 written test for a hazardous materials endorsement  
71 must be taken and passed.

**§17E-1-13. Disqualification and cancellation.**

1 (a) *Disqualification offenses.*—On or after the first day  
2 of April, one thousand nine hundred ninety-two, any  
3 person is disqualified from driving a commercial motor  
4 vehicle for a period of not less than one year if convicted  
5 of a first violation of:

6 (1) Driving a commercial motor vehicle under the  
7 influence of alcohol or a controlled substance;

8 (2) Driving a commercial motor vehicle while the  
9 alcohol concentration of the person's blood or breath is  
10 four hundredths or more;

11 (3) Leaving the scene of an accident involving a  
12 commercial motor vehicle driven by the person;

13 (4) Using a commercial motor vehicle in the commis-  
14 sion of any felony as defined in this article;

15 (5) Refusal to submit to a test to determine the  
16 driver's alcohol concentration while driving a commer-  
17 cial motor vehicle.

18 In addition, the conviction of any of the following  
19 offenses as an operator of any vehicle is a disqualifica-  
20 tion offense:

21 (1) Manslaughter or negligent homicide resulting  
22 from the operation of a motor vehicle as defined under  
23 the provisions of section five, article three, chapter  
24 seventeen-b, and section one, article five, chapter  
25 seventeen-c of this code;

26 (2) Driving while license is suspended or revoked, as  
27 defined under the provisions of section three, article  
28 four, chapter seventeen-b of this code;

29 (3) Perjury or making a false affidavit or statement  
30 under oath to the department of motor vehicles, as  
31 defined under the provisions of subsection (4), section  
32 five, article three, and section two, article four, chapter  
33 seventeen-b of this code.

34 If any of the above violations occurred while trans-  
35 porting a hazardous material required to be placarded,  
36 the person is disqualified for a period of not less than  
37 three years.

38 (b) A person is disqualified for life if convicted of two  
39 or more violations of any of the offenses specified in  
40 subsection (a) of this section, or any combination of  
41 those offenses, arising from two or more separate  
42 incidents.

43 (c) The commissioner may issue rules establishing  
44 guidelines, including conditions, under which a disqual-  
45 ification for life under subsection (b) of this section may  
46 be reduced to a period of not less than ten years.

47 (d) A person is disqualified from driving a commer-  
48 cial motor vehicle for life who uses a commercial motor  
49 vehicle in the commission of any felony involving the  
50 manufacture, distribution or dispensing of a controlled  
51 substance, or possession with intent to manufacture,  
52 distribute or dispense a controlled substance.

53 (e) A person is disqualified from driving a commer-  
54 cial motor vehicle for a period of not less than sixty days  
55 if convicted of two serious traffic violations, or one  
56 hundred twenty days if convicted of three serious  
57 violations, committed in a commercial motor vehicle  
58 arising from separate incidents occurring within a  
59 three-year period.

60 (f) After suspending, revoking or cancelling a com-  
61 mercial driver's license, the department shall update its  
62 records to reflect that action within ten days.

**§17E-1-14. Commercial drivers prohibited from operat-  
ing with any alcohol in system.**

1 (a) Notwithstanding any other provision of this  
2 article, a person may not drive, operate or be in physical  
3 control of a commercial motor vehicle while having any  
4 measurable alcohol in his or her system.

5 (b) In addition to any other penalties provided by this  
6 code, a person who drives, operates or is in physical

7 control of a commercial motor vehicle while having any  
8 measurable alcohol in his or her system or who refuses  
9 to take a preliminary breath test to determine their  
10 alcohol content as provided by section fifteen of this  
11 article must be placed out of service for twenty-four  
12 hours.

**§17E-1-15. Implied consent requirements for commercial motor vehicles drivers.**

1 (a) A person who drives a commercial motor vehicle  
2 within this state is deemed to have given consent,  
3 subject to provisions of section four, article five, chapter  
4 seventeen-c of this code, to take a test or tests of that  
5 person's blood, breath or urine for the purpose of  
6 determining that person's alcohol concentration, or the  
7 presence of other drugs.

8 (b) A test or tests may be administered at the  
9 direction of a law-enforcement officer, who after  
10 stopping or detaining the commercial motor vehicle  
11 driver, has reasonable cause to believe that driver was  
12 driving a commercial motor vehicle while having  
13 alcohol in his or her system.

14 (c) A person requested to submit to a test as provided  
15 in subsection (a) of this section must be warned by the  
16 law-enforcement officer requesting the test that a  
17 refusal to submit to the test will result in that person  
18 being disqualified from operating a commercial motor  
19 vehicle under section fifteen of this article.

20 (d) If the person refuses testing, or submits to a test  
21 which discloses an alcohol concentration of four hun-  
22 dredths or more, that law-enforcement officer must  
23 submit a sworn report to the department of motor  
24 vehicles certifying that the test was requested pursuant  
25 to subsection (a) of this section and that the person  
26 refused to submit to testing, or submitted to a test which  
27 disclosed an alcohol concentration of four hundredths or  
28 more.

29 (e) Upon receipt of the sworn report of a law-  
30 enforcement officer submitted under subsection (d) of  
31 this section, the commissioner must disqualify the driver

32 from driving a commercial motor vehicle under section  
33 fifteen of this article.

**§17E-1-16. Notification of traffic convictions.**

1 Within ten days after receiving a report of the  
2 conviction of any holder of a commercial driver license  
3 for any violation of state law or local ordinance relating  
4 to motor vehicle traffic control, other than parking  
5 violations, committed in a commercial motor vehicle, the  
6 commissioner must notify the driver licensing authority  
7 in the licensing state of the conviction and the United  
8 States department of transportation, federal highway  
9 administration, and the public service commission,  
10 transportation division.

**§17E-1-17. Driving record information to be furnished.**

1 Notwithstanding any other provision of law to the  
2 contrary, the commissioner must furnish full informa-  
3 tion regarding the driving record of any person:

4 (a) To the driver license administrator of any other  
5 state or province or territory of Canada requesting that  
6 information;

7 (b) To any employer or prospective employer;

8 (c) To insurers upon request;

9 (d) To credit reporting organizations and for other  
10 legitimate business transactions; or

11 (e) The driver himself.

**§17E-1-18. Rule-making authority.**

1 The commissioner shall adopt rules and regulations  
2 necessary to carry out the provisions of this article.

**§17E-1-19. Authority to enter agreements.**

1 The commissioner may enter into or make agree-  
2 ments, arrangements or declarations to carry out the  
3 provisions of this chapter.

**§17E-1-20. Reciprocity.**

1 Notwithstanding any law to the contrary, a person  
2 may drive a commercial motor vehicle if the person has



3 a commercial driver's license by any state in accordance  
4 with the minimum federal standards for the issuance of  
5 commercial motor vehicle driver licenses; if the license  
6 is not suspended, revoked or canceled; and if the person  
7 is not disqualified from driving a commercial motor  
8 vehicle, or subject to an "out-of-service" order.

**§17E-1-21. Severability and savings clause.**

1 The provisions of any chapter or parts of chapters of  
2 this code, which are inconsistent with the provisions of  
3 this chapter, are repealed to the extent of such incon-  
4 sistency.

**§17E-1-22. Effective dates.**

1 All provisions of this chapter are effective imme-  
2 diately on passage except:

3 (a) Section seven—the first day of April, one thousand  
4 nine hundred ninety-two.

5 (b) Section eight—the first day of July, one thousand  
6 nine hundred eighty-nine.

7 (c) Section nine—the first day of July, one thousand  
8 nine hundred eighty-nine.

9 (d) Section ten—the first day of July, one thousand  
10 nine hundred eighty-nine.

11 (e) Sections eleven, twelve, thirteen, fourteen—the  
12 first day of April, one thousand nine hundred ninety-  
13 two.

**§17E-1-23. Funding for the commercial driver's license fees.**

1 Each application for a commercial driver's license  
2 shall be accompanied by the fees hereafter provided and  
3 such fees shall be deposited in a special revolving fund  
4 for the operation by the department of its functions  
5 established by this chapter.

6 The fee for a commercial driver's license shall be  
7 established by the commissioner to cover all necessary  
8 costs for program administration. The fees for knowl-  
9 edge and road testing shall also be established by the

10 commissioner to cover all program costs projected to be  
11 incurred by the department of motor vehicles and the  
12 department of public safety. The commissioner of motor  
13 vehicles is authorized and directed to transfer into a  
14 special revolving fund under the control of the super-  
15 intendent of the department of public safety such  
16 amounts required by the department of public safety  
17 and determined by the commissioner as necessary to  
18 administer its responsibilities under this article.

#### §17E-1-24. Enforcement.

1 In addition to the officers of the department of public  
2 safety, any police officer, or employee of the department  
3 of highways designated by the commissioner of high-  
4 ways as a weight enforcement officer, or any inspector  
5 of the public service commission, motor carrier division,  
6 may enforce the provisions of this article.

#### §17E-1-25. Penalties.

1 It is a misdemeanor for any person to violate any of  
2 the provisions of this chapter unless such violation is by  
3 this chapter or other law of this state declared to be a  
4 felony.

5 Unless another penalty is provided in this chapter or  
6 by the laws of this state, every person convicted of a  
7 misdemeanor for the violation of any provisions of this  
8 chapter shall be fined not less than one hundred dollars  
9 nor more than one thousand dollars, or imprisoned for  
10 not more than six months in the county jail, or both  
11 fined and imprisoned, except that for the second  
12 violation of section seven of this article and, upon  
13 conviction thereof, the offender shall be fined not less  
14 than five hundred dollars nor more than two thousand  
15 dollars or imprisoned for not less than six months nor  
16 more than nine months in the county jail, or both fined  
17 and imprisoned. For the third or any subsequent  
18 conviction for violation of section seven of this article,  
19 upon conviction thereof, the offender shall be fined not  
20 less than one thousand dollars nor more than two  
21 thousand five hundred dollars, or imprisoned for not less  
22 than nine months nor more than one year in the county  
23 jail, or both fined and imprisoned.

## CHAPTER 206

(H. B. 2003—By Delegates Love and Given)

[Passed March 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article ten, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enacting the uniform determination of death act; establishing standards for the determination of death; mandating uniform construction and application of the act; providing civil and criminal immunity for certain persons; and changing the short title from the uniform brain death act to the uniform determination of death act.

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

That article ten, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 10. UNIFORM DETERMINATION OF DEATH ACT.

- §16-10-1. Determination of death.
- §16-10-2. Uniformity of construction and application.
- §16-10-3. Civil and criminal immunity.
- §16-10-4. Short title.

#### §16-10-1. Determination of death.

- 1 An individual who has sustained either (1) irreversible
- 2 cessation of circulatory and respiratory functions or (2)
- 3 irreversible cessation of all functions of the entire brain,
- 4 including the brain stem, is dead. A determination of
- 5 death must be made in accordance with accepted
- 6 medical standards.

#### §16-10-2. Uniformity of construction and application.

- 1 This article shall be applied and construed to effec-
- 2 tuate its general purpose to make uniform the law with
- 3 respect to the subject of this article among states
- 4 enacting it.

#### §16-10-3. Civil and criminal immunity.

- 1 A physician or any other person authorized by law to

2 determine death who makes such determination in  
 3 accordance with section one of this article is not liable  
 4 for damages in any civil action or subject to prosecution  
 5 in any criminal proceeding for his acts or the acts of  
 6 others based on that determination. Any person who acts  
 7 in good faith in reliance on a determination of death is  
 8 not liable for damages in any civil action or subject to  
 9 prosecution in any criminal proceeding for such act.

#### §16-10-4. Short title.

1 This article may be cited as the "Uniform Determi-  
 2 nation of Death Act."

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## CHAPTER 207

(S. B. 302—By Senators Brackenrich, Parker and Felton)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seven, article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five-a, article one; section two, article six; and section three, article eight, chapter sixty of said code, all relating to the permission of advertising of farm wineries; revising the definition of "farm winery" as inclusive of operating an offsite establishment and as exclusive of young implantations; providing permission for the holder of a farm winery license to sell wine to consumers at the winery and to other sellers without payment of a transport bond; relating to the permission and the regulation of the sale of West Virginia wine at fairs, festivals, restaurants and state stores; and providing for legislative rules.

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

That section seven, article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five-a, article one; section two, article six; and section three, article eight, chapter sixty of said code be amended and reenacted, all to read as follows:

**Chapter****17. Roads and Highways.****60. State Control of Alcoholic Liquors.****CHAPTER 17. ROADS AND HIGHWAYS.****ARTICLE 22. OUTDOOR ADVERTISING.****§17-22-7. Exceptions to prohibited signs; standards for excepted signs.**

1       The provisions of section three of this article shall not  
2       apply to the following: (a) Directional and other official  
3       signs and notices required or authorized by law,  
4       including, but not limited to, signs and notices pertain-  
5       ing to natural wonders, farm wineries, scenic and  
6       historical attractions, which such signs and notices shall  
7       conform to standards respecting lighting, size, number,  
8       spacing and such other appropriate requirements as  
9       may be designated and specified by the secretary of  
10       transportation of the United States: *Provided*, That the  
11       commissioner of the department of highways shall not  
12       establish any standards respecting lighting, size,  
13       number, spacing and other appropriate requirements  
14       which are stricter than such standards designated and  
15       specified by the secretary of transportation of the  
16       United States; (b) signs, displays, and devices advertis-  
17       ing the sale or lease of property upon which they are  
18       located; and (c) signs, displays, and devices advertising  
19       activities conducted on the property on which they are  
20       located, including markers of underground utility  
21       facilities.

**CHAPTER 60. STATE CONTROL OF  
ALCOHOLIC LIQUORS.****Article**

1. General Provisions.
6. Miscellaneous Provisions.
8. Sale of Wines.

**ARTICLE 1. GENERAL PROVISIONS.****§60-1-5a. Farm wineries defined.**

1       For the purpose of this chapter: "Farm winery" means  
2       an establishment where in any year fifty thousand  
3       gallons or less of wine is manufactured exclusively by

4 natural fermentation from grapes, other fruit or honey,  
5 with twenty-five percent of such raw products being  
6 produced by the owner of such farm winery on the  
7 premises of that establishment, and no more than  
8 twenty-five percent of such produce originating from  
9 any source outside this state: *Provided*, That a farm  
10 winery may include one off-farm location: *Provided*,  
11 *however*, That the owner of a farm winery may provide  
12 to the commissioner evidence, accompanied by written  
13 findings by the West Virginia agriculture commissioner  
14 in support thereof, that the owner has planted on the  
15 premises of the farm winery young nonbearing fruit  
16 plants. The commissioner may grant permission for one  
17 off-farm location in an amount equal to that reasonably  
18 expected to be produced when the nonbearing fruit  
19 plants planted on the farm winery come into full  
20 production. The length of time of the permission to use  
21 an off-farm location shall be determined by the commis-  
22 sioner after consultation with the agriculture commis-  
23 sioner.

#### ARTICLE 6. MISCELLANEOUS PROVISIONS.

##### §60-6-2. When lawful to manufacture and sell wine and cider.

- 1 The provisions of this chapter shall not prevent:
- 2 (1) A person from manufacturing wine at his resi-  
3 dence for consumption at his residence as permitted by  
4 section one of this article;
- 5 (2) A person from manufacturing and selling unfer-  
6 mented cider;
- 7 (3) A person from manufacturing and selling cider  
8 made from apples produced by him within this state, to  
9 persons holding distillery licenses, but such manufac-  
10 ture and sale shall be under the supervision and  
11 regulation of the commissioner;
- 12 (4) A person from manufacturing and selling wine  
13 made from fruit produced by him within this state to  
14 persons holding winery licenses, but such manufacture  
15 and sale shall be under the supervision and regulation  
16 of the commissioner; and

17 (5) The holder of a farm winery license from selling  
18 wine produced by it directly to consumers at the winery  
19 and at one off-farm winery location or to any other  
20 person who is licensed under this chapter to sell wine  
21 either at wholesale or at retail: *Provided*, That the  
22 winery may ship wines from the farm winery without  
23 the bonding requirements of a transporter: *Provided*,  
24 *however*, That notwithstanding any other provisions of  
25 law to the contrary, an individual or licensee in a state  
26 which affords the wineries of this state equal reciprocal  
27 shipping privileges may ship for personal use and not  
28 for resale not more than two cases of wine per month  
29 to any adult resident in this state.

#### ARTICLE 8. SALE OF WINES.

##### §60-8-3. Licenses; fees; general restrictions.

1 (a) Except as to farm wineries as defined by section  
2 five-a, article one of this chapter, no person may engage  
3 in business in the capacity of a distributor, retailer or  
4 private wine restaurant without first obtaining a license  
5 from the commissioner, nor shall a person continue to  
6 engage in any such activity after his license has expired,  
7 been suspended or revoked. No person may be licensed  
8 simultaneously as a distributor and a retailer, as a  
9 distributor and a private wine restaurant, or as a  
10 retailer and a private wine restaurant.

11 (b) The commissioner shall collect an annual fee for  
12 licenses issued under this article, as follows:

13 (1) Twenty-five hundred dollars per year for a  
14 distributor's license and each separate warehouse or  
15 other facility from which a distributor sells, transfers  
16 or delivers wine shall be separately licensed and there  
17 shall be collected with respect to each such location the  
18 annual license fee of twenty-five hundred dollars as  
19 herein provided.

20 (2) One hundred fifty dollars per year for a retailer's  
21 license.

22 (3) Fifty dollars per year for a wine tasting license.

23 (4) Fifty dollars for each sales representative of or  
24 employed by a licensed distributor.

25 (5) Two hundred fifty dollars per year for a private  
26 wine restaurant license, and each separate restaurant  
27 from which a licensee sells wine shall be separately  
28 licensed and there shall be collected with respect to each  
29 such location the annual license fee of two hundred fifty  
30 dollars as herein provided.

31 (c) The license period shall begin on the first day of  
32 July of each year and end on the thirtieth day of June  
33 of the following year, and if granted for a less period,  
34 the same shall be computed semiannually in proportion  
35 to the remainder of the fiscal year.

36 (d) No retailer may be licensed as a private club as  
37 provided by article seven of this chapter.

38 (e) No retailer may be licensed as a Class A retail  
39 dealer in nonintoxicating beer as provided by article  
40 sixteen, chapter eleven of this code: *Provided*, That a  
41 delicatessen which is a grocery store as defined in  
42 section two of this article and which is licensed as a  
43 Class A retail dealer in nonintoxicating beer, may be a  
44 retailer under this article: *Provided, however*, That any  
45 delicatessen licensed in both such capacities must  
46 maintain average monthly sales exclusive of sales of  
47 wine and nonintoxicating beer which exceed the average  
48 monthly sales of nonintoxicating beer.

49 (f) A retailer under this article may also hold a wine  
50 tasting license authorizing such retailer to serve  
51 complimentary samples of wine in moderate quantities  
52 for tasting. Such retailer shall organize a winetaster's  
53 club, which has at least fifty duly elected or approved  
54 dues paying members in good standing. Such club shall  
55 meet on the retailer's premises not more than one time  
56 per week and shall either meet at a time when the  
57 premises are closed to the general public, or shall meet  
58 in a separate segregated facility on the premises to  
59 which the general public is not admitted. Attendance at  
60 tastings shall be limited to duly elected or approved  
61 dues paying members and their guests.



62 (g) A retailer who has more than one place of retail  
63 business shall obtain a license for each separate retail  
64 establishment. A retailer's license may be issued only to  
65 the proprietor or owner of a bona fide grocery store or  
66 wine specialty shop.

67 (h) The commissioner may issue a special license for  
68 the retail sale of wine at any festival or fair which is  
69 endorsed or sponsored by the governing body of a  
70 municipality or a county commission. Such special  
71 license shall be issued for a term of no longer than ten  
72 consecutive days and the fee therefor shall be two  
73 hundred fifty dollars regardless of the term of the  
74 license unless the applicant is the manufacturer of said  
75 wine on a farm winery as defined in section five-a,  
76 article one of this chapter, in which event the fee shall  
77 be twenty-five dollars. The application for such license  
78 shall contain such information as the commissioner may  
79 reasonably require and shall be submitted to the  
80 commissioner at least thirty days prior to the first day  
81 when wine is to be sold at such festival or fair. A farm  
82 winery licensed under this subsection may exhibit,  
83 conduct tastings, not to exceed a reasonable serving, and  
84 may sell wine only for consumption off the premises of  
85 such festival or fair. A special license issued other than  
86 to a farm winery may be issued to a "wine club" as  
87 defined hereinbelow. The festival or fair committee or  
88 the governing body shall designate a person to organize  
89 a club under a name which includes the name of the  
90 festival or fair and the words "wine club." The license  
91 shall be issued in the name of the wine club. A licensee  
92 may not commence the sale of wine as provided for in  
93 this subsection until the wine club has at least fifty dues  
94 paying members who have been enrolled and to whom  
95 membership cards have been issued. Thereafter, new  
96 members may be enrolled and issued membership cards  
97 at any time during the period for which the license is  
98 issued. A wine club licensed under the provisions of this  
99 subsection may sell wine only to its members, and in  
100 portions not to exceed eight ounces per serving. Such  
101 sales shall take place on premises or in an area cordoned  
102 or segregated so as to be closed to the general public,  
103 and the general public shall not be admitted to such

104 premises or area. A wine club licensee under the  
105 provisions of this subsection shall be authorized to serve  
106 complimentary samples of wine in moderate quantities  
107 for tasting.

108 A license issued under the provisions of this subsection  
109 and the licensee holding such license shall be subject to  
110 all other provisions of this article and the rules,  
111 regulations and orders of the commissioner relating to  
112 such special license: *Provided*, That the commissioner  
113 may by rule, regulation, or order provide for certain  
114 waivers or exceptions with respect to such provisions,  
115 rules, regulations, or orders as the circumstances of each  
116 such festival or fair may require, including, without  
117 limitation, the right to revoke or suspend any license  
118 issued pursuant to this section prior to any notice or  
119 hearing notwithstanding the provisions of section twelve  
120 of this article: *Provided, however*, That under no  
121 circumstances shall the provisions of subsections (c) or  
122 (d), section twenty of this article be waived nor shall any  
123 exception be granted with respect thereto.

124 A license issued under the provisions of this subsection  
125 and the licensee holding such license shall not be subject  
126 to the provisions of subsection (g) of this section.

127 (i) A license to sell wine granted to a private wine  
128 restaurant under the provisions of this article entitles  
129 the operator to sell and serve wine, for consumption on  
130 the premises of the licensee, when such sale accompanies  
131 the serving of food or a meal to its members and their  
132 guests in accordance with the provisions of this article.  
133 Such licensees are authorized to keep and maintain on  
134 their premises a supply of wine in such quantities as  
135 may be appropriate for the conduct of operations  
136 thereof. Any sale of wine so made shall be subject to all  
137 restrictions set forth in section twenty of this article. A  
138 private wine restaurant may also be licensed as a Class  
139 A retail dealer in nonintoxicating beer as provided by  
140 article sixteen, chapter eleven of this code.

141 (j) With respect to subdivisions (h) and (i) of this  
142 section, the commissioner shall promulgate rules and  
143 regulations in regard to the form of the applications, the

144 suitability of both the applicant and location of the  
145 licensed premises and such other rules and regulations  
146 deemed necessary to carry the provisions of such  
147 subsections into effect.

148 (k) The commissioner shall promulgate rules and  
149 regulations in accordance with chapter twenty-nine-a to  
150 allow restaurants to serve West Virginia wine with  
151 meals, but not to sell the wine by the bottle. Each  
152 restaurant so licensed shall be charged a fee less than  
153 that charged for a wine license to a retail outlet, such  
154 fees to be set forth in the aforementioned rules and  
155 regulations promulgated pursuant to this subsection.

156 (l) The commissioner shall establish guidelines to  
157 permit West Virginia wines to be sold in state stores.

158 (m) Farm wineries as defined in section one-a of this  
159 article may advertise off premises as provided in section  
160 seven, article twenty-two of chapter seventeen and in  
161 any other media, including, but not limited to, news-  
162 paper, radio, television, magazines and direct mail  
163 solicitation.

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## CHAPTER 208

(H. B. 2672—By Delegates M. Burke and Rutledge)

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[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workers' compensation; disability and death benefits; providing that employees of the state and its political subdivisions may not simultaneously draw workers' compensation benefits and receive sick leave for the same period of time.

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

That section one, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

## CHAPTER 23. WORKERS' COMPENSATION.

## ARTICLE 4. DISABILITY AND DEATH BENEFITS.

**§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.**

1 Subject to the provisions and limitations elsewhere in  
2 this chapter set forth, the commissioner shall disburse  
3 the workers' compensation fund to the employees of  
4 employers subject to this chapter, which employees have  
5 received personal injuries in the course of and resulting  
6 from their covered employment or to the dependents, if  
7 any, of such employees in case death has ensued,  
8 according to the provisions hereinafter made; and also  
9 for the expenses of the administration of this chapter,  
10 as provided in section two, article one of this chapter:  
11 *Provided*, That in the case of any employees of the state  
12 and its political subdivisions, including: counties;  
13 municipalities; cities; towns; any separate corporation or  
14 instrumentality established by one or more counties,  
15 cities or towns as permitted by law; any corporation or  
16 instrumentality supported in most part by counties,  
17 cities, or towns; any public corporation charged by law  
18 with the performance of a governmental function and  
19 whose jurisdiction is coextensive with one or more  
20 counties, cities or towns; any agency or organization  
21 established by the department of mental health for the  
22 provision of community health or mental retardation  
23 services and which is supported in whole or in part by  
24 state, county or municipal funds; board, agency,  
25 commission, department or spending unit including any  
26 agency created by rule of the supreme court of appeals,  
27 who have received personal injuries in the course of and  
28 resulting from their covered employment, such em-  
29 ployees are ineligible to receive compensation while such  
30 employees are at the same time and for the same reason  
31 drawing sick leave benefits. Such state employees may  
32 only use sick leave for non-job related absences consist-  
33 ent with sick leave utilization, and may draw workers'  
34 compensation benefits only where there is a job related

35 injury. This proviso shall not apply to permanent  
36 benefits: *Provided, however,* That such employees may  
37 collect sick leave benefits until receiving temporary  
38 total disability benefits. The division of personnel shall  
39 promulgate rules pursuant to chapter twenty-nine-a of  
40 this code relating to use of sick leave benefits by  
41 employees receiving personal injuries in the course of  
42 and resulting from covered employment: *Provided*  
43 *further,* That in the event an employee is injured in the  
44 course of and resulting from covered employment and  
45 such injury results in lost time from work, and such  
46 employee for whatever reason uses or obtains sick leave  
47 benefits and subsequently receives temporary total  
48 disability benefits for the same time period, such  
49 employee may be restored sick leave time taken by him  
50 or her as a result of the compensable injury by paying  
51 to his or her employer the temporary total disability  
52 benefits received or an amount equal to the temporary  
53 total disability benefits received. Such employee shall be  
54 restored sick leave time on a day for day basis which  
55 corresponds to temporary total disability benefits paid  
56 to the employer: *And provided further,* That since the  
57 intent of this paragraph is to prevent an employee of the  
58 state or any of its political subdivisions from collecting  
59 both temporary total disability benefits and sick leave  
60 benefits for the same time period, nothing herein may  
61 be construed to prevent an employee of the state or any  
62 of its political subdivisions from electing to receive  
63 either sick leave benefits or temporary total disability  
64 benefits but not both.

65 For the purposes of this chapter the terms "injury"  
66 and "personal injury" shall include occupational pneu-  
67 moconiosis and any other occupational disease, as  
68 hereinafter defined, and the commissioner shall likewise  
69 disburse the workers' compensation fund to the em-  
70 ployees of such employers in whose employment such  
71 employees have been exposed to the hazards of occupa-  
72 tional pneumoconiosis or other occupational disease and  
73 in this state have contracted occupational pneumoconi-  
74 osis or other occupational disease, or have suffered a  
75 perceptible aggravation of an existing pneumoconiosis  
76 or other occupational disease, or to the dependents, if

77 any, of such employees, in case death has ensued,  
78 according to the provisions hereinafter made: *Provided*,  
79 That compensation shall not be payable for the disease  
80 of occupational pneumoconiosis, or death resulting  
81 therefrom, unless the employee has been exposed to the  
82 hazards of occupational pneumoconiosis in the state of  
83 West Virginia over a continuous period of not less than  
84 two years during the ten years immediately preceding  
85 the date of his last exposure to such hazards, or for any  
86 five of the fifteen years immediately preceding the date  
87 of such last exposure. An application for benefits on  
88 account of occupational pneumoconiosis shall set forth  
89 the name of the employer or employers and the time  
90 worked for each, and the commissioner may allocate to  
91 and divide any charges resulting from such claim  
92 among the employers by whom the claimant was  
93 employed for as much as sixty days during the period  
94 of three years immediately preceding the date of last  
95 exposure to the hazards of occupational pneumoconiosis.  
96 The allocation shall be based upon the time and degree  
97 of exposure with each employer.

98 For the purposes of this chapter disability or death  
99 resulting from occupational pneumoconiosis, as defined  
100 in the immediately succeeding sentence, shall be treated  
101 and compensated as an injury by accident.

102 Occupational pneumoconiosis is a disease of the lungs  
103 caused by the inhalation of minute particles of dust over  
104 a period of time due to causes and conditions arising out  
105 of and in the course of the employment. The term  
106 "occupational pneumoconiosis" shall include, but shall  
107 not be limited to, such diseases as silicosis, anthracosi-  
108 lerosis, coal worker's pneumoconiosis, commonly known  
109 as black lung or miner's asthma, silico-tuberculosis  
110 (silicosis accompanied by active tuberculosis of the  
111 lungs), coal worker's pneumoconiosis accompanied by  
112 active tuberculosis of the lungs, asbestosis, siderosis,  
113 anthrax and any and all other dust diseases of the lungs  
114 and conditions and diseases caused by occupational  
115 pneumoconiosis which are not specifically designated  
116 herein meeting the definition of occupational pneumo-  
117 coniosis set forth in the immediately preceding sentence.

118 In determining the presence of occupational pneumo-  
119 coniosis, X-ray evidence may be considered but shall not  
120 be accorded greater weight than any other type of  
121 evidence demonstrating occupational pneumoconiosis.

122 For the purposes of this chapter, occupational disease  
123 means a disease incurred in the course of and resulting  
124 from employment. No ordinary disease of life to which  
125 the general public is exposed outside of the employment  
126 shall be compensable except when it follows as an  
127 incident of occupational disease as defined in this  
128 chapter. Except in the case of occupational pneumoco-  
129 niosis, a disease shall be deemed to have been incurred  
130 in the course of or to have resulted from the employment  
131 only if it is apparent to the rational mind, upon  
132 consideration of all the circumstances (1) that there is  
133 a direct causal connection between the conditions under  
134 which work is performed and the occupational disease,  
135 (2) that it can be seen to have followed as a natural  
136 incident of the work as a result of the exposure  
137 occasioned by the nature of the employment, (3) that it  
138 can be fairly traced to the employment as the proximate  
139 cause, (4) that it does not come from a hazard to which  
140 workmen would have been equally exposed outside of  
141 the employment, (5) that it is incidental to the character  
142 of the business and not independent of the relation of  
143 employer and employee, and (6) that it must appear to  
144 have had its origin in a risk connected with the  
145 employment and to have flowed from that source as a  
146 natural consequence, though it need not have been  
147 foreseen or expected before its contraction.

148 No award shall be made under the provisions of this  
149 chapter for any occupational disease contracted prior to  
150 the first day of July, one thousand nine hundred forty-  
151 nine. An employee shall be deemed to have contracted  
152 an occupational disease within the meaning of this  
153 paragraph if the disease or condition has developed to  
154 such an extent that it can be diagnosed as an occupa-  
155 tional disease.

156 Claims for occupational disease as hereinbefore  
157 defined, except occupational pneumoconiosis, shall be  
158 processed in like manner as claims for all other personal  
159 injuries.

## CHAPTER 209

(S. B. 614—By Senator Dittmar)

[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Calhoun County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election to extend the additional county levy for emergency services in Calhoun County from between the seventh and twenty-eighth days of March until Thursday, the first day of June, one thousand nine hundred eighty-nine.

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

**CALHOUN COUNTY COMMISSION MEETING AS A LEVYING BODY EXTENDED TO CONTINUE ADDITIONAL LEVY FOR EMERGENCY SERVICES.**

§1. **Extending time for Calhoun County commission to meet as levying body for election to continue additional levy for emergency services.**

1 Notwithstanding the provisions of article eight,  
2 chapter eleven of the code of West Virginia, one  
3 thousand nine hundred thirty-one, as amended, to the  
4 contrary, the county commission of Calhoun County is  
5 hereby authorized to extend the time for its meeting as  
6 a levying body and certifying its actions to the state tax  
7 commissioner from between the seventh and twenty-  
8 eighth days of March until Thursday, the first day of  
9 June, one thousand nine hundred eighty-nine, for the  
10 purpose of submitting to the voters of Calhoun County  
11 the extension of the additional county levy for emer-  
12 gency services in Calhoun County.

## CHAPTER 210

(H. B. 2779—By Delegate Willison)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to authorize the transfer by the Doddridge County board of education of the land and buildings of the Krenn School or the St. Clara community building.



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

**THE KRENN SCHOOL, ALSO KNOWN AS THE ST. CLARA COMMUNITY BUILDING.**

**§1. School board authorized to transfer Krenn School to Historical Society.**

1 The school board of Doddridge County is hereby  
2 authorized and empowered to convey to the Doddridge  
3 County Historical Society for a nominal sum, the one-  
4 room frame school building, accompanying outbuild-  
5 ings, and surrounding one-quarter acre described on  
6 pages seventy-one through seventy-three in Deed Book  
7 twenty-nine of the Doddridge County Commission and  
8 known collectively as the Krenn School or the St. Clara  
9 community meeting place. This conveyance shall be for  
10 the purpose of the historical preservation of the  
11 property.

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## CHAPTER 211

(Com. Sub. for S. B. 591—By Senator J. Manchin)

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[Passed April 7, 1989; in effect from passage. Approved by the Governor.]

**AN ACT to authorize Fairmont State College to use the Highgate Carriage House property located in Fairmont, Marion County, West Virginia.**

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

**HIGHGATE CARRIAGE HOUSE.**

**§1. Fairmont State College authorized to use Highgate Carriage House property.**

1 Fairmont State College is hereby authorized, in the  
2 event the Highgate Carriage House property located in  
3 Fairmont, Marion County, West Virginia, is purchased  
4 by a qualified nonprofit organization approved by the  
5 Internal Revenue Service, to enter into contracts and  
6 leases permitting the college to occupy, use and  
7 maintain portions of said property as desired for  
8 operational or administrative purposes and for the

9 benefit and enhancement of the community. This  
10 legislation does not authorize Fairmont State College to  
11 purchase the property known as Highgate Carriage  
12 House.

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## CHAPTER 212

(Com. Sub. for S. B. 141—By Senator Hawse)

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[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the Hardy County commission and the Hardy County board of education to support financially the operation of the Hardy County extension service; authorizing annual levy for such purpose; authorizing contribution of other funds for such purpose; and providing for disposition of funds.

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

### **HARDY COUNTY EXTENSION SERVICE.**

- §1. Levies by county commission and county board of education to support the Hardy County extension service.
- §2. Disposition of funds; participation by West Virginia University extension service.

### **§1. Levies by county commission and county board of education to support the Hardy County extension service.**

1 In order to provide for the support, maintenance and  
2 operation of the Hardy County extension service, Hardy  
3 County, West Virginia, the board of education of the  
4 county of Hardy and the Hardy County commission,  
5 hereinafter described as the supporting agencies, may,  
6 if requested by the Hardy County extension service  
7 committee, levy annually on each one hundred dollars  
8 of assessed valuation of the property taxable according  
9 to the last assessment for state and county purposes,  
10 amounts as follows: By the board of education of the  
11 county of Hardy, Class I, two and six-tenths mills; Class  
12 II, five and two-tenths mills; Class III, ten and four-  
13 tenths mills; Class IV, ten and four-tenths mills; by the

14 county commission of Hardy County, Class I, nine and  
 15 one-half mills; Class II, nineteen mills; Class III, thirty-  
 16 eight mills; Class IV, thirty-eight mills.

17 Each year the Hardy County extension service  
 18 committee may request each of the supporting agencies  
 19 to levy the above rates on each one hundred dollars of  
 20 assessed valuation of property of the same class, and  
 21 each of the supporting agencies may levy the rates  
 22 aforesaid. In addition, each supporting agency may  
 23 contribute to the extension service any other general or  
 24 specific revenues or excess levy funds.

**§2. Disposition of funds; participation by West Virginia  
 University extension service.**

1 Money collected or appropriated by the supporting  
 2 agencies for the personnel services of the Hardy County  
 3 extension service shall be transferred to the West  
 4 Virginia University extension service and disbursed by  
 5 it for salaries and related expenses.

6 As long as the foregoing levy continues, West Virginia  
 7 University extension service may contribute from its  
 8 funds to the support of three full-time agent positions.

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## CHAPTER 213

(S. B. 138—By Senators Hawse and Lucht)

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[Passed February 24, 1989; in effect ninety days from passage. Approved by the Governor.]

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AN ACT authorizing the county commission of Jefferson  
 County to convey a parcel of county-owned land to the  
 Jefferson County Fairgrounds, reserving certain rever-  
 sionary rights.

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

JEFFERSON COUNTY.

**§1. County commission authorized to convey land to the  
 Jefferson County Fairgrounds.**

1 The Legislature hereby recognizes that an adequate

2 site is necessary for the citizens of Jefferson County to  
3 conduct a county fair to enable youth and adults to  
4 exhibit livestock, horticultural products, agricultural  
5 products and home economics skills. Accordingly, the  
6 Legislature hereby finds and declares that transfers of  
7 any property, real or personal, made by county commis-  
8 sions to any person, organization or corporation for the  
9 furtherance of such activities promotes the cultural and  
10 educational welfare of the public and, therefore, is a  
11 public purpose.

12 The county commission of Jefferson County is hereby  
13 authorized and empowered to transfer and convey unto  
14 the Jefferson County Fairgrounds, all that certain  
15 parcel of land situated within Middleway District of  
16 Jefferson County, West Virginia, more particularly  
17 bounded and described as:

18 **DESCRIPTION OF SURVEY FOR**  
19 **JEFFERSON COUNTY FAIRGROUNDS**

20 A tract or parcel of land located in Middleway  
21 District, Jefferson County, West Virginia, said tract or  
22 parcel situated north of the property presently owned by  
23 the Jefferson County Fair Association, Inc., and more  
24 particularly bound and described according to a survey  
25 and plat thereof made by Appalachian Surveys, Inc.,  
26 said plat attached hereto and made a part of this  
27 description.

28 Beginning at a 5/8-inch rebar (202) to be set, said  
29 rebar SW 21-12-27 822.99 feet from a found stone  
30 (1), said stone a corner with the "parent" tract and  
31 with The Jefferson County Volunteer Fireman's  
32 Association, Inc.; thence two new lines with The  
33 Jefferson County Farm NW 74-22-26 508.15 feet to  
34 a 5/8 inch rebar (203) to be set; thence SW 21-12-  
35 27 300.00 feet to a found 3/8 inch rebar (5) to be  
36 set, said rebar a corner with the Jefferson County  
37 Farm and the property presently owned by the  
38 Jefferson County Association, Inc.; thence with said  
39 Association SE 74-22-26 508.15 feet to a 5/8-inch  
40 rebar (201) to be set, said rebar NW 74-22-26 41.85  
41 feet from a corner wooden fence post (200); thence

42 with the Jefferson County Volunteer Fireman's  
43 Association, Inc. NE 21-12-27 300.00 feet to the  
44 point of beginning, containing 3.48 acres.

45 Being a part of the same tract or parcel conveyed by  
46 Minor Hurst and Sarah S. Hurst, husband and wife, to  
47 the "Overseers of the Poor For the County of Jefferson  
48 in the State of Virginia" by deed dated December 26th,  
49 1857 and recorded in the Office of the Clerk of the  
50 Jefferson County Commission in Deed Book 38 at page  
51 24.

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## CHAPTER 214

(H. B. 2663—By Delegates Manuel and Mezzatesta)

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[Passed March 22, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to extend the time for the board of education of Jefferson County, West Virginia, to meet as a levying body to certify its actions to the state tax commissioner for the purpose of presenting to the voters of the county an election to increase the county excess levy of eighty-seven and twenty-five one hundredths percent to one hundred percent for textbooks, employees salaries and benefits from Tuesday, the twenty-eighth day of March, until Thursday, the first day of June, one thousand nine hundred eighty-nine.

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

**THE BOARD OF EDUCATION OF JEFFERSON COUNTY MEETING AS LEVYING BODY EXTENDED TO INCREASE COUNTY EXCESS LEVY FOR TEXTBOOKS, EMPLOYEES SALARIES AND BENEFITS.**

**§1. Extending time for board of education of Jefferson County to meet as a levying body for election to increase levy for textbooks, employee salaries and benefits.**

1 Notwithstanding the provisions of article eight,  
2 chapter eleven of the code of West Virginia, one  
3 thousand nine hundred thirty-one, as amended, to the

4 contrary, the board of education of Jefferson County is  
5 hereby authorized to extend the time for its meeting as  
6 a levying body to certify its actions to the state tax  
7 commissioner for the purpose of presenting to the voters  
8 of the county an election to increase the county excess  
9 levy of eighty-seven and twenty-five one hundredths  
10 percent to one hundred percent for textbooks, employees  
11 salaries and benefits from Tuesday, the twenty-eighth  
12 day of March, until Thursday, the first day of June, one  
13 thousand nine hundred eighty-nine.

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## CHAPTER 215

(H. B. 2524—By Delegates Manuel and Mezzatesta)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Jefferson County to lease a certain parcel of real estate located in Shepherdstown District, Charles Town District and Harpers Ferry District, Jefferson County, West Virginia, for a period of up to ten years.

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

JEFFERSON COUNTY.

**§1. County commission authorized to lease Samuel G. Michaels farm located in Shepherdstown District, Charles Town District and Harpers Ferry District.**

1 The Legislature hereby recognizes that recreation is  
2 necessary for the welfare of the people of Jefferson  
3 County; and that the 137.424 acres Samuel G. Michaels  
4 Farm was conveyed to the county commission of  
5 Jefferson County for recreational purposes and that to  
6 generate the necessary moneys to develop the farm as  
7 a park the county commission of Jefferson County need  
8 be authorized to lease all or a portion of it to any person,  
9 firm or corporation for a period of up to ten years to  
10 generate funds to make necessary recreational improve-  
11 ments; and that such a rental would promote the general  
12 welfare of the public and, therefore, is a public purpose.

13 The county commission of Jefferson County, West

14 Virginia, is hereby authorized and empowered to lease  
15 for a period of up to ten years all or any portion of all  
16 that tract of land located on the south side of West  
17 Virginia secondary Route 22, being in Shepherdstown,  
18 Charles Town and Harpers Ferry District, Jefferson  
19 County, West Virginia, designated tract No. 1, as shown  
20 upon that certain map entitled "Plat of Survey of  
21 Samuel G. Michaels Property, Situated in Shepherd-  
22 stown, Charles Town, and Harpers Ferry Districts,  
23 Jefferson County, West Virginia, containing 138.25  
24 Acres By Survey and Being a Part of the Same Property  
25 Conveyed by William Engle, Trustee, to Samuel G.  
26 Michaels by Deed Dated April 1, 1874 — Deed Book C,  
27 Page 123," dated 1-29-76, approved by Samuel P.  
28 McClung, L.L.S. #380, and more particularly bounded  
29 and described as follows:

30 Beginning at corner #1, a corner fence post in the  
31 southern right-of-way line of West Virginia secondary  
32 Route 22 and a corner common to Robinson Ice and  
33 Storage Company; thence leaving said road right-of-way  
34 with a fence line common to Robinson Ice and Storage  
35 Company: S. 21 degrees — 58' W. 2,843.52 feet to corner  
36 #2, a corner fence post; thence leaving Robinson Ice and  
37 Storage Company land and with a fence line common  
38 to William E. Walker, thence N. 84 degrees — 13' W.  
39 2,832.16 feet to corner #3, a corner fence post on or near  
40 the southern right-of-way of West Virginia secondary  
41 Route 22 at the intersection of a private road leading  
42 onto the William E. Walker 89.66 acre tract; thence  
43 leaving William E. Walker land and with the southern  
44 right-of-way line of West Virginia secondary Route 22  
45 for the following calls: N. 25 degrees — 00' E. 523.13  
46 feet to a locust hub, N. 28 degrees — 10' E. 140.44 feet  
47 on to a locust hub, N. 37 degrees — 14' E. 226.54 feet  
48 to a locust hub, N. 38 degrees — 44 feet E. 929.40 feet  
49 to a locust hub, N. 46 degrees — 44' E. 41.65 feet to a  
50 locust hub, N. 59 degrees — 54' E. 42.23 feet to a locust  
51 hub, N. 68 degrees — 39' E. 31.30 feet to a locust hub,  
52 N. 71 degrees — 24' E. 504.88 feet to a locust hub, N.  
53 69 degrees — 34' E. 256.76 feet to a point in the southern  
54 right-of-way line, said point being 15 feet left of and at  
55 right angles to centerline station 23+00, thence south-

56 erly 25.00 feet to a point 40 feet left of and at right  
57 angles to centerline station 23+00, thence northeasterly  
58 270.00 feet to a point 45 feet left of and at right angles  
59 to centerline station P.T. 20+30.28, thence northeasterly  
60 385.00 feet to a point 40 feet left of and at right angles  
61 to centerline station P.T. 16+53.94, thence northeasterly  
62 272.00 feet to a point 40 feet left of and at right angles  
63 to centerline station P.C. 13+45.61, thence N. 78 degrees  
64 — 15' E. 245.61 feet to a point 40 feet left of and at right  
65 angles to centerline station 11+00, thence northeasterly  
66 25.00 feet to a point 15 feet left of and at right angles  
67 to centerline station 11+00, thence N. 78 degrees — 53'  
68 E. 913.58 feet to a locust hub, thence W. 70 degrees —  
69 17' E. 183.39 feet to the beginning, containing 137.424  
70 acres, more or less, and being the same property  
71 conveyed by Samuel G. Michaels to the State of West  
72 Virginia by will dated September 22, 1972, and  
73 recorded in the Office of the Clerk of Jefferson County  
74 in Will Book "P" at page 42, minus 0.826 of an acre  
75 additional right-of-way conveyed by the State of West  
76 Virginia, Public Land Corporation to the West Virginia  
77 Department of Highways by deed dated September 2,  
78 1977, and recorded in the Office of the Clerk of Jefferson  
79 County in Deed Book 431, at page 608.

80 Any lease agreement shall require that all improve-  
81 ments made to said farm shall remain upon the lease  
82 terminating. The county commission of Jefferson  
83 County, West Virginia, shall deposit all rental moneys  
84 received from the lease of this farm or any portion  
85 thereof in a special account which moneys may only be  
86 used to improve and maintain said farm.

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## CHAPTER 216

(S. B. 171—By Senators Chafin, Heck, Jones and Tomblin)

[Passed February 20, 1989; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the city of Kenova, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the city an election to extend the city levy for the Ceredo-Kenova War Memorial,



Ceredo-Kenova Memorial Public Library, Kenova Volunteer Fire Department, athletics and recreation, and police, fire and other employee salaries, generally, in the city of Kenova from the twenty-eighth day of March until Monday, the first day of May, one thousand nine hundred eighty-nine.

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

**CITY OF KENOVA LEVYING BODY EXTENDED TO CONTINUE LEVY FOR THE CEREDO-KENOVA WAR MEMORIAL, CEREDO-KENOVA MEMORIAL PUBLIC LIBRARY, KENOVA VOLUNTEER FIRE DEPARTMENT, ATHLETICS AND RECREATION, AND POLICE, FIRE AND OTHER KENOVA CITY EMPLOYEE SALARIES.**

**§1. Extending time for city of Kenova to meet as a levying body for election to continue levy for Ceredo-Kenova War Memorial, Ceredo-Kenova Memorial Public Library, Kenova Volunteer Fire Department, athletics and recreation, and police, fire and other Kenova city employee salaries.**

1 Notwithstanding the provisions of article eight,  
 2 chapter eleven of the code of West Virginia, one  
 3 thousand nine hundred thirty-one, as amended, to the  
 4 contrary, the city council of Kenova is hereby authorized  
 5 to extend the time for its meeting as a levying body and  
 6 certifying its actions to the state tax commissioner from  
 7 the twenty-eighth day of March until Monday, the first  
 8 day of May, one thousand nine hundred eighty-nine, for  
 9 the purpose of submitting to the voters of the city of  
 10 Kenova the extension of the city levy for the Ceredo-  
 11 Kenova War Memorial, Ceredo-Kenova Memorial Public  
 12 Library, Kenova Volunteer Fire Department, athletics  
 13 and recreation, and police, fire and other employee  
 14 salaries, generally, in the city of Kenova.

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## CHAPTER 217

**(S. B. 419—By Senators Tucker, Mr. President, and Spears)**

[Passed March 20, 1989; in effect from passage. Approved by the Governor.]

**AN ACT to extend the time for the city of Richwood, West Virginia, to meet as a levying body for the purpose of**

presenting to the voters of the city an election to extend the city levy to supplement current expense funds for general repairs of existing streets, alleys and sewers; acquisition of rights-of-way and construction of new streets; for services related to protection against loss by fire and street maintenance; and for services related to collection and disposal of garbage in the city of Richwood from Tuesday, the twenty-eighth day of March, until Monday, the first day of May, one thousand nine hundred eighty-nine.

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

**CITY OF RICHWOOD LEVYING BODY EXTENDED TO CONTINUE LEVY FOR THE SUPPLEMENT OF CURRENT EXPENSE FUNDS FOR GENERAL REPAIRS OF EXISTING STREETS, ALLEYS AND SEWERS; ACQUISITION OF RIGHTS-OF-WAY AND CONSTRUCTION OF NEW STREETS; FOR SERVICES RELATED TO PROTECTION AGAINST LOSS BY FIRE AND STREET MAINTENANCE; AND FOR SERVICES RELATED TO COLLECTION AND DISPOSAL OF GARBAGE IN THE CITY OF RICHWOOD.**

**§1. Extending time for city of Richwood to meet as a levying body for election to continue levy to supplement current expense funds for general repairs of existing streets, alleys and sewers; acquisition of rights-of-way and construction of new streets; for services related to protection against loss by fire and street maintenance; and for services related to collection and disposal of garbage in the city of Richwood.**

1 Notwithstanding the provisions of article eight,  
2 chapter eleven of the code of West Virginia, one  
3 thousand nine hundred thirty-one, as amended, to the  
4 contrary, the city council of Richwood is hereby  
5 authorized to extend the time for its meeting as a  
6 levying body and certifying its actions to the state tax  
7 commissioner from Tuesday, the twenty-eighth day of  
8 March, until Monday, the first day of May, one thousand  
9 nine hundred eighty-nine, for the purpose of submitting  
10 to the voters of the city of Richwood the extension of the  
11 city levy to supplement current expense funds for  
12 general repairs of existing streets, alleys and sewers;

13 acquisition of rights-of-way and construction of new  
14 streets; for services related to protection against loss by  
15 fire and street maintenance; and for services related to  
16 collection and disposal of garbage in the city of  
17 Richwood.

# RESOLUTIONS

(Only resolutions of general interest are included herein.)

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## HOUSE CONCURRENT RESOLUTION 19

(By Delegates Martin and Helmick  
and Mr. Speaker, Mr. Chambers)

[Adopted March 6, 1989]

Commemorating the 87th birthday of West Virginia's retired United States Senator, the Honorable Jennings Randolph.

WHEREAS, Jennings Randolph, West Virginia's retired United States Senator served with distinction in the United States Congress for 37 years, as a Senator (27 years) and Congressman (10 years); set an all-time Congressional record of 10,753 roll call votes; authored the 26th Amendment to the United States Constitution giving the right to vote to 18 to 20 year-old Americans; and served with nine United States Presidents, will on the eighth day of March, 1989, celebrate his 87th birthday; and

WHEREAS, This event in the life of this great West Virginia Statesman and American should not go unnoticed by the citizens of West Virginia and its elected representatives of the 69th Legislature; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the members of the Legislature do hereby express their congratulations to the distinguished Statesman and fellow West Virginian in the celebration on March 8, 1989, of his 87th birthday and wish him many more such celebrations in the years to come; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution posthaste to Senator Randolph in time to be read on his birthday and that a copy suitable for framing be sent to members of his family as well.

COMMITTEE SUBSTITUTE FOR  
HOUSE CONCURRENT RESOLUTION 42  
(By Mr. Speaker, Mr. Chambers, and Delegate Susman)

[Adopted April 8, 1989]

Requiring the Joint Committee on Government and Finance to form a Property Tax Study Commission to examine the complete property tax system of the State of West Virginia.

WHEREAS, The Property Tax Limitation and Homestead Exemption Amendment of 1982 required the statewide reappraisal of all property to be completed, certified and published on or before March 31, 1985, for use when directed by the Legislature; and

WHEREAS, The Legislature has assigned and delegated to the State Tax Commissioner and other public officials responsibilities and duties to conduct the statewide reappraisal, to facilitate the correction of errors or defects and to provide further review of the results of the reappraisal, and to provide for the implementation of the reappraisal; and

WHEREAS, The matter of implementation of the statewide reappraisal affects every citizen of this State in that property taxation is required by the constitutional mandate of the people to be equal and uniform, and property taxes directly support local government and the public school system of the State; and

WHEREAS, The Legislature specifically delegated responsibility to the State Tax Commissioner to certify, upon completion of the review procedures, that the procedures have been substantially complied with and that the results are substantially correct so that final valuations produced by the reappraisal process may be used; and

WHEREAS, The State Tax Commissioner has not issued the certification as to the review process provided for by general law, the statewide property reappraisal has not been implemented, and the assessments and taxation in place prior to the adoption of the aforesaid Amendment of 1982 remain in effect; and

WHEREAS, Many citizens and public officials are concerned that the statewide reappraisal contains errors, inconsistencies, and other matters which undermine taxpayer confidence and raise issues as to the fiscal impact of reappraisal implemen-

tation upon public schools and local government financing and that continuing review is appropriate even though the reappraisal review procedures may have been substantially complied with and the results thereof may be substantially correct; and

WHEREAS, The Legislature recognizes that other aspects of state tax policy may also be affected by the property taxation system and that, as the Legislature has considered and enacted major reforms of the State's tax and revenue structure to advance fiscal and economic development policies which benefit the State, the taxation of property by the State should likewise be reviewed to determine whether and how property taxation can be designed to affect and contribute to such policies including innovations in tax policy which might provide appropriate means to ensure a fair distribution of tax burden to concentrated ownership of West Virginia's land, timber and minerals and to encourage rational, long-term planning and use of our State's resources; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature by the creation of the Property Tax Study Commission desires to provide an appropriate forum for the thorough review and consideration of the property tax system, including the statewide reappraisal and the relationship between such system and the State's goals of fiscal responsibility and economic development. This commission shall consist of fifteen members; five of whom shall be members of the State Senate, appointed by the President of the Senate, with no more than four of such members to be of the same political party; five of whom shall be members of the House of Delegates, appointed by the Speaker of the House of Delegates, with no more than four of such members to be of the same political party; and five members to be appointed by the Governor, one of whom shall be the State Tax Commissioner, with not more than four members to be of the same political party; and, be it

*Further Resolved,* That the President of the Senate, Speaker of the House of Delegates and the Governor shall confer together on their respective appointments prior to the same being made in order to ensure that the membership of the Property Tax Study Commission is reasonably diverse as to experience, knowledge, interest and representation; and, be it

*Further Resolved,* That the Governor shall select one of the members as Chairman, and one as Vice Chairman, and vacancies on the Commission shall be promptly filled by the original appointing authority; and, be it

*Further Resolved,* That the Commission may employ such professional, clerical and technical assistance as it deems necessary in order to perform its duties, and may request information from any State officers or agencies in order to assist the performance of its duties; and, be it

*Further Resolved,* That the Commission shall meet in Charleston or elsewhere as it may deem necessary or appropriate, and it shall convene at least monthly and at such other times as its duties may require. The first meeting shall be called jointly, by the President of the Senate and the Speaker of the House of Delegates, one of whom shall preside temporarily and until a chairman is selected; and, be it

*Further Resolved,* That compensation shall be paid and actual and necessary expenses shall be paid or reimbursed from legislative appropriations to the Joint Committee on Government and Finance, but no such compensation and expenses shall be incurred, paid or reimbursed without first obtaining the approval of the Joint Committee on Government and Finance; and, be it

*Further Resolved,* That the Commission is instructed to review and determine the status and quality of the statewide reappraisal review process and make such findings and recommendations as the Commission deems appropriate to provide for an equal and fair property tax system. The Commission shall consult with assessors; county commissioners; representatives of taxpayer groups, including, but not limited to, forestry, coal, and agriculture industries and small businesses; representatives of residential property owners; and other persons who possess knowledge, expertise, or information pertinent to the areas of inquiry identified by the Commission. The Commission or a subcommittee thereof may hold public hearings or meetings at such times and places as it deems appropriate to gather information and provide forums for public comment, in addition to its regular or special meetings. The Commission shall make interim reports

to the Joint Committee on Government and Finance periodically and shall prepare and deliver to the Joint Committee on Government and Finance a final report containing the findings and recommendations of the Commission on or before the 1st day of December, 1989; and, be it

*Further Resolved*, That the Commission is empowered to study, review, and make recommendations as to the following additional matters:

- (1) The benefits, detriments, and viability of applying a two-tiered property tax structure to West Virginia's property tax system;
- (2) The implications of adoption of an "excess acreage tax", "nonproduction tax" or similar tax upon land or natural resource holdings in the State;
- (3) The prospects for integration of tax policies and structures to encourage production, processing and manufacturing activities to occur within West Virginia utilizing the natural resources and raw materials found within the State;
- (4) The prospects of "roll back" or similar provisions in the property tax system to ensure fairness and an equitable sharing of the property tax burden when property is sold for development;
- (5) Developing a more efficient system for the operation and training for those responsible for the identification, assessment and collection of real and personal property taxes; and
- (6) Examine the feasibility of setting minimum tax rates so as to guarantee a stable base of tax revenue; and, be it

*Further Resolved*, That subject to prior approval of the Joint Committee on Government and Finance, the Commission may employ consultants to assist in the analysis and consideration of these subjects. The Commission shall report its findings and recommendations, if any, to the Legislature on the first day of the next Regular Session.



## SENATE CONCURRENT RESOLUTION 3

(By Senators Tucker, Mr. President, Chernenko, Loehr,  
Blatnik and Wiedebusch)

[Adopted March 28, 1989]

Directing that the Wheeling Interstate 470 bridge spanning the Ohio River be hereafter named and referred to as the Vietnam Veterans Memorial Bridge.

WHEREAS, This state is proud of those Vietnam veterans who served with honor in the armed forces of the United States; and

WHEREAS, There should be a suitable memorial to those Vietnam veterans of this state and other states; and

WHEREAS, The Wheeling Interstate 470 bridge spanning the Ohio River will serve admirably as a memorial honoring those Vietnam veterans; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Wheeling Interstate 470 bridge spanning the Ohio River be hereafter named and known as the Vietnam Veterans Memorial Bridge, as an honor and memorial to Vietnam veterans everywhere; and, be it

*Further Resolved* That the Clerk is hereby directed to forward a copy of this resolution to the President of the Senate and the Speaker of the House of the Ohio General Assembly, to the Commissioner of the West Virginia Department of Highways, and to the national headquarters of the Vietnam Veterans of America, the Veterans of Foreign Wars and the American Legion.

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**SENATE CONCURRENT RESOLUTION 22**

(By Senators Holliday, Pritt and Rundle)

[Adopted April 8, 1989]

Urging the Congress of the United States to enact legislation to restore interim black lung benefits to disabled coal miners which were put in jeopardy by a recent United States Supreme Court decision.

WHEREAS, It is already an ordeal, sometimes taking up to

five years, for a coal miner suffering from black lung to obtain benefits; and

WHEREAS, It is totally unfair to make it tougher for individuals with black lung to get this interim relief; and

WHEREAS, Studies involving more than 400 miners have shown that 90 percent to 95 percent of those with more than 20 years of mining experience showed signs of black lung at death; and

WHEREAS, The miners' plight is tough enough without asking them to provide reams of medical and legal paperwork; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Congress of the United States is urged to support Congressman Bob Wise's bill which will allow miners to receive interim benefits by submitting a single piece of evidence supporting a diagnosis of black lung, such as a positive chest X ray, blood test, ventilatory study or doctor's opinion; and, be it

*Further Resolved,* That a copy of this resolution is hereby directed to be sent to the Clerk of the United States House of Representatives, to Congressmen Bob Wise, Harley O. Staggers, Nick J. Rahall and Alan Mollohan, to Senators Robert C. Byrd and John D. Rockefeller IV, and to the Vice President and President of the United States.

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### SENATE CONCURRENT RESOLUTION 26

(By Senators Tucker, Mr. President, Whitlow, Parker, Hylton, Rundle, Holliday, Brackenrich, Chafin and Wagner)

[Adopted March 23, 1989]

Commemorating the passing of James Kee, former U.S. Representative, gentleman and statesman.

WHEREAS, James Kee was born April 15, 1917, at Bluefield, Mercer County, and died in the year 1989 at the age of seventy-one at Montgomery, Fayette County; and

WHEREAS, During his long and colorful life, James Kee served the Congress first as an employee and then as a U.S. Representative and made innumerable contributions to the

state of West Virginia during his thirty-three years of service; and

WHEREAS, Mr. Kee, in giving unselfishly of himself to his community, his state and his country, left this world a better place than it was when he entered it; and

WHEREAS, The passing of James Kee should not go unnoticed; therefore, be it

*Resolved by the Legislature of West Virginia:*

That regret is hereby expressed by the members at the passing of James Kee, a great West Virginian; and, be it

*Further Resolved*, That the Clerk of this body is hereby directed to forward a copy of this resolution to the family of Mr. James Kee.

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COMMITTEE SUBSTITUTE  
FOR  
HOUSE JOINT RESOLUTION 12

(By Mr. Speaker, Mr. Chambers, and Delegate Given)  
(Originating in the House Committee on Constitutional Revision)

[Adopted April 1, 1989]

Proposing an amendment to the Constitution of the State of West Virginia, amending sections eight and thirteen, article nine thereof; and amending said article by adding thereto two new sections, designated sections fourteen and fifteen, all relating to municipal and county organization; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

*Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held on September ninth, one thousand nine hundred eighty-nine, which proposed amendment is that sections eight and thirteen, article nine, be amended; and that said article be further amended by adding thereto two new sections, designated

sections fourteen and fifteen, all to read as follows:

**ARTICLE IX. COUNTY ORGANIZATION.**

**§8. Formation and consolidation of counties; allocation of liabilities.**

1 No new county may hereafter be formed in this state  
2 except by the consolidation of counties. The Legislature  
3 shall provide by law for the consolidation of two or more  
4 counties or the division of a county and the consolidation  
5 of the division thereof with one or more other counties.  
6 No such consolidation may become effective without the  
7 consent of a majority of the voters residing within each  
8 county affected who vote on the question. The former  
9 areas shall be held responsible for their respective  
10 existing liabilities as provided by law.

**§13. Optional forms of county organization and government; home rule for counties.**

1 Notwithstanding any provision of this constitution to  
2 the contrary, the Legislature shall provide by law for  
3 not less than three forms of county organizations and  
4 governments, any one of which shall become effective in  
5 any county when submitted to the voters thereof in an  
6 election held for such purpose and approved by a  
7 majority of the voters who vote on the question. At least  
8 one such form of organization and government shall  
9 provide for either a county manager or county executive  
10 type of organization and government; at least one form  
11 of such organization and government shall be the form  
12 of government in effect in the counties upon the date of  
13 enactment of this amendment and shall include all  
14 elected county offices in effect as of that date; and at  
15 least one form of such organization and government  
16 shall provide for the consolidation of the offices and  
17 functions of one or more of the elected county officers  
18 provided for in the constitution and general laws of this  
19 state as they exist when this amendment takes effect.  
20 All such forms of organizations and governments shall  
21 provide for the exercise of all powers vested in, and the  
22 performance of all duties imposed upon, counties and  
23 county officers by this constitution or by general laws.  
24 Any of such forms of organizations and governments

25 may provide that counties have the power to pass such  
26 laws and ordinances relating to their local affairs as the  
27 Legislature may authorize.

**§14. Consolidation of municipalities and counties; powers and duties of governing bodies; allocation of liabilities.**

1 The Legislature shall provide by law that two or more  
2 municipal governments or municipal and county go-  
3 vernments may be merged into one consolidated govern-  
4 ment with one set of officers but, as to a municipal and  
5 county merger into one consolidated government, the  
6 county shall remain as a geographical area after such  
7 consolidation. Such consolidated governments may be  
8 formed in a manner prescribed by law. The Legislature  
9 may provide that such consolidated governments may  
10 have all or any part of the combined taxing powers of  
11 municipalities and counties, that such consolidated  
12 governments may establish taxing districts within their  
13 jurisdiction in which different rates of taxes may be  
14 imposed based upon the type of services provided within  
15 each district, and that the officers or governing bodies  
16 of such governments may exercise any powers vested in,  
17 or perform any duties imposed upon, counties and  
18 municipalities and their offices and officers by this  
19 constitution or by general laws.

20 No county government shall conduct an election on a  
21 merger pursuant to this section without first receiving  
22 consent from a majority of the members of the govern-  
23 ing body of any municipality proposed to be included in  
24 said consolidated government.

25 No such consolidated government may be formed  
26 without the consent of a majority of the electorate voting  
27 upon the question and residing within the boundaries of  
28 each incorporated municipality that is proposed to be  
29 merged into a consolidated government and a majority  
30 of the electorate voting upon the question and residing  
31 within the boundaries of the proposed consolidated  
32 county and not within the boundaries of any incorpo-  
33 rated municipality included in the proposed consolida-  
34 tion. If any consolidation under this section includes a

35 municipality which has corporate boundaries extending  
 36 into one or more county or counties, the consent of a  
 37 majority of the voters residing in that portion of a  
 38 county or counties not included in the consolidation shall  
 39 be required.

40 The former areas shall be held responsible for their  
 41 existing liabilities as provided by law.

**§15. Legislature may increase salaries of elected officials during term.**

1 Notwithstanding the provisions of article six, section  
 2 thirty-eight of this constitution, the salary of a county  
 3 commissioner, clerks of county commissions, clerks of  
 4 circuit courts, sheriffs, prosecuting attorneys, assessors  
 5 and any other official whose office is created pursuant  
 6 to this article may be increased by the Legislature  
 7 during their terms of office. Each commissioner shall  
 8 receive the same salary as the other commissioners of  
 9 the same county.

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10 *Resolved further,* That in accordance with the provi-  
 11 sions of article eleven, chapter three of the code of West  
 12 Virginia, one thousand nine hundred thirty-one, as  
 13 amended, such proposed amendment is hereby num-  
 14 bered "Amendment No. 2" and designated as the  
 15 "County Organization Reform Amendment" and the  
 16 purpose of the proposed amendment is summarized as  
 17 follows: "To allow alternate forms of local government  
 18 and consolidation."

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COMMITTEE SUBSTITUTE  
 FOR  
 HOUSE JOINT RESOLUTION 21  
 (By Mr. Speaker, Mr. Chambers)  
 [By Request of the Executive]

[Adopted March 28, 1989.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section two of article twelve thereof, relating to education and supervision of free schools; eliminating the office of state superintendent of

free schools as a constitutional office and the West Virginia board of education as a constitutional board; providing that the powers and duties of such office and board shall be exercised and performed by such department or person as shall be prescribed by law; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

*Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held on the ninth day of September, one thousand nine hundred eighty-nine, for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is that section two of article twelve be amended to read as follows:

#### ARTICLE XII. EDUCATION.

##### §2. Supervision of free schools.

1 The supervision of the free schools of the State shall  
2 be vested in such department within the executive  
3 branch of state government as shall be prescribed by  
4 law, which department shall have such powers and  
5 perform such duties as shall be prescribed by law.  
6 Wherever elsewhere in this Constitution reference is  
7 made to the West Virginia board of education or  
8 superintendent of free schools, such reference shall  
9 henceforth be read, construed and understood to mean,  
10 respectively, such department or person specified by law  
11 as being responsible for the exercise and performance  
12 of the powers and duties previously vested in such board  
13 and superintendent. Until the effective date of such law,  
14 the supervision of the free schools shall continue to be  
15 vested in the West Virginia board of education, and the  
16 state superintendent of free schools shall continue to be  
17 the chief school officer of the state.

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18     *Resolved further*, That in accordance with the provi-  
 19 sions of article eleven, chapter three of the code of West  
 20 Virginia, one thousand nine hundred thirty-one, as  
 21 amended, such proposed amendment is hereby num-  
 22 bered "Amendment No. 1" and designated as the  
 23 "Education Reorganization Amendment," and the  
 24 purpose of the proposed amendment is summarized as  
 25 follows: "To amend the state Constitution so as to  
 26 eliminate the office of the state superintendent of free  
 27 schools as a constitutional office and the West Virginia  
 28 board of education as a constitutional board, and to vest  
 29 the responsibility for the exercise and performance of  
 30 the powers and duties of the state superintendent and  
 31 state board in such department of state government or  
 32 person as shall be prescribed by law."

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### SENATE JOINT RESOLUTION 11

(By Senators Tucker, Mr. President, and Harman)

[By Request of the Executive]

[Adopted April 6, 1989]

Proposing an amendment to the Constitution of the State of West Virginia, repealing section eight of article twelve and amending sections one, two, four and seventeen of article seven thereof, repealing an archaic provision in the Constitution; relating to the executive department of state government; eliminating the offices of secretary of state, treasurer and commissioner of agriculture as constitutional offices; providing that the powers and duties of such offices shall be exercised and performed by such departments or persons as shall be prescribed by law; limiting the number of terms of office for the auditor and attorney general; providing for vacancies in the executive department, accounting for moneys, and false reporting constituting perjury; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

*Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:*



That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held on September ninth, one thousand nine hundred eighty-nine, for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is that section eight, article twelve be repealed, and that sections one, two, four and seventeen of article seven be amended to read as follows:

**ARTICLE VII. EXECUTIVE DEPARTMENT.**

**§1. Executive department.**

1 The executive department shall consist of a governor,  
2 auditor and attorney general, who shall be, ex officio,  
3 reporter of the court of appeals. Their terms of office  
4 shall be four years and shall commence on the first  
5 Monday after the second Wednesday of January next  
6 after their election. They shall reside at the seat of  
7 government during their terms of office, keep there the  
8 public records, books and papers pertaining to their  
9 respective offices and shall perform such duties as may  
10 be prescribed by law.

11 The persons holding the offices of secretary of state,  
12 treasurer and commissioner of agriculture on the date  
13 of ratification of the amendment of this section shall  
14 continue in office and complete their terms of office,  
15 unless vacated by death, resignation or otherwise.  
16 Thereafter, the powers and duties previously vested in  
17 the secretary of state, treasurer and commissioner of  
18 agriculture shall be exercised and performed by such  
19 departments or persons in the respective departments of  
20 state government as shall be prescribed by law.  
21 Wherever elsewhere in this Constitution reference is  
22 made to the secretary of state, treasurer or commis-  
23 sioner of agriculture, such reference shall henceforth be  
24 read, construed and understood to mean such depart-  
25 ment or person.

**§2. Election.**

1 An election for governor, auditor and attorney general

2 shall be held at such times and places as may be  
3 prescribed by law.

**§4. Eligibility.**

1 None of the executive officers mentioned in this article  
2 shall hold any other office during the term of service.

3 A person who has been elected or who has served as  
4 auditor or attorney general during all or any part of two  
5 consecutive terms shall be ineligible for the same office  
6 during any part of the term immediately following the  
7 second of the two consecutive terms. The person holding  
8 the office of auditor or attorney general when this  
9 section is ratified shall not be prevented from holding  
10 the office during the term immediately following the  
11 term being served at the time of ratification.

12 A person who has been elected or who has served as  
13 governor during all or any part of two consecutive terms  
14 shall be ineligible for the office of governor during any  
15 part of the term immediately following the second of the  
16 two consecutive terms.

**§17. Vacancies in other executive departments.**

1 If the office of auditor or attorney general shall  
2 become vacant by death, resignation or otherwise, it  
3 shall be the duty of the governor to fill the same by  
4 appointment, and the appointee shall hold the office  
5 until a successor shall be elected and qualified in such  
6 manner as may be prescribed by law. The subordinate  
7 officers of the executive department and the officers of  
8 all public institutions of the state shall keep an account  
9 of all moneys received or disbursed by them, respec-  
10 tively, from all sources and for every service performed,  
11 and make a semiannual report thereof to the governor  
12 under oath or affirmation; and any officer who shall  
13 willfully make a false report shall be deemed guilty of  
14 perjury.

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15 *Resolved further,* That in accordance with the provi-  
16 sions of article eleven, chapter three of the code of West  
17 Virginia, one thousand nine hundred thirty-one, as

18 amended, such proposed amendment is hereby num-  
19 bered "Amendment No. 3" and designated as the "Better  
20 Government Amendment," and the purpose of the  
21 proposed amendment is summarized as follows: "To  
22 amend the state Constitution so as to eliminate the  
23 offices of secretary of state, treasurer and commissioner  
24 of agriculture as constitutional offices; to vest the  
25 responsibility for the exercise and performance of the  
26 powers and duties of such offices in such departments  
27 of state government and persons as shall be prescribed  
28 by law; to limit the number of terms of office for the  
29 auditor and attorney general; and to repeal an archaic  
30 provision in the Constitution.

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### HOUSE RESOLUTION 12

(By Mr. Speaker, Mr. Chambers, and Delegate R. Burk)

[Adopted February 24, 1989]

Relating to empowering the House Committee on the Judiciary to investigate allegations of impeachable offenses against the State Treasurer.

WHEREAS, On the twenty-first day of February, one thousand nine hundred eighty-nine, House Resolution 9 was presented to the House of Delegates, alleging the loss of an estimated Two Hundred Seventy-nine Million Dollars from the "Consolidated Investment Fund"; and

WHEREAS, The said resolution alleges that "[t]he losses incurred by said fund appear to and may be the result of incompetence, neglect of duty or maladministration by the State Treasurer"; and

WHEREAS, On the day aforesaid the said resolution as presented to the House of Delegates was referred to the House Committee on the Judiciary; and

WHEREAS, The said resolution raises issues which may relate to acts or omissions in the administration and conduct of the office of the Treasurer of the State of West Virginia, by the Treasurer, A. James Manchin, and calls for a determination by the House of Delegates as to whether said acts or omissions by the Treasurer may constitute offenses for which the Treasurer should be impeached pursuant to section nine,

article IV of the Constitution of the State of West Virginia; and

WHEREAS, The matters raised by the said resolution are a proper subject of investigation by the House of Delegates; therefore, be it

*Resolved by the House of Delegates:*

That the House Committee on the Judiciary be, and it is by this resolution, empowered (1) To investigate, or cause to be investigated, any allegations or charges raised in the aforesaid resolution which may relate to maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor by the Treasurer of the State of West Virginia; (2) to hold a hearing or hearings thereon; (3) to make findings of fact based upon such investigations and hearings; (4) to report to the House of Delegates its findings of facts and any recommendations which the Committee on the Judiciary may deem proper; and (5) if the recommendation of the committee be to impeach the Treasurer, to present to the House of Delegates a proposed resolution of impeachment and proposed articles of impeachment; and, be it

*Further Resolved,* That in carrying out its duties pursuant to this resolution, the House Committee on the Judiciary is authorized:

(1) To examine witnesses, to send for persons and papers, documents and other physical evidence, to order the attendance of any witness, or the production of any paper, document and other physical evidence, and to exercise all other powers described under the provisions of section five, article one, chapter four of the Code of West Virginia;

(2) To issue summonses, subpoenas and subpoenas duces tecum and to enforce obedience to its summonses and subpoenas in accordance with the provisions of section five, article one, chapter four of the Code of West Virginia or by invoking the aid of the courts of this state;

(3) To administer oaths or affirmations in accordance with the provisions of section six, article one, chapter four of the Code of West Virginia; and

(5) To determine whether all or any portion of a meeting or

hearing should be held in an executive session, notwithstanding the provisions of Rule eighty-three of the Rules of the House of Delegates; and, be it

*Further Resolved*, That in carrying out his duties pursuant to this resolution, the Chairman of the Committee on the Judiciary is authorized:

(1) To establish or define rules of procedure for the conduct of meetings or hearings held pursuant to this resolution;

(2) To employ, with the prior approval of the Speaker of the House, a court reporter or stenographer and such other professional or clerical employees as may be reasonably required;

(3) To designate a subcommittee or subcommittees of the Committee on the Judiciary to assist the Chairman or the Committee in performing his or its duties pursuant to this resolution; and

(4) To determine the time and place of all meetings or hearings of the Committee and its designated subcommittees; and, be it

*Further Resolved*, That the Committee on the Judiciary, during its inquiry, may entertain such procedural and dispositive motions as may be made in the case of any other bill or resolution referred to that Committee, or, in making its recommendations, if any, pursuant to this resolution, may include any one or more of the following:

(1) A recommendation that the House of Delegates and its Committee on the Judiciary delay any further consideration of the charges raised in the aforesaid resolution until a time certain;

(2) A recommendation that the Treasurer of the State of West Virginia, A. James Manchin, not be impeached;

(3) A recommendation (A) That the Treasurer of the State of West Virginia, A. James Manchin, be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor, and that the said A. James Manchin be removed from office and be thereafter disqualified from holding any office of honor, trust or profit, under this State; and (B) that the House of

Delegates adopt a resolution of impeachment and formal articles of impeachment as prepared by the Committee on the Judiciary and deliver the same to the Senate in accordance with the procedures of the House of Delegates, for consideration by the Senate according to law; and

(4) A recommendation of proposed legislation to correct any perceived statutory deficiencies found by the Committee.

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### HOUSE RESOLUTION 19

(Originating in the House Committee on the Judiciary)

[Adopted March 29, 1989]

Relating to the impeachment of A. James Manchin, Treasurer of the State of West Virginia, for maladministration, incompetency, neglect of duty, and high crimes and misdemeanors in his office as Treasurer of the State of West Virginia.

*Resolved*, That A. James Manchin, Treasurer of the State of West Virginia, be impeached for maladministration, incompetency, neglect of duty, and high crimes and misdemeanors in his office as Treasurer of the State of West Virginia, and that said articles of impeachment, being seventeen in number, be and they are hereby adopted by the House of Delegates, and that the same shall be exhibited to the Senate in the following words and figures, to-wit:

ARTICLES exhibited by the House of Delegates of West Virginia in the name of themselves and all of the people of the State of West Virginia against A. James Manchin, who was at the general election held in November, 1984, duly elected to the office of Treasurer of the State of West Virginia, and on the 14th day of January, 1985, after having duly qualified as such Treasurer of the State of West Virginia by taking the required oath to support the Constitution of the United States and the Constitution of the State of West Virginia and to faithfully discharge the duties thereof to the best of his skill and judgment, entered upon the discharge of the duties thereof, and continued therein for a full term of four years; and, who was, at the general election held in November, 1988, again duly elected to said office of Treasurer of the State of West Virginia, and on January 16, 1989, after having again

duly qualified as such, by again taking the required oath to support the Constitution of the United States and the Constitution of this State and to faithfully discharge the duties of the office to the best of his skill and judgment, again entered upon the discharge of the duties thereof for a second term of four years, ending January 13, 1993, in maintenance and support of their impeachment against him, the said A. James Manchin, Treasurer of the State of West Virginia, for maladministration, incompetency, neglect of duty, and high crimes and misdemeanors.

### Article I

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there, with regard to the discharge of the duties of his office, delegated major elements of supervision to his subordinates, and thereafter failed to exercise reasonable and proper supervisory oversight of said subordinates in regard to the proper discharge of their duties.

### Article II

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, failed to use due diligence in protecting securities under his control from loss from any cause.

### Article III

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high

office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, made investments of funds of the Consolidated Fund (commonly called the Consolidated Investment Fund) with maturity dates beyond ten years, without the approval of a majority of the members of the West Virginia State Board of Investments, in violation of investment policy guidelines adopted by said Board on February 19, 1985.

#### Article IV

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin and his employees under his direct control and supervision, on and after January 14, 1985, continued to maintain, within the Consolidated Fund (commonly called the Consolidated Investment Fund), a reserve for losses (commonly called a reserve account or "rainy day fund") without approval of the West Virginia State Board of Investments, in violation of legislative rules promulgated by the Board pursuant to statutory law.

#### Article V

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees



under his direct control and supervision, entered into reverse repurchase agreements, through the Consolidated Fund (commonly called the Consolidated Investment Fund), in amounts exceeding the West Virginia State Board of Investments' investment policy guidelines adopted by the Board on February 19, 1985, to-wit: The movement of the total dollar value of reverse repurchase agreements during April, 1987, was as follows:

Date	Amount	Percentage of Total Fund
April 1, 1987	\$996,344,313.00	41%
April 3, 1987	\$797,608,813.00	33%
April 8, 1987	\$822,952,325.00	34%
April 13, 1987	\$623,217,325.00	26%
April 15, 1987	\$619,205,306.00	25%
April 21, 1987	\$514,515,981.00	21%
April 27, 1987	\$ 76,400,000.00	3%

#### Article VI

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, entered into futures or options contracts, through the Consolidated Fund (commonly called the Consolidated Investment Fund), in violation of the West Virginia State Board of Investments' investment policy guidelines adopted by the said Board on December 29, 1986, such options being speculative in nature, to-wit:

The Investments Division of the State Treasurer's office, using funds of the said Consolidated Fund, wrote two options in March, 1987. As the writer of the options, the said Investments Division received premiums paid by the buyers of the options.

The said Investments Division wrote a call option on March 4, 1987, on \$15,000,000.00 of Federal National Mortgage Association (FNMA) notes due on March 10, 1992, and received a premium of \$37,500.00. The said Investments Division purchased \$67,000,000.00 of FNMA notes on March 10, 1987, maturing on March 10, 1992 (\$15,000,000.00 of which was to cover the call option in the event it was exercised by the buyer). The call option expired on May 4, 1987, without being exercised, meaning the buyer did not buy the FNMA notes. Thereafter, the said Investments Division sold the \$67,000,000.00 of FNMA notes on June 4, 1987, and incurred a loss in the said Consolidated Fund of \$4,284,375.00 of which \$956,250.00 of the loss resulted from the sale of the FNMA notes purchased to cover the call option. The net loss in the said Consolidated Fund was reduced by the premium received, \$37,500.00, to \$918,750.00 on these transactions.

The said Investments Division wrote a put option on March 12, 1987, for \$200,000,000.00 of United States Treasury Notes due on November 15, 1996, and received a premium of \$1,671,875.00. However, the put option was exercised by the buyer of the put on May 12, 1987, meaning the buyer of the put forced the said Investments Division to take possession of the \$200,000,000.00 of United States Treasury Notes. In turn, the said Investments Division sold the investments on the same day and incurred a loss in the said Consolidated Fund of \$15,421,875.00. The net loss in the said Consolidated Fund was reduced by the premium received, \$1,671,875.00, to \$13,750,000.00 on this transaction.

### Article VII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, failed to distribute earnings or allocate losses to the several participants in the

Consolidated Fund (commonly called the Consolidated Investment Fund) in an equitable manner, to-wit:

(1) Prior to May, 1987, the Treasurer's office made apportionments of purported earnings to the several participants in the said Consolidated Fund which were less than the actual amounts which were earned by the said Consolidated Fund.

(2) Beginning in May, 1987, the Treasurer's office made apportionments of purported earnings to the several participants in the said Consolidated Fund which were greater than the actual amounts which were earned by the said Consolidated Fund.

(3) Beginning in May, 1987, and for periods thereafter during which the said Consolidated Fund experienced actual losses in earnings income, or negative income, the Treasurer's office did not allocate losses among the several participants in the said Consolidated Fund, but instead made apportionments of purported earnings to the several participants in the said Consolidated Fund.

#### Article VIII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, paid costs and expenses from the Investment Service Fees Account which were not incurred in the performance of the functions of the West Virginia State Board of Investments and were therefore not proper charges against, and were not payable on a pro rata basis from, the earnings of the various funds managed by the said Board, to-wit:

(1) The Treasurer's office did pay wages and salaries of some employees of the Treasurer's office from the Investment Service Fees Account, which such wages and salaries were not for personal services rendered by or on behalf of the West Virginia State Board of Investments.

(2) The Treasurer's office did pay expenses of the Treasurer's office and the Treasurer, A. James Manchin, from the Investment Service Fees Account, which such expenses were not incurred by or on behalf of the West Virginia State Board of Investments.

### Article IX

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, made charges against purported earnings of the various funds managed by the West Virginia State Board of Investments and deposited the same into the Investment Service Fees Account when, in fact, such earnings did not exist or were overstated.

### Article X

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: Notwithstanding that A. James Manchin, as Treasurer of the State of West Virginia, is, by statute, the Executive Secretary of the West Virginia State Board of Investments and the custodian of all funds, securities and assets held by the Board, and notwithstanding that the office of the Treasurer is, by statute, the staff agency for said Board, A. James Manchin and staff of the State Treasurer's office failed, with respect to investments made with funds of the Consolidated Fund (commonly called the Consolidated Investment Fund), to exercise that degree of judgment and care, under circumstances then prevailing, which men of experience, prudence, discretion and intelligence exercise in the management of their own affairs, not for

speculation but for investment considering the probable safety of their capital as well as the probable income to be derived.

#### Article XI

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin and his employees under his direct control and supervision violated, with respect to investments made with funds of the Consolidated Fund (commonly called the Consolidated Investment Fund), generally and specifically, general investment policies of the West Virginia State Board of Investments as to (1) purpose, (2) standard of care, (3) diversification, (4) permissible investments and (5) social responsibility.

#### Article XII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: That the said A. James Manchin and his employees under his direct control and supervision generally and specifically violated, with respect to investments made with funds of the Consolidated Fund (commonly called the Consolidated Investment Fund), the general investment policies of the West Virginia State Board of Investments as to (1) preservation of capital, (2) stability, (3) liquidity and (4) turnover.

#### Article XIII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in

the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: Notwithstanding that A. James Manchin, as State Treasurer, as a member of, and Executive Secretary of, the West Virginia State Board of Investments, and as chief executive officer of the staff agency for said Board, had a fiduciary duty to recognize investment losses as they occurred within the Consolidated Fund (commonly called the Consolidated Investment Fund) and to timely report such losses to said Board, A. James Manchin breached said duty by failing to recognize and report such losses after being informed by trusted employees of the Treasurer's office, Mary Jane Lopez and Jack Fuller, in November, 1987, that investment losses had occurred.

#### Article XIV

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there appointed an individual to manage a multi-billion dollar portfolio of investments, as well as other duties, without care or attention to such person's qualifications, to-wit: A. James Manchin appointed and retained a person to direct the management and investment of funds of the Consolidated Fund (commonly called the Consolidated Investment Fund), knowing that the said person had no formal education or training to qualify said person to direct the investment or trading in investments of funds within the said Consolidated Fund, and knowing that the said person had participated as an investments officer in the trading of investments which had resulted in losses within the said Consolidated Fund during the months of April, May and June, 1987.

#### Article XV

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in

the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his senior staff, or both A. James Manchin and his senior staff, conspired to cover up losses which occurred in April, May and June, 1987, in the Consolidated Fund (commonly called the Consolidated Investment Fund) and to withhold information as to such losses from the various participants in the said Consolidated Fund and from the people of West Virginia.

### Article XVI

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: Notwithstanding that A. James Manchin had the benefit of numerous warnings concerning bond market conditions during the second quarter of 1987 and the trading position of the Investments Division of the Treasurer's office with regard to the various portfolios of the Consolidated Fund (commonly called the Consolidated Investment Fund) under his control, and notwithstanding that A. James Manchin received direct reports of investment losses in the said Consolidated Fund, A. James Manchin failed, omitted or neglected to recognize and react to these warning signals and reports, to-wit: A. James Manchin failed, omitted or neglected to recognize and react to the following:

(1) Action taken by the Board of Directors of the West Virginia Housing Development Fund during April, May and June, 1987, to withdraw all of its funds from the said Consolidated Fund, because said bond market conditions and the type of investments held by the said Consolidated Fund had caused the investment portfolio of the West Virginia Housing Development Fund to be "under water" or worth less than par value.

(2) A letter from John L. O'Grady of Salomon Brothers dated April 3, 1987, directed to Arnold T. Margolin, Assistant Treasurer, with copies thereof directed to the members of the

West Virginia State Board of Investments, of which A. James Manchin was and is a member, wherein Salomon Brothers questioned the position of the said Consolidated Fund in the then-existing bond market and described the potential risks to which the said Consolidated Fund was exposed.

(3) A letter from Governor Arch A. Moore, Jr., a member of and Chairman of the West Virginia State Board of Investments, dated April 15, 1987, directed to A. James Manchin, who was and is State Treasurer and Executive Secretary of the West Virginia State Board of Investments, expressing great concern with the contents of the Salomon Brothers letter, a copy of which the Governor had received from said O'Grady, expressing concern with the volatility of interest rates existing at that time and the potential effect on the portfolio of the said Consolidated Fund, and expressing particular concern with Arnold T. Margolin's interpretation of investment guidelines of the West Virginia State Board of Investments.

(4) Meetings and conversations which took place in November, 1987, with Mary Jane Lopez and Jack Fuller, two valued and trusted employees of the Treasurer, wherein A. James Manchin was informed by the said Lopez and Fuller of losses on investments of funds of the said Consolidated Fund made by the said Investments Division.

#### Article XVII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there overdelegated the duties and responsibilities of the office of State Treasurer, to the detriment of the people of West Virginia, to-wit: Throughout his tenure as State Treasurer, A. James Manchin has:

(1) Delegated the substantive duties and responsibilities of the Investments Division of the Treasurer's office, first, to Arnold T. Margolin and, subsequently, to Mary Hudson, without requiring such persons to be accountable for their



activities or for their direction of the said Investments Division.

(2) Attended primarily to self-created ceremonial functions, not required by law to be performed, and not directly related to the discharge of the duties of the office of Treasurer of the State of West Virginia.

(3) Failed to obtain even a conversational understanding of the functions of the said Investments Division.

(4) Failed to impose adequate controls upon employees of the Treasurer's office to ensure the proper conduct of their assigned or delegated duties and responsibilities.

(5) Failed to require that proper internal audits be performed to supervise investment trading and other financial transactions carried out within the office of the Treasurer.

(6) Failed to establish effective lines of communication within the Treasurer's office necessary to keep himself informed of the manner in which delegated duties and responsibilities were being carried out, and, further, failed to properly pursue issues or questions raised by communications which did come to his attention.

(7) Allowed inadequate record keeping and improper reporting procedures, as to the performance of the Consolidated Fund (commonly called the Consolidated Investment Fund), to be established and continued.

(8) Brought an absence of care and attention to the duties and responsibilities of his office, and failed to have a concern for the discharge of his duties that would reasonably be expected of a person holding the office of State Treasurer or a similar executive office.

*Wherefore*, the said A. James Manchin, Treasurer of the State of West Virginia, failed to discharge the duties of his office, and was and is guilty of maladministration, incompetency, neglect of duty, and high crimes and misdemeanors.

And the House of Delegates of West Virginia, saving to themselves the liberty and rights of exhibiting at any time hereafter any further articles against the said A. James Manchin, Treasurer of the State of West Virginia, as aforesaid, and also of replying to his answers which he may

make unto the articles herein preferred against him, and of offering proof to any and all of the articles herein contained, and every part thereof, and to all and every other article, accusation or impeachment, which shall be exhibited by the said House of Delegates as the case may require, do demand that the said A. James Manchin, Treasurer as aforesaid, may be put to answer the maladministration, incompetency, neglect of duty, and high crimes and misdemeanors, herein charged against him, and that such proceedings, examinations, trials and judgments, may be thereupon had, given and taken, as may be agreeable to the Constitution and laws of the State of West Virginia, and as justice may require.

We, Robert C. Chambers, Speaker of the House of Delegates of West Virginia, and Donald L. Kopp, Clerk thereof, do certify that the above and foregoing Articles of Impeachment preferred by said House of Delegates against A. James Manchin, Treasurer of the State of West Virginia, were adopted by the House of Delegates on the 29th day of March, 1989.

In Testimony Whereof, we have signed our names hereunto this the 29th day of March, 1989.

ROBERT C. CHAMBERS  
Speaker of the House of Delegates

DONALD L. KOPP  
Clerk of the House of Delegates

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### HOUSE RESOLUTION 20

(Originating in the House Committee on the Judiciary)

[Adopted March 29, 1989]

Recommending the public reprimand and censure of Glen B. Gainer, Jr., Auditor of the State of West Virginia.

WHEREAS, On the twenty-first day of February, one thousand nine hundred eighty-nine, House Resolution 9 was presented to the House of Delegates, alleging the loss of an estimated two hundred seventy-nine million dollars from the "Consolidated Investment Fund"; and

WHEREAS, The said resolution alleges that "[t]he losses incurred by said Fund appear to and may be the result of incompetence, neglect of duty or maladministration by the State Treasurer"; and

WHEREAS, On the day aforesaid the said resolution as presented to the House of Delegates was referred to the Committee on the Judiciary; and

WHEREAS, On the twenty-fourth day of February, one thousand nine hundred eighty-nine, House Resolution 12 was adopted by the House of Delegates empowering the Committee on the Judiciary to, among other things, "report to the House of Delegates its findings of facts and any recommendations which the Committee on the Judiciary may deem proper" respecting the matters raised in the said House Resolution 9; and

WHEREAS, During the course of its proceedings pursuant to said House Resolution 12, the Committee on the Judiciary heard testimony and reviewed documentary evidence concerning the official conduct of members of the West Virginia State Board of Investments, including the official conduct of the Auditor, Glen B. Gainer, Jr., who is a member of said Board, the said Auditor having served in such capacity since January fourteenth, one thousand nine hundred eighty-five, and continues to so serve; and

WHEREAS, The Committee on the Judiciary has concluded its proceedings with respect to the said House Resolution 12 and, in addition to other recommendations otherwise dealt with, submits the findings and recommendation set forth herein; and

WHEREAS, As a result of the aforementioned proceedings, the Committee has determined that the said Auditor, Glen B. Gainer, Jr., has: (1) Overdelegated certain of his substantive duties and responsibilities of the office of the Auditor to some members of his staff without establishing effective methods of communication and without requiring such persons to be accountable to and report important activities and information to him; (2) neglected to keep himself adequately informed, as a member of the West Virginia State Board of Investments,

as to the status of the funds within the Consolidated Fund (commonly called the Consolidated Investment Fund); and (3) otherwise failed to effectively participate, in an active manner, as a member of the West Virginia State Board of Investments; and

WHEREAS, The Committee on the Judiciary is of the opinion that the said Glen B. Gainer, Jr., Auditor of the State of West Virginia, should be publicly reprimanded and censured for and because of his aforementioned conduct; therefore, be it

*Resolved by the House of Delegates:*

That Glen B. Gainer, Jr., Auditor of the State of West Virginia, be and he is hereby publicly reprimanded and censured for and because of this aforementioned conduct; and, be it

*Further Resolved*, That the Clerk of the House of Delegates be and he is hereby directed to forward a copy of this resolution to the said Glen B. Gainer, Jr., Auditor of the State of West Virginia.

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### HOUSE RESOLUTION 21

(By Mr. Speaker, Mr. Chambers, and Delegate Hatcher)

[Adopted April 7, 1989]

Providing for the appointment of a committee of five on the part of the House of Delegates to go before the Senate to impeach A. James Manchin, Treasurer of the State of West Virginia, for maladministration, incompetence, neglect of duty, and high crimes and misdemeanors, and, as managers on the part of the House of Delegates, to deliver to the Senate articles of impeachment, and to conduct the impeachment against A. James Manchin.

*Resolved*, That a committee of five members of the House of Delegates be appointed by the Speaker, and that such committee be and it is hereby directed to go before the Senate, and deliver to the Clerk of the Senate a message whereby the said committee, in the name of the House of Delegates and the people of the State of West Virginia, impeaches A. James Manchin, Treasurer of the State of West Virginia, for

maladministration, incompetence, neglect of duty, and high crimes and misdemeanors in his office, and acquaint the Senate that the House of Delegates will exhibit particular articles of impeachment against him, the said A. James Manchin, Treasurer of the State of West Virginia, as aforesaid, and make good the same, and that said committee demand that the Senate cause to be served upon the said A. James Manchin a true copy of the articles of impeachment and take order for the appearance of the said A. James Manchin to answer to said impeachment; and, be it

*Further Resolved*, That said committee of five members of the House of Delegates be and it is hereby directed to act as managers on the part of the House of Delegates to carry and deliver to the Clerk of the Senate the said articles of impeachment; and, be it

*Further Resolved*, That said committee of five, as managers, be and it is hereby directed to conduct the impeachment against the said A. James Manchin, Treasurer of this State, before the Senate, in accordance with procedural rules adopted by the Senate, with all necessary assistance as may be required and provided by employees of the House or Senate and by such professional, clerical and stenographic assistants as may be engaged by the House or Senate for such purposes.

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### SENATE RESOLUTION 26

(Originating in the Senate Committee on Rules)

[Adopted April 3, 1989]

Amending Rules of the Senate, relating to "Bill Reading Docket."

*Resolved by the Senate:*

That the Standing Rules of the Senate be amended by adding thereto a new rule, designated Senate Rule No. 21a, to read as follows:

21a. Upon motion of any member, on any legislative day or the day preceding, the Senate may, by a vote of two thirds of those present, establish a period of time known as "Bill Reading Docket".

Such motion shall state each bill to be read, the time and order for such Bill Reading Docket to commence and to conclude, and may provide for the adjournment or recess of the Senate for not more than one legislative day, during which reading of the docket no motion, except a motion to postpone the reading of the bills, by two-thirds vote of those elected, shall be heard. A quorum shall not be required during the Reading of the Docket. Any and all members requesting that a bill be read shall be present at all times in the Chamber during its reading.

All bills read on the Bill Reading Docket shall be considered as having been read fully and distinctly.

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SENATE RESOLUTION 35  
(By Senator Brackenrich)

[Adopted April 6, 1989]

Directing the West Virginia Department of Natural Resources to make an in-depth study of mandatory hunter safety programs in West Virginia and other states.

WHEREAS, Hunting is a popular sport enjoyed by thousands in West Virginia, and over the past five years we have averaged sixty-five hunter-related accidents and seven fatalities per year; and

WHEREAS, Thirty-nine states, four of which border West Virginia, and six Canadian provinces currently have mandatory hunter education programs; and

WHEREAS, It is in the public interest to address the issue of hunter safety and to develop programs to minimize the danger while enhancing the enjoyment of hunting; therefore, be it

*Resolved by the Senate:*

That the West Virginia Department of Natural Resources make an in-depth study of the mandatory hunter safety programs in West Virginia and other states, said report to include the following: Statistics on the effect of mandatory hunter safety programs on hunting accidents; how long other states have required completion of a hunter safety program as a requisite to obtaining a hunting license; and a list of states which have reciprocal agreements with West Virginia

regarding hunting licensing and hunter education programs; and, be it

*Further Resolved*, That a report on the findings of said study be made to the West Virginia Legislature no later than January 15, 1991; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Director, Department of Natural Resources, Charleston, West Virginia.

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### SENATE RESOLUTION 37

(By Senators Tucker, Mr. President, Holliday, Boettner, M. Manchin, Holmes, Pritt, and Brackenrich.)

[Adopted April 7, 1989]

Encouraging the speedy development of the Elk River and its proximity into a national recreational area by the federal and state governments and the citizens of West Virginia.

WHEREAS, By far the greatest recreational opportunity in West Virginia is the development of the Elk River and its tributaries as a first-class national recreational area under the Department of the Interior; and

WHEREAS, The counties most affected are Clay, Pocahontas, Nicholas, Randolph, Webster, Braxton and Kanawha; and

WHEREAS, The Elk River, which is the longest river within the bounds of the state of West Virginia with crystal clear water, has excellent fishing, scenic splendor, in close proximity to modern highways; and

WHEREAS, The development would require additional and improved access highways; and

WHEREAS, By necessity a main headquarters and modern lodge would have to be built; and

WHEREAS, Hunting, boating, hiking, picnicking, camping and other recreation such as golfing, tennis, canoeing, aerial trams, horse riding trails, public swimming areas, and scenic railroads would find an ideal location; and

WHEREAS, New and permanent employment with such a

national recreation area and through necessary supporting businesses, motels, restaurants, gasoline stations, sporting goods stores and general retail stores would increase at a rapid rate and remain at a high and stable level; and

WHEREAS, Such development would be an important step in solving the economic problems of central West Virginia and the economic impact would, in fact, be statewide in significance; and

WHEREAS, We see scenic overlooks, preserving swinging bridges, historical plays centered about Confederate and Union battles and legends of Indians who lived in the nearby mountains continuing; and

WHEREAS, We are urging immediate steps be taken to begin work on the project; and

WHEREAS, We must be ready for the increased number of people who will be seeking recreation; the increase in per capita income; the increase in per capita leisure time; and the increase in per capita travel; and

WHEREAS, West Virginia contains a charm and alluring atmosphere that is yet to be discovered by millions of people throughout the nation and our state's hospitality is genuine to homefolks and visitors from afar; therefore, be it

*Resolved by the Senate:*

That the Senate go on record strongly urging and encouraging the development of the Elk River and its proximity into a national recreational area as soon as possible; and, be it

*Further Resolved,* That a copy of this resolution be transmitted to the following persons: President George Bush; the National Park Services of the United States; the Interior Department; United States Senators Robert C. Bryd and John D. Rockefeller IV, United States Congressmen Robert Wise, Alan Mollohan, Harley O. Staggers, Jr. and Nick Jo Rahall; and Governor Gaston Caperton, and further released to any organizations and individuals the Senate may deem appropriate.



# LEGISLATURE OF WEST VIRGINIA

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# ACTS

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## EXTRAORDINARY SESSION, 1989

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### CHAPTER 1

(Com. Sub. for H. B. 104—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed February 1, 1989; in effect July 1, 1989. Approved by the Governor.]

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AN ACT to amend and reenact section six, article one-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article one-a by adding thereto a new section, designated section seven; and to amend and reenact chapter six-b of said code, all relating generally to ethical standards of governmental officials and employees and disclosure of financial interests of such persons; requiring financial disclosure by candidates for public office; the duties and authority of the secretary of state with respect thereto; providing a short title with respect to said chapter six-b; definition of certain terms with respect thereto; providing for certain legislative findings and purposes; clarifying that the remedies provided in said chapter six-b are in addition to other applicable remedies in said code; providing for the severability of the provisions of said chapter; creating within state government a West Virginia ethics commission and providing for its membership; providing for the appointment of such members and their respective

terms of office; requiring that such persons take an oath of office; providing for their compensation and reimbursement of expenses; establishing certain rules with respect to the meetings of the commission; providing rules with respect to voting procedures of the commission and a quorum thereof; describing the powers, duties and authority of the commission and providing for its facilities and staff; requiring the commission to promulgate legislative rules and regulations to carry out the purposes of said chapter six-b and the time within which such rules and regulations are to be promulgated; authorizing the commission to issue advisory opinions and the effect thereof with respect to persons acting pursuant thereto; the powers of the commission with respect to the hearing of complaints brought against public officials and employees; authorizing the commission to employ hearing examiners, issuing subpoenas and subpoenas duces tecum; the authority of the commission to impose certain administrative sanctions for violations of said chapter; conciliation agreements; providing for procedures with respect to the filing of complaints against persons subject to said chapter and the conducting of hearings with respect thereto; providing for confidentiality requirements as to commission members and staff; providing for confidentiality of certain proceedings of the commission; penalties; requiring a record of hearings conducted by the commission; penalties; permitting commission members to recuse themselves in certain instances; authority to recommend prosecution; authority to commence civil proceedings; judicial review; civil actions against complainants; effective dates; statute of limitations; providing ethical standards for elected and appointed officials, as well as certain public employees; prohibiting the use of public office for private gain; exceptions; limitation on gifts; exceptions; limiting the right of certain elected and appointed officials or employees to contract with certain governmental agencies and providing for certain exceptions with respect thereto; prohibiting the disclosure of confidential information; limiting the rights of certain public officials and employees to represent certain

persons before any agency by whom such officials and employees are or were employed; exemption; prohibiting certain public officials and employees from seeking employment with persons whom they regulate; exemptions; clarifying when members of the Legislature are required to vote upon disclosure of an interest in a matter before the Legislature; limiting the rights of certain public officials and employees in licensing or rate-making proceedings in certain cases; requiring the filing of financial disclosure statements by certain public officials, public employees and candidates, the contents thereof and the time when such statements are to be filed; providing for the appointment of special prosecutors in certain cases; providing for penalties for violations of said chapter; providing for termination of commission; providing for registration and reporting requirements for lobbyists; defining certain terms relating to lobbyists and lobbying activities; prescribing the information required of lobbyists upon registration; providing for an information booklet identifying registered lobbyists; establishing reporting requirements for lobbyists; providing for registration and reporting by grass roots lobbying campaigns; making it a violation of law to pay a person to lobby who is not registered; describing the duties of lobbyists and defining certain acts which are violations; limiting lobbying within the legislative chambers; defining certain crimes and establishing the penalties therefor; and authorizing municipalities to enact ordinances regulating lobbyists.

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

That section six, article one-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article one-a be further amended by adding thereto a new section, designated section seven; and that chapter six-b be amended and reenacted, all to read as follows:

## **Chapter**

### **3. Elections.**

#### **6B. Public Officers and Employees; Ethics; Conflicts of Interest; Financial Disclosure.**

**CHAPTER 3. ELECTIONS.****ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.**

§3-1A-6. Election rules; powers and duties of secretary of state; exercise of powers by appointees.

§3-1A-7. Candidate's financial disclosure statement.

**§3-1A-6. Election rules; powers and duties of secretary of state; exercise of powers by appointees.**

1       The secretary of state shall be the chief election  
2 official of the state. He shall have authority, after  
3 consultation with the state election commission, of which  
4 he is a member, to make, amend and rescind such rules,  
5 regulations and orders as may be necessary to carry out  
6 the policy of the Legislature, as contained in this  
7 chapter. In order to avoid conflicting provisions between  
8 regulations promulgated by the secretary of state and  
9 the state commission on ethics, the rules and regulations  
10 promulgated under this section shall be legislative rules  
11 and shall be promulgated pursuant to the provisions of  
12 chapter twenty-nine-a of the code of West Virginia. All  
13 regulations adopted prior to the first day of January, one  
14 thousand nine hundred eighty-nine, shall be submitted  
15 on or before the first day of August, one thousand nine  
16 hundred eighty-nine, to the Legislature for review by  
17 the legislative rule-making review committee and  
18 approval by the Legislature.

19       It shall be the duty of all election officials, county  
20 commissions, clerks of county commissions, clerks of  
21 circuit courts, boards of ballot commissioners, election  
22 commissioners and poll clerks to abide by such rules,  
23 regulations and orders, which shall include:

24       (a) Uniform rules of procedure for registrars and  
25 other registration officials in the performance of their  
26 duties, as to time and manner of performance;

27       (b) Uniform rules for the purging of registration  
28 records;

29       (c) Uniform rules for challenging registrants; and

30       (d) Any other rules, regulations or directions neces-

31 sary to standardize and make effective the administra-  
32 tion of the provisions of this chapter.

33 The secretary of state also shall have authority to  
34 require collection and report of statistical information  
35 and to require other reports by county commissions,  
36 clerks of county commissions and clerks of circuit  
37 courts.

38 It shall be his further duty to advise with election  
39 officials; to furnish to the election officials a sufficient  
40 number of indexed copies of the current election laws  
41 of West Virginia and the administrative orders and  
42 rules and regulations issued or promulgated thereunder;  
43 to investigate the administration of election laws, frauds  
44 and irregularities in any registration or election; to  
45 report violations of election laws to the appropriate  
46 prosecuting officials; and to prepare an annual report.

47 The secretary of state shall also have the power to  
48 administer oaths and affirmations, issue subpoenas for  
49 the attendance of witnesses, issue subpoena duces tecum  
50 to compel the production of books, papers, records,  
51 registration records and other evidence, and fix the time  
52 and place for hearing any matters relating to the  
53 administration and enforcement of this chapter, or the  
54 rules, regulations and directions promulgated or issued  
55 hereunder by the secretary of state as the chief election  
56 official of the state. In case of disobedience to a subpoena  
57 or subpoena duces tecum, he may invoke the aid of any  
58 circuit court in requiring the attendance, evidence and  
59 testimony of witnesses and the production of papers,  
60 books, records, registration records and other evidence.

61 All powers and duties vested in the secretary of state  
62 under this article may be exercised by appointees of the  
63 secretary of state at his discretion, but the secretary of  
64 state shall be responsible for their acts.

### §3-1A-7. Candidate's financial disclosure statement.

1 Candidates for election to any state, county or  
2 municipal office, county school board, district school  
3 board, or to the position of county or district school  
4 board superintendent, shall file a financial disclosure

5 statement with the ethics commission as may be  
6 required under subsection (a), section six, article two,  
7 chapter six-b of this code.

**CHAPTER 6B.  
PUBLIC OFFICERS AND EMPLOYEES;  
ETHICS; CONFLICTS OF INTEREST;  
FINANCIAL DISCLOSURE.**

**Article**

1. Short Title; Legislative Findings, Purposes and Intent; Construction and Application of Chapter; Severability.
2. West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearances Before Public Agencies.
3. Lobbyists.

**ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.**

§6B-1-1. Short title.

§6B-1-2. Legislative findings, purpose, declaration and intent.

§6B-1-3. Definitions.

§6B-1-4. Remedies and penalties in addition to other applicable remedies and penalties.

§6B-1-5. Severability.

**§6B-1-1. Short title.**

- 1 This chapter shall be known as the "West Virginia  
2 Governmental Ethics Act."

**§6B-1-2. Legislative findings, purpose, declaration and intent.**

- 1 (a) The Legislature hereby finds that the holding of  
2 a public office or public employment is a public trust.  
3 Independence and impartiality of public officials and  
4 public employees are essential for the maintenance of  
5 the confidence of our citizens in the operation of a  
6 democratic government. The decisions and actions of  
7 public officials and public employees must be made free  
8 from undue influence, favoritism or threat, at every  
9 level of government. Public officials and public em-  
10 ployees who exercise the powers of their office or  
11 employment for personal gain beyond the lawful  
12 emoluments of their position or who seek to benefit  
13 narrow economic or political interests at the expense of

14 the public at large undermine public confidence in the  
15 integrity of a democratic government.

16 (b) It is the purpose of this chapter to maintain  
17 confidence in the integrity and impartiality of the  
18 governmental process in the state of West Virginia and  
19 its political subdivisions and to aid public officials and  
20 public employees in the exercise of their official duties  
21 and employment; to define and establish minimum  
22 ethical standards for elected and appointed public  
23 officials and public employees; to eliminate actual  
24 conflicts of interest; to provide a means to define ethical  
25 standards; to provide a means of investigating and  
26 resolving ethical violations; and to provide administra-  
27 tive and criminal penalties for specific ethical violations  
28 herein found to be unlawful.

29 (c) The Legislature finds that the state government  
30 and its many public bodies and local governments have  
31 many part-time public officials and public employees  
32 serving in elected and appointed capacities; and that  
33 certain conflicts of interest are inherent in part-time  
34 service and do not, in every instance, disqualify a public  
35 official or public employee from the responsibility of  
36 voting or deciding a matter; however, when such conflict  
37 becomes personal to a particular public official or public  
38 employee, such person should seek to be excused from  
39 voting, recused from deciding, or otherwise relieved  
40 from the obligation of acting as a public representative  
41 charged with deciding or acting on a matter.

42 (d) It is declared that high moral and ethical stand-  
43 ards among public officials and public employees are  
44 essential to the conduct of free government; that the  
45 Legislature believes that a code of ethics for the  
46 guidance of public officials and public employees will  
47 help them avoid conflicts between their personal  
48 interests and their public responsibilities, will improve  
49 standards of public service and will promote and  
50 strengthen the faith and confidence of the people of this  
51 state in their public officials and public employees.

52 (e) It is the intent of the Legislature that in its  
53 operations the West Virginia ethics commission created

54 under this chapter shall protect to the fullest extent  
55 possible the rights of individuals affected.

**§6B-1-3. Definitions.**

1 As used in this chapter, unless the context in which  
2 used clearly requires otherwise:

3 (a) "Compensation" means money, thing of value or  
4 financial benefit. The term "compensation" does not  
5 include reimbursement for actual reasonable and  
6 necessary expenses incurred in the performance of one's  
7 official duties.

8 (b) "Employee" means any person in the service of  
9 another under any contract of hire, whether express or  
10 implied, oral or written, where the employer or an agent  
11 of the employer or a public official has the right or  
12 power to control and direct such person in the material  
13 details of how work is to be performed and who is not  
14 responsible for the making of policy nor for recommend-  
15 ing official action.

16 (c) "Ethics commission", "commission on ethics" or  
17 "commission" means the West Virginia ethics  
18 commission.

19 (d) "Immediate family", with respect to an individual,  
20 means a spouse residing in the individual's household  
21 and any dependent child or children and dependent  
22 parent or parents.

23 (e) "Ministerial functions" means actions or functions  
24 performed by an individual under a given state of facts  
25 in a prescribed manner in accordance with a mandate  
26 of legal authority, without regard to, or without the  
27 exercise of, such individual's own judgment as to the  
28 propriety of the action being taken.

29 (f) "Person" means an individual, corporation, busi-  
30 ness entity, labor union, association, firm, partnership,  
31 limited partnership, committee, club or other organiza-  
32 tion or group of persons, irrespective of the denomina-  
33 tion given such organization or group.

34 (g) "Political contribution" means and has the same  
35 definition as is given that term under the provisions of  
36 article eight, chapter three of this code.



37 (h) "Public employee" means any full-time or part-  
38 time employee of any governmental body or any political  
39 subdivision thereof, including county school boards.

40 (i) "Public official" means any person who is elected  
41 or appointed and who is responsible for the making of  
42 policy or takes official action which is either ministerial  
43 or nonministerial, or both, with respect to  
44 (i) contracting for, or procurement of, goods or services,  
45 (ii) administering or monitoring grants or subsidies,  
46 (iii) planning or zoning, (iv) inspecting, licensing,  
47 regulating or auditing any person, or (v) any other  
48 activity where the official action has an economic impact  
49 of greater than a *de minimis* nature on the interest or  
50 interests of any person.

51 (j) "Respondent" means a person who is the subject of  
52 an investigation by the commission or against whom a  
53 complaint has been filed with the commission.

54 (k) "Thing of value", "other thing of value", or  
55 "anything of value" means and includes (i) money, bank  
56 bills or notes, United States treasury notes, and other  
57 bills, bonds or notes issued by lawful authority and  
58 intended to pass and circulate as money; (ii) goods and  
59 chattels; (iii) promissory notes, bills of exchange, orders,  
60 drafts, warrants, checks, bonds given for the payment  
61 of money or the forbearance of money due or owing;  
62 (iv) receipts given for the payment of money or other  
63 property; (v) any right or chose in action; (vi) chattels  
64 real or personal or things which savor of realty and are,  
65 at the time taken, a part of a freehold, whether they are  
66 of the substance or produce thereof or affixed thereto,  
67 although there may be no interval between the severing  
68 and the taking away thereof; (vii) any interest in realty,  
69 including, but not limited to, fee simple estates, life  
70 estates, estates for a term or period of time, joint  
71 tenancies, cotenancies, tenancies in common, partial  
72 interests, present or future interests, contingent or  
73 vested interests, beneficial interests, leasehold interests,  
74 or any other interest or interests in realty of whatsoever  
75 nature; (viii) any promise of employment, present or

76 future; (ix) donation or gift; (x) rendering of services or  
 77 the payment thereof; (xi) any advance or pledge; (xii) a  
 78 promise of present or future interest in any business or  
 79 contract or other agreement; or (xiii) every other thing  
 80 or item, whether tangible or intangible, having eco-  
 81 nomic worth. "Thing of value", "other thing of value" or  
 82 "anything of value" shall not include anything which is  
 83 *de minimis* in nature nor a lawful political contribution  
 84 reported as required by law.

**§6B-1-4. Remedies and penalties in addition to other applicable remedies and penalties.**

1 The provisions of this chapter shall be in addition to  
 2 any other applicable provisions of this code and shall not  
 3 be deemed to be in derogation of or as a substitution for  
 4 any other provisions of this code, including, but not  
 5 limited to, article five-a, chapter sixty-one of this code  
 6 and the remedies and penalties provided in this chapter  
 7 shall be in addition to any other remedies or penalties  
 8 which may be applicable to any circumstances relevant  
 9 to both.

**§6B-1-5. Severability.**

1 The provisions of subsection (cc), section ten, article  
 2 two, chapter two of this code shall apply to the  
 3 provisions of this chapter to the same extent as if the  
 4 same were set forth in extenso herein.

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.**

- §6B-2-1. West Virginia ethics commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.
- §6B-2-2. Same—General powers and duties.
- §6B-2-3. Advisory opinions.
- §6B-2-4. Complaints; dismissals; hearings; disposition; judicial review.
- §6B-2-5. Ethical standards for elected and appointed officials and public employees.
- §6B-2-6. Financial disclosure statement; filing requirements.
- §6B-2-7. Financial disclosure statement; contents.
- §6B-2-8. Exceptions to financial disclosure requirements and conflicts of interest provisions.

§6B-2-9. Special prosecutor authorized.

§6B-2-10. Violations and penalties.

§6B-2-11. Termination of commission.

**§6B-2-1. West Virginia ethics commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.**

1 (a) There is hereby created the West Virginia ethics  
2 commission, consisting of twelve members, no more than  
3 seven of whom shall be members of the same political  
4 party. The members of the commission shall be ap-  
5 pointed by the governor with the advice and consent of  
6 the Senate. Within thirty days of the effective date of  
7 this section, the governor shall make the initial appoint-  
8 ments to the commission. No person may be appointed  
9 to the commission or continue to serve as a member of  
10 the commission, who holds elected or appointed office  
11 under the government of the United States, the state of  
12 West Virginia or any of its political subdivisions, or who  
13 is a candidate for any of such offices, or who is otherwise  
14 subject to the provisions of this chapter other than by  
15 reason of his or her appointment to or service on the  
16 commission. A member may contribute to a political  
17 campaign, but no member shall hold any political party  
18 office, or participate in a campaign relating to a  
19 referendum or other ballot issue.

20 (b) At least two members of the commission shall  
21 have served as a member of the West Virginia Legis-  
22 lature; at least two members of the commission shall  
23 have been employed in a full-time elected or appointed  
24 office in state government; at least one member shall  
25 have served as an elected official in a county or  
26 municipal government or on a county school board; at  
27 least one member shall have been employed full time as  
28 a county or municipal officer or employee; and at least  
29 two members shall have served part time as a member  
30 or director of a state, county or municipal board,  
31 commission or public service district and at least four  
32 members shall be selected from the public at large. No  
33 more than four members of the commission shall reside  
34 in the same congressional district.

35 (c) Of the initial appointments made to the commis-  
36 sion, two shall be for a term ending one year after the  
37 effective date of this section, two for a term ending two  
38 years after the effective date of this section, two for a  
39 term ending three years after the effective date of this  
40 section, three for a term ending four years after the  
41 effective date of this section, and three shall be for terms  
42 ending five years after the effective date of this section.  
43 Thereafter, terms of office shall be for five years, each  
44 term ending on the same day of the same month of the  
45 year as did the term which it succeeds. Each member  
46 shall hold office from the date of his or her appointment  
47 until the end of the term for which he or she was  
48 appointed or until his or her successor qualifies for  
49 office. When a vacancy occurs as a result of death,  
50 resignation, or removal in the membership of this  
51 commission, it shall be filled by appointment within  
52 thirty days of the vacancy for the unexpired portion of  
53 the term in the same manner as original appointments.  
54 No member shall serve more than two consecutive full  
55 or partial terms, and no person may be reappointed to  
56 the commission until at least two years have elapsed  
57 after the completion of a second successive term.

58 (d) Each member of the commission shall take and  
59 subscribe to the oath or affirmation required pursuant  
60 to Section 5, Article IV of the Constitution of West  
61 Virginia. A member may be removed by the governor  
62 for substantial neglect of duty, gross misconduct in  
63 office or violation of this chapter, after written notice  
64 and opportunity for reply.

65 (e) The commission shall meet within thirty days of  
66 the initial appointments to the commission at a time and  
67 place to be determined by the governor, who shall  
68 designate a member to preside at that meeting until a  
69 chairman is elected. At its first meeting, the commission  
70 shall elect a chairman and such other officers as are  
71 necessary. The commission shall within ninety days  
72 after its first meeting adopt rules for its procedures.

73 (f) Seven members of the commission shall constitute  
74 a quorum, except that when the commission is sitting  
75 as a hearing board pursuant to section four of this

76 article, then five members shall constitute a quorum.  
77 Except as may be otherwise provided in this article, a  
78 majority of the total membership shall be necessary to  
79 act at all times.

80 (g) Members of the commission shall receive one  
81 hundred dollars for each day actually devoted to the  
82 business of the commission and, in addition thereto,  
83 shall be reimbursed for expenses actually and necessar-  
84 ily incurred in the performance of their official duties  
85 as such members.

86 (h) The commission shall appoint an executive direc-  
87 tor to assist the commission in carrying out its functions  
88 in accordance with commission rules and regulations  
89 and with applicable law. Said executive director shall  
90 be paid such salary as may be fixed by the commission  
91 or as otherwise provided by law. The commission shall  
92 appoint and discharge counsel and employees and shall  
93 fix the compensation of employees and prescribe their  
94 duties. Counsel to the commission shall advise the  
95 commission on all legal matters and on the instruction  
96 of the commission may commence such civil actions as  
97 may be appropriate: *Provided*, That no counsel shall  
98 both advise the commission and act in a representative  
99 capacity in any proceeding.

100 (i) The commission may delegate authority to the  
101 chairman or executive director to act in the name of the  
102 commission between meetings of the commission, except  
103 that the commission shall not delegate the power to hold  
104 hearings and determine violations to the chairman or  
105 executive director.

106 (j) The chairman shall have the authority to designate  
107 subcommittees of three persons, no more than two of  
108 whom may be members of the same political party. Said  
109 subcommittees shall be investigative panels which shall  
110 have the powers and duties set forth hereinafter in this  
111 article.

112 (k) The principal office of the commission shall be in  
113 the seat of government but it or its designated subcom-  
114 mittees may meet and exercise its power at any other  
115 place in the state. Meetings of the commission shall be

116 public unless such meetings or hearings are required to  
117 be private in conformity with the provisions of this  
118 chapter relating to confidentiality, except that the  
119 commission shall exclude the public from attendance at  
120 discussions of commission personnel, planned or ongoing  
121 litigation and planned or ongoing investigations.

122 (l) Meetings of the commission shall be upon the call  
123 of the chairman and shall be conducted by the personal  
124 attendance of the commission members and no meeting  
125 shall be conducted by telephonic or other electronic  
126 conferencing, nor shall any member be allowed to vote  
127 by proxy: *Provided*, That telephone conferencing and  
128 voting may be held for the purpose of approving or  
129 rejecting any proposed advisory opinions prepared by  
130 the commission, or for voting on issues involving the  
131 administrative functions of the commission. Meetings  
132 held by telephone conferencing shall require notice to  
133 members in the same manner as meetings to be  
134 personally attended, shall be electronically recorded,  
135 and the recordings shall be made a permanent part of  
136 the commission records. Members shall not be compen-  
137 sated for meetings other than those personally attended.

**§6B-2-2. Same—General powers and duties.**

1 (a) The commission shall promulgate rules and  
2 regulations to carry out the purposes of this article  
3 within six months of the effective date of this section.  
4 Such rules and regulations shall be legislative rules  
5 subject to legislative rule-making review and subject to  
6 the provisions of the administrative procedures act.

7 (b) The commission may subpoena witnesses, compel  
8 their attendance and testimony, administer oaths and  
9 affirmations, take evidence and require by subpoena the  
10 production of books, papers, records or other evidence  
11 needed for the performance of the commission's duties  
12 or exercise of its powers, including its duties and powers  
13 of investigation.

14 (c) The commission shall, in addition to its other  
duties:

- 15 (1) Prescribe forms for reports, statements, notices,  
16 and other documents required by law;
- 17 (2) Prepare and publish manuals and guides explain-  
18 ing the duties of individuals covered by this law; and  
19 giving instructions and public information materials to  
20 facilitate compliance with, and enforcement of, this act;  
21 and
- 22 (3) Provide assistance to agencies, officials and  
23 employees in administering the provisions of this act.
- 24 (d) The commission may:
- 25 (1) Prepare reports and studies to advance the  
26 purpose of the law;
- 27 (2) Contract for any services which cannot satisfactor-  
28 ily be performed by its employees;
- 29 (3) Request the attorney general to provide legal  
30 advice without charge to the commission, and the  
31 attorney general shall comply with the request;
- 32 (4) Employ additional legal counsel; and
- 33 (5) Request appropriate agencies of state government  
34 to provide such professional assistance as it may require  
35 in the discharge of its duties: *Provided*, That any agency  
36 providing such assistance other than the attorney  
37 general shall be reimbursed by the West Virginia ethics  
38 commission the cost of such assistance.

### §6B-2-3. Advisory opinions.

1 A person subject to the provisions of this chapter may  
2 make application in writing to the ethics commission for  
3 an advisory opinion on whether an action or proposed  
4 action violates the provisions of this chapter, and would  
5 thereby expose the person to sanctions by the commis-  
6 sion or criminal prosecution. The commission shall  
7 respond within thirty days from the receipt of the  
8 request by issuing an advisory opinion on the matter  
9 raised in the request. All advisory opinions shall be  
10 published and indexed in the code of state rules by the  
11 secretary of state: *Provided*, That before an advisory  
12 opinion is made public, any material which may identify  
13 the person who is the subject of the opinion, shall to the

14 fullest extent possible, be deleted and the identity of the  
15 person shall not be revealed. A person subject to the  
16 provisions of this chapter may rely upon the published  
17 guidelines or an advisory opinion of the commission, and  
18 any person acting in good faith reliance on any such  
19 guideline or opinion shall be immune from the sanctions  
20 of this chapter, and shall have an absolute defense to any  
21 criminal prosecution for actions taken in good faith  
22 reliance upon any such opinion or guideline.

**§6B-2-4. Complaints; dismissals; hearings; disposition;  
judicial review.**

1 (a) Upon the filing by any person with the commission  
2 of a complaint which is duly verified by oath or  
3 affirmation, the executive director of the commission or  
4 his or her designee shall, within three working days,  
5 acknowledge the receipt of the complaint by first class  
6 mail, unless the complainant or his or her representative  
7 personally filed the complaint with the commission and  
8 was given a receipt or other acknowledgement evidenc-  
9 ing the filing. Within fourteen days after the receipt of  
10 a complaint, an investigative panel shall be appointed  
11 to investigate the substance of the allegations in the  
12 complaint and to determine whether there is probable  
13 cause to believe that a violation of this chapter has  
14 occurred. The method of selecting and rotating appoint-  
15 ments of members to investigative panels shall be  
16 established by legislative rule of the commission.

17 (b) In the absence of a filed complaint, if the commis-  
18 sion otherwise receives or discovers information which  
19 may merit an inquiry as to whether a violation of this  
20 chapter has occurred, the commission may, by the  
21 affirmative vote of seven of its members, appoint an  
22 investigative panel on its own initiative to investigate  
23 such matters and to determine whether there is  
24 probable cause to believe that a violation of this chapter  
25 has occurred.

26 (c) In the case of a filed complaint, the first inquiry  
27 of the investigative panel shall be a question as to  
28 whether or not the allegations of the complaint, if taken  
29 as true, would constitute a violation of law upon which



30 the commission could properly act under the provisions  
31 of this chapter. If the complaint is determined by a  
32 majority vote of the investigative panel to be insufficient  
33 in this regard, the investigative panel shall dismiss the  
34 complaint. A dismissal under this subsection shall not  
35 preclude the commission from initiating an investiga-  
36 tion on its own initiative under the provisions of  
37 subsection (b) of this section.

38 (d) After the commission receives a complaint found  
39 by the investigative panel to be sufficient, or makes a  
40 decision to investigate possible violations on its own  
41 initiative, the executive director shall give notice of a  
42 pending investigation by the investigative panel to the  
43 complainant and respondent. The notice of investigation  
44 shall be mailed to the parties, and, in the case of the  
45 respondent, shall be mailed as certified mail, return  
46 receipt requested, marked "Addressee only, personal  
47 and confidential". The notice shall describe the conduct  
48 of the respondent which is the basis for an alleged  
49 violation of law, and if a complaint has been filed, a copy  
50 of the complaint shall be appended to the notice mailed  
51 to the respondent. Each notice of investigation shall  
52 inform the respondent that the purpose of the investi-  
53 gation is to determine whether probable cause exists to  
54 believe that a violation of law has occurred which may  
55 subject the respondent to administrative sanctions by  
56 the commission, criminal prosecution by the state, or  
57 civil liability. The notice shall further inform the  
58 respondent that he or she has a right to appear before  
59 the investigative panel, and that he or she may respond  
60 in writing to the commission within thirty days after the  
61 receipt of the notice, but that no fact or allegation shall  
62 be taken as admitted by a failure or refusal to timely  
63 respond.

64 (e) Within the forty-five day period following the  
65 mailing of a notice of investigation, the investigative  
66 panel shall proceed to consider (1) the allegations raised  
67 in the complaint or by the commission's inquiry, (2) any  
68 timely received written response of the respondent, and  
69 (3) any other competent evidence gathered by or  
70 submitted to the commission which has a proper bearing

71 on the issue of probable cause. A respondent shall be  
72 afforded the opportunity to appear before the investig-  
73 ative panel and make an oral response to the complaint.  
74 The commission shall, in promulgating legislative rules  
75 pursuant to the provisions of subsection (a), section two  
76 of this article, prescribe the manner in which a  
77 respondent may present his oral response to the  
78 investigatory panel. The commission may request a  
79 respondent to disclose specific amounts received from a  
80 source, and other detailed information not otherwise  
81 required to be set forth in a statement or report filed  
82 under the provisions of this chapter, if the information  
83 sought is deemed to be probative as to the issues raised  
84 by a complaint or an investigation initiated by the  
85 commission. Any information thus received shall be  
86 confidential. If the person so requested fails or refuses  
87 to furnish the information to the commission, the  
88 commission may exercise its subpoena power as pro-  
89 vided for elsewhere in this chapter, and any subpoena  
90 issued thereunder shall have the same force and effect  
91 as a subpoena issued by a circuit court of this state, and  
92 enforcement of any such subpoena may be had upon  
93 application to a circuit court of the county in which the  
94 investigatory panel is conducting an investigation,  
95 through the issuance of a rule or an attachment against  
96 the respondent as in cases of contempt.

97 (f) (1) Members of the commission and its staff shall  
98 not disclose any information relating to a complaint,  
99 including the identity of the complainant or respondent,  
100 except that the commission may release any information  
101 at any time if the release has been agreed to in writing  
102 by the respondent, and the identity of the complainant  
103 shall be released to the respondent immediately upon  
104 request. No present or former member of the commis-  
105 sion or present or former employee of the commission  
106 may knowingly and improperly disclose any confidential  
107 information acquired by him or her in the course of his  
108 or her official duties.

109 (2) If, in a specific case, the commission finds that  
110 there is a reasonable likelihood that the dissemination  
111 of information or opinion in connection with a pending

112 or imminent proceeding will interfere with a fair  
113 hearing or otherwise prejudice the due administration  
114 of justice, the commission may order that all or a portion  
115 of the information communicated to the commission to  
116 cause an investigation and all allegations of ethical  
117 misconduct or criminal acts contained in a complaint  
118 shall be confidential, and the person providing such  
119 information or filing a complaint shall be bound to  
120 confidentiality until further order of the commission.

121 (g) If a majority of the members of the investigative  
122 panel fails to find probable cause, the proceedings shall  
123 be dismissed by the commission in an order signed by  
124 the majority members of the panel, and copies of the  
125 order of dismissal shall be sent to the complainant and  
126 the respondent forthwith. If the investigative panel  
127 decides by a majority vote that there is probable cause  
128 to believe that a violation under this chapter has  
129 occurred, the majority members of the investigatory  
130 panel shall sign an order directing the commission staff  
131 to prepare a statement of charges, to assign the matter  
132 for hearing to the commission or a hearing examiner as  
133 the commission may subsequently direct, and to sche-  
134 dule a hearing to determine the truth or falsity of the  
135 charges, such hearing to be held within ninety days  
136 after the date of the order.

137 (h) At least eighty days prior to the date of the  
138 hearing, the respondent shall be served by certified  
139 mail, return receipt requested, with the statement of  
140 charges and a notice of hearing setting forth the date,  
141 time and place for the hearing. The scheduled hearing  
142 may be continued only upon a showing of good cause by  
143 the respondent or under such other circumstances as the  
144 commission shall, by legislative rule, direct.

145 (i) The commission members who have not served as  
146 members of an investigatory panel in a particular case  
147 may sit as a hearing board to adjudicate the case or may  
148 permit an assigned hearing examiner employed by the  
149 commission to preside at the taking of evidence. The  
150 commission shall, by legislative rule, establish the  
151 general qualifications for hearing examiners. Such  
152 legislative rule shall also contain provisions which seek

153 to ensure that the functions of a hearing examiner will  
154 be conducted in an impartial manner, and shall describe  
155 the circumstances and procedures for disqualification of  
156 hearing examiners.

157 (j) A member of the commission or a hearing exam-  
158 iner presiding at a hearing may:

159 (1) Administer oaths and affirmations, compel the  
160 attendance of witnesses and the production of docu-  
161 ments, examine witnesses and parties, and otherwise  
162 take testimony and establish a record;

163 (2) Rule on offers of proof and receive relevant  
164 evidence;

165 (3) Take depositions or have depositions taken when  
166 the ends of justice may be served;

167 (4) Regulate the course of the hearing;

168 (5) Hold conferences for the settlement or simplifica-  
169 tion of issues by consent of the parties;

170 (6) Dispose of procedural requests or similar matters;

171 (7) Accept stipulated agreements;

172 (8) Take other action authorized by the ethics commis-  
173 sion consistent with the provisions of this chapter.

174 (k) With respect to allegations of a violation under  
175 this chapter, the complainant has the burden of proof.  
176 The West Virginia rules of evidence as used to govern  
177 proceedings in the courts of this state, shall be given like  
178 effect in hearings held before the commission or a  
179 hearing examiner. The commission shall, by legislative  
180 rule, regulate the conduct of hearings so as to provide  
181 full procedural due process to a respondent. Hearings  
182 before a hearing examiner shall be recorded electron-  
183 ically. When requested by either of the parties, the  
184 presiding officer shall make a transcript, verified by  
185 oath or affirmation, of each hearing held and so  
186 recorded. In the discretion of the commission, a record  
187 of the proceedings may be made by a certified court  
188 reporter. Unless otherwise ordered by the commission,  
189 the cost of preparing a transcript shall be paid by the

190 party requesting the transcript. Upon a showing of  
191 indigency, the commission may provide a transcript  
192 without charge. Within fifteen days following the  
193 hearing, either party may submit to the hearing  
194 examiner that party's proposed findings of fact. The  
195 hearing examiner shall thereafter prepare his or her  
196 own proposed findings of fact, and make copies of the  
197 findings available to the parties. The hearing examiner  
198 shall then submit the entire record to the commission  
199 for final decision.

200 (l) The recording of the hearing or the transcript of  
201 testimony, as the case may be, and the exhibits, together  
202 with all papers and requests filed in the proceeding, and  
203 the proposed findings of fact of the hearing examiner  
204 and the parties, constitute the exclusive record for  
205 decision by the commission, unless by leave of the  
206 commission a party is permitted to submit additional  
207 documentary evidence or take and file depositions or  
208 otherwise exercise discovery.

209 (m) The commission shall set a time and place for the  
210 hearing of arguments by the complainant and respond-  
211 ent, or their respective representatives, and shall notify  
212 the parties thereof, and briefs may be filed by the  
213 parties in accordance with procedural rules promul-  
214 gated by the commission. The final decision of the  
215 commission shall be made in writing within forty-five  
216 days of the receipt of the entire record of a hearing held  
217 before a hearing examiner or, in the case of an  
218 evidentiary hearing held by the board in lieu of a  
219 hearing examiner, within twenty-one days following the  
220 close of the evidence.

221 (n) A decision to impose sanctions must be approved  
222 by at least six members of the commission.

223 (o) Members of the commission shall recuse them-  
224 selves from a particular case upon their own motion  
225 with the approval of the commission or for good cause  
226 shown upon motion of a party. The remaining members  
227 of the commission shall, by majority vote, select a  
228 temporary member of the commission to replace a  
229 recused member.

230 (p) A complainant may be assisted by a member of  
231 the commission staff assigned by the commission after  
232 a determination of probable cause.

233 (q) No member of the commission staff may partic-  
234 ipate in the commission deliberations or communicate  
235 with commission members concerning the merits of a  
236 complaint after being assigned to prosecute a complaint.

237 (r) If the commission finds by evidence beyond a  
238 reasonable doubt that the facts alleged in the complaint  
239 are true and constitute a material violation of this  
240 article, it may impose one or more of the following  
241 sanctions:

242 (1) Public reprimand;

243 (2) Cease and desist orders;

244 (3) Orders of restitution for money, things of value, or  
245 services taken or received in violation of this chapter;  
246 or

247 (4) Fines not to exceed one thousand dollars per  
248 violation.

249 In addition to imposing such sanctions, the commis-  
250 sion may recommend to the appropriate governmental  
251 body that a respondent be terminated from employment  
252 or removed from office.

253 The commission may institute civil proceedings in the  
254 circuit court of the county wherein a violation occurred  
255 for the enforcement of sanctions.

256 (s) At any stage of the proceedings under this section,  
257 the commission may enter into a conciliation agreement  
258 with a respondent if such agreement is deemed by a  
259 majority of the members of the commission to be in the  
260 best interest of the state and the respondent.

261 (t) Decisions of the commission involving the issuance  
262 of sanctions may be appealed to the circuit court of  
263 Kanawha County, West Virginia, or to the circuit court  
264 of the county where the violation is alleged to have  
265 occurred, only by the respondent, and only upon the  
266 grounds set forth in section four, article five, chapter  
267 twenty-nine-a of this code.

268 (u) In the event the commission finds in favor of the  
269 person complained against, the commission shall order  
270 reimbursement of all actual costs incurred, including,  
271 but not limited to, attorney fees to be paid to the person  
272 complained against by the complainant, if the commis-  
273 sion finds that the complaint was brought or made in  
274 bad faith. In addition, the aggrieved party shall have a  
275 cause of action and be entitled to compensatory dam-  
276 ages, punitive damages, costs and attorney fees for a  
277 complaint made or brought in bad faith.

278 (v) If at any stage in the proceedings under this  
279 section, it appears to an investigative panel, a hearing  
280 examiner or the commission that a criminal violation  
281 may have been committed by a respondent, such  
282 situation shall be brought before the full commission for  
283 its consideration. If, by a vote of two-thirds of the full  
284 commission, it is determined that probable cause exists  
285 to believe a criminal violation has occurred, it may  
286 recommend to the appropriate county prosecuting  
287 attorney having jurisdiction over the case that a  
288 criminal investigation be commenced. Deliberations of  
289 the commission with regard to a recommendation for  
290 criminal investigation by a prosecuting attorney shall be  
291 private and confidential. Notwithstanding any other  
292 provision of this article, once a referral for criminal  
293 investigation is made under the provisions of this  
294 subsection, the ethics proceedings shall be held in  
295 abeyance until such referral proceedings are concluded.  
296 If the commission determines that a criminal violation  
297 has not occurred, the commission shall remand the  
298 matter to the investigating panel, the hearing examiner  
299 or the commission itself as a hearing board, as the case  
300 may be, for further proceedings under this article.

301 (w) The provisions of this section shall apply to  
302 violations of this chapter occurring after the thirtieth  
303 day of September, one thousand nine hundred eighty-  
304 nine, and within one year before the filing of a  
305 complaint under subsection (a) of this section or the  
306 appointment of an investigative panel by the commission  
307 under subsection (b) of this section.

**§6B-2-5. Ethical standards for elected and appointed officials and public employees.**

1 (a) *Persons subject to section*—The provisions of this  
2 section apply to all elected and appointed public officials  
3 and public employees, whether full or part time, in  
4 state, county, municipal governments and their respec-  
5 tive boards, agencies, departments, and commissions  
6 and in any other regional or local governmental agency,  
7 including county school boards.

8 (b) *Use of public office for private gain*—(1) A public  
9 official or public employee may not intentionally use his  
10 or her office or the prestige of his or her office for his  
11 or her own private gain or that of another person. The  
12 performance of usual and customary constituent servi-  
13 ces, without compensation, does not constitute the use of  
14 prestige of office for private gain.

15 (2) The Legislature, in enacting this subsection (b),  
16 relating to the use of public office or public employment  
17 for private gain, recognizes that there may be certain  
18 public officials or public employees who bring to their  
19 respective offices or employment their own unique  
20 personal prestige which is based upon their intelligence,  
21 education, experience, skills and abilities, or other  
22 personal gifts or traits. In many cases, these persons  
23 bring a personal prestige to their office or employment  
24 which inures to the benefit of the state and its citizens.  
25 Such persons may, in fact, be sought by the state to  
26 serve in their office or employment because, through  
27 their unusual gifts or traits, they bring stature and  
28 recognition to their office or employment and to the  
29 state itself. While the office or employment held or to  
30 be held by such persons may have its own inherent  
31 prestige, it would be unfair to such individuals and  
32 against the best interests of the citizens of this state to  
33 deny such persons the right to hold public office or be  
34 publicly employed on the grounds that they would, in  
35 addition to the emoluments of their office or employ-  
36 ment, be in a position to benefit financially from the  
37 personal prestige which otherwise inheres to them.  
38 Accordingly, the commission is directed, by legislative  
39 rule, to establish categories of such public officials and



40 public employees, identifying them generally by the  
41 office or employment held, and offering persons who fit  
42 within such categories the opportunity to apply for an  
43 exemption from the application of the provisions of this  
44 subsection. Such exemptions may be granted by the  
45 commission, on a case-by-case basis, when it is shown  
46 that: (1) The public office held or the public employment  
47 engaged in is not such that it would ordinarily be  
48 available or offered to a substantial number of the  
49 citizens of this state; (2) the office held or the employ-  
50 ment engaged in is such that it normally or specifically  
51 requires a person who possesses personal prestige; and  
52 (3) the person's employment contract or letter of  
53 appointment provides or anticipates that the person will  
54 gain financially from activities which are not a part of  
55 his or her office or employment.

56 (c) *Gifts*—(1) An official or employee of the state may  
57 not solicit any gift. No official or employee may  
58 knowingly accept any gift, directly or indirectly, from  
59 any person whom the official or employee knows or has  
60 reason to know:

61 (A) Is doing or seeking to do business of any kind with  
62 his or her agency;

63 (B) Is engaged in activities which are regulated or  
64 controlled by his or her agency;

65 (C) Has financial interests which may be substantially  
66 and materially affected, in a manner distinguishable  
67 from the public generally, by the performance or  
68 nonperformance of his official duties.

69 (2) Notwithstanding the provisions of subdivision  
70 (1) of this subsection, a person who is a public official  
71 or public employee may accept a gift described in this  
72 subdivision, and there shall be a presumption that the  
73 receipt of such gift does not impair the impartiality and  
74 independent judgment of the person. This presumption  
75 may be rebutted only by direct objective evidence that  
76 the gift did impair the impartiality and independent  
77 judgment of the person or that the person knew or had  
78 reason to know that the gift was offered with the intent  
79 to impair his or her impartiality and independent

80 judgment. The provisions of subdivision (1) of this  
81 subsection do not apply to:

82 (A) Meals and beverages;

83 (B) Ceremonial gifts or awards which have insignif-  
84 icant monetary value;

85 (C) Unsolicited gifts of nominal value or trivial items  
86 of informational value;

87 (D) Reasonable expenses for food, travel, and lodging  
88 of the official or employee for a meeting at which the  
89 official or employee participates in a panel or speaking  
90 engagement at the meeting;

91 (E) Gifts of tickets or free admission extended to a  
92 public official or public employee to attend charitable,  
93 cultural or political events, if the purpose of such gift  
94 or admission is a courtesy or ceremony customarily  
95 extended to the office;

96 (F) Gifts that are purely private and personal in  
97 nature; or

98 (G) Gifts from relatives by blood or marriage, or a  
99 member of the same household.

100 (3) The acceptance of an honorarium by an elected  
101 public official is prohibited. The commission shall, by  
102 legislative rule, establish guidelines for the acceptance  
103 of reasonable honorariums by all other public officials  
104 and public employees other than elected public officials.

105 (4) Nothing in this section shall be construed so as to  
106 prohibit the giving of a lawful political contribution as  
107 defined by law.

108 (5) The governor or his designee, may, in the name of  
109 the state of West Virginia, accept and receive gifts from  
110 any public or private source. Any such gift so obtained  
111 shall become the property of the state and shall, within  
112 thirty days of the receipt thereof, be registered with the  
113 commission and the Department of Culture and History.

114 (6) The commission by regulation may define further  
115 exemptions from this section as necessary or  
116 appropriate.

117 (d) *Interests in public contracts*—(1) In addition to the  
118 provisions of section fifteen, article ten, chapter sixty-  
119 one of this code, no elected or appointed public official  
120 or public employee or member of his or her immediate  
121 family or business with which he or she is associated  
122 may be a party to or have an interest in the profits or  
123 benefits of a contract with the governmental body over  
124 which he or she has direct authority or with which he  
125 or she is employed: *Provided*, That nothing herein shall  
126 be construed to prevent or make unlawful the employ-  
127 ment of any person with any governmental body:  
128 *Provided, however*, That nothing herein shall be  
129 construed to prohibit a member of the Legislature from  
130 entering into a contract with any governmental body.

131 (2) In the absence of bribery or a purpose to defraud,  
132 an elected or appointed public official or public  
133 employee or a member of his or her immediate family  
134 or a business with which he or she is associated shall  
135 not be considered as having an interest in a public  
136 contract when such a person has a limited interest as  
137 an owner, shareholder or creditor of the business which  
138 is the contractor on the public contract involved. A  
139 limited interest for the purposes of this section is an  
140 interest not exceeding ten percent of the partnership or  
141 the outstanding shares of a corporation or thirty  
142 thousand dollars, whichever is the lesser, or an interest  
143 as a creditor not exceeding ten percent of the total  
144 indebtedness of a business or thirty thousand dollars,  
145 whichever is the lesser.

146 (3) Where the provisions of subdivisions (1) and (2) of  
147 this subsection would result in the loss of a quorum in  
148 a public body or agency, in excessive cost, undue  
149 hardship, or other substantial interference with the  
150 operation of a state, county, municipality, county school  
151 board or other governmental agency, the affected  
152 governmental body or agency may make written  
153 application to the ethics commission for an exemption  
154 from subdivisions (1) and (2) of this subsection.

155 (e) *Confidential information*—No present or former  
156 public official or employee may knowingly and improper-  
157 ly disclose any confidential information acquired by

158 him or her in the course of his or her official duties nor  
159 use such information to further his or her personal  
160 interests or the interests of another person.

161 (f) *Prohibited representation*—No present or former  
162 elected or appointed public official or public employee  
163 shall during or after his or her public employment or  
164 service represent a client or act in a representative  
165 capacity with or without compensation on behalf of any  
166 person in a contested case, rate-making proceeding,  
167 license or permit application, regulation filing or other  
168 specific matter which arose during his or her period of  
169 public service or employment and in which he or she  
170 personally participated in a decision-making, advisory  
171 or staff support capacity.

172 (g) *Limitation on practice before a board, agency,*  
173 *commission or department*—(1) No elected or appointed  
174 public official and no full-time staff attorney or  
175 accountant shall, during his or her public service or  
176 public employment or for a period of six months after  
177 the termination of his or her public service or public  
178 employment with a governmental entity authorized to  
179 hear contested cases or promulgate regulations, appear  
180 in a representative capacity before the governmental  
181 entity in which he or she serves or served or is or was  
182 employed in the following matters:

183 (A) A contested case involving an administrative  
184 sanction, action or refusal to act;

185 (B) To support or oppose a proposed regulation;

186 (C) To support or contest the issuance or denial of a  
187 license or permit;

188 (D) A rate-making proceeding; and

189 (E) To influence the expenditure of public funds.

190 (2) As used in this subsection, “represent” includes  
191 any formal or informal appearance before, or any  
192 written or oral communication with, any public agency  
193 on behalf of any person: *Provided*, That nothing  
194 contained in this subsection shall prohibit, during any  
195 period, a former public official or employee from being

196 retained by or employed to represent, assist, or act in  
197 a representative capacity on behalf of the public agency  
198 by which he or she was employed or in which he or she  
199 served. Nothing in this subsection shall be construed to  
200 prevent a former public official or employee from  
201 representing another state, county, municipal or other  
202 governmental entity before the governmental entity in  
203 which he or she served or was employed within six  
204 months after the termination of his or her employment  
205 or service in the entity.

206 (3) A present or former public official or employee  
207 may appear at anytime in a representative capacity  
208 before the Legislature, a county commission, city or  
209 town council or county school board in relation to the  
210 consideration of a statute, budget, ordinance, rule,  
211 resolution or enactment.

212 (4) Members and former members of the Legislature  
213 and professional employees and former professional  
214 employees of the Legislature shall be permitted to  
215 appear in a representative capacity on behalf of clients  
216 before any governmental agency of the state, or of  
217 county or municipal governments including county  
218 school boards.

219 (5) An elected or appointed public official, full-time  
220 staff attorney or accountant who would be adversely  
221 affected by the provisions of this subsection (g) may  
222 apply to the ethics commission for an exemption from  
223 the six months prohibition against appearing in a  
224 representative capacity, when the person's education  
225 and experience is such that the prohibition would, for  
226 all practical purposes, deprive the person of the ability  
227 to earn a livelihood in this state outside of the govern-  
228 mental agency. The ethics commission shall by legisla-  
229 tive rule establish general guidelines or standards for  
230 granting an exemption or reducing the time period, but  
231 shall decide each application on a case-by-case basis.

232 (h) *Seeking employment with regulated person prohi-*  
233 *bited*—(1) No full-time public official or full-time public  
234 employee who exercises policymaking, nonministerial or  
235 regulatory authority may seek employment with, or

236 allow himself or herself to be employed by, any person  
237 who is or may be regulated by the governmental body  
238 which he or she serves while he or she is employed or  
239 serves in the governmental agency. The term "employ-  
240 ment" within the meaning of this section includes  
241 professional services and other services rendered by the  
242 public official or public employee whether rendered as  
243 an employee or as an independent contractor.

244 (2) No person regulated by a governmental agency  
245 shall offer employment to a full-time public official or  
246 full-time public employee of the regulating governmen-  
247 tal agency during the period of time the public official  
248 or employee works or serves in such agency.

249 (3) A full-time public official or full-time public  
250 employee who would be adversely affected by the  
251 provisions of this subsection may apply to the ethics  
252 commission for an exemption from the prohibition  
253 against seeking employment with a person who is or  
254 may be regulated, when the person's education and  
255 experience is such that the prohibition would, for all  
256 practical purposes, deprive the person of the ability to  
257 earn a livelihood in this state outside of the governmen-  
258 tal agency. The ethics commission shall by legislative  
259 rule establish general guidelines or standards for  
260 granting an exemption, but shall decide upon each  
261 application on a case-by-case basis.

262 (i) *Members of the Legislature required to vote—*  
263 Members of the Legislature who have asked to be  
264 excused from voting or who have made inquiry as to  
265 whether they should be excused from voting on a  
266 particular matter and who are required by the presid-  
267 ing officer of the House of Delegates or Senate of West  
268 Virginia to vote under the rules of the particular house  
269 shall not be guilty of any violation of ethics under the  
270 provisions of this section for a vote so cast.

271 (j) *Limitations on participation in licensing and rate-*  
272 *making proceedings—*No public official or employee may  
273 participate within the scope of his duties as a public  
274 official or employee, except through ministerial func-  
275 tions as defined in section three, article one of this

276 chapter, in any license or rate-making proceeding that  
277 directly affects the license or rates of any person,  
278 partnership, trust, business trust, corporation, or  
279 association in which the public official or employee or  
280 his immediate family owns or controls more than ten  
281 percent. No public official or public employee may  
282 participate within the scope of his duties as a public  
283 official or public employee, except through ministerial  
284 functions as defined in section three, article one of this  
285 chapter, in any license or rate-making proceeding that  
286 directly affects the license or rates of any person to  
287 whom the public official or public employee or his  
288 immediate family, or a partnership, trust, business  
289 trust, corporation, or association of which he or his  
290 immediate family owns or controls more than ten  
291 percent, has sold goods or services totaling more than  
292 one thousand dollars during the preceding year, unless  
293 the public official or public employee has filed a written  
294 statement acknowledging such sale with the public  
295 agency and the statement is entered in any public record  
296 of the agency's proceedings. This subsection shall not be  
297 construed to require the disclosure of clients of attorneys  
298 or of patients or clients of persons licensed pursuant to  
299 articles three, eight, fourteen, fourteen-a, fifteen,  
300 sixteen, twenty, twenty-one or thirty-one, chapter thirty  
301 of this code.

**§6B-2-6. Financial disclosure statement; filing requirements.**

1 (a) The requirements for filing a financial disclosure  
2 statement shall become initially effective on the first day  
3 of February, one thousand nine hundred ninety, for all  
4 persons holding public office or employment on that  
5 date and who are otherwise required to file such  
6 statement under the provisions of this section. The  
7 initial financial disclosure statement shall cover the  
8 period from the first day of July, one thousand nine  
9 hundred eighty-nine, for the period ending the thirty-  
10 first day of January, one thousand nine hundred ninety.  
11 Thereafter, the financial disclosure statement shall be  
12 filed on the first day of February of each calendar year  
13 to cover the period of the preceding calendar year,

14 except insofar as may be otherwise provided herein. The  
15 following persons must file the financial disclosure  
16 statement required by this section with the ethics  
17 commission:

18 (1) All elected officials in this state, including, but not  
19 limited to, all persons elected statewide, all county  
20 elected officials, municipal elected officials in munici-  
21 palities which have, by ordinance, opted to be covered  
22 by the disclosure provisions of this section, all members  
23 of the several county or district boards of education and  
24 all county or district school board superintendents;

25 (2) All members of state boards, commissions and  
26 agencies appointed by the governor; and

27 (3) Secretaries of departments, commissioners, deputy  
28 commissioners, assistant commissioners, directors,  
29 deputy directors, assistant directors, department heads,  
30 deputy department heads and assistant department  
31 heads.

32 A person who is required to file a financial disclosure  
33 statement under this section by virtue of becoming an  
34 elected or appointed public official whose office is  
35 described in subdivisions (1), (2) or (3) of this subsec-  
36 tion, and who assumes the office less than ten days  
37 before a filing date established herein or who assumes  
38 the office after the filing date, shall file a financial  
39 disclosure statement for the previous twelve months no  
40 later than thirty days after the date on which the person  
41 assumes the duties of the office, unless the person has  
42 filed a financial disclosure statement with the commis-  
43 sion during the twelve month period before he or she  
44 assumed office.

45 (b) A candidate for public office shall file a financial  
46 disclosure statement for the previous twelve months  
47 with the state ethics commission no later than ten days  
48 after he or she files a certificate of candidacy, but in all  
49 circumstances, not later than ten days prior to the  
50 election, unless he or she has filed a financial disclosure  
51 statement with the state ethics commission during the  
52 previous twelve months.



53 The ethics commission shall file a duplicate copy of  
54 the financial disclosure statement required in this  
55 section in the following offices within ten days of the  
56 receipt of the candidate's statement of disclosure:

57 (1) Municipal candidates in municipalities which have  
58 opted, by ordinance, to be covered by the disclosure  
59 provisions of this section, in the office of the clerk of the  
60 municipality in which the candidate is seeking office;

61 (2) Legislative candidates in single county districts  
62 and candidates for a county office or county school board  
63 in the office of the clerk of the county commission of the  
64 county in which the candidate is seeking office;

65 (3) Legislative candidates from multicounty districts  
66 and congressional candidates in the office of the clerk  
67 of the county commission of the county of the candidate's  
68 residence.

69 After a ninety day period following any election, the  
70 clerks who receive the financial disclosure statements of  
71 candidates, may destroy or dispose of those statements  
72 filed by candidates who were unsuccessful in the  
73 election.

74 (c) No candidate for public office may maintain his or  
75 her place on a ballot and no public official may take the  
76 oath of office or enter or continue upon his or her duties  
77 or receive compensation from public funds, unless he or  
78 she has filed a financial disclosure statement with the  
79 state ethics commission as required by the provisions of  
80 this section.

81 (d) The state ethics commission may, upon request of  
82 any person required to file a financial disclosure  
83 statement, and for good cause shown, extend the  
84 deadline for filing such statement for a reasonable  
85 period of time: *Provided*, That no extension of time shall  
86 be granted to a candidate who has not filed a financial  
87 disclosure statement for the preceding filing period.

88 (e) No person shall fail to file a statement required by  
89 this section.

90 (f) No person shall knowingly file a materially false  
91 statement that is required to be filed under this section.

**§6B-2-7. Financial disclosure statement; contents.**

1       The financial disclosure statement required under this  
2 article shall contain the following information:

3       (1) The name, residential and business addresses of  
4 the person filing the statement and all names under  
5 which the person does business.

6       (2) The name and address of each employer of the  
7 person.

8       (3) The identification, by category, of every source of  
9 income over five thousand dollars received during the  
10 preceding calendar year, in his or her own name or by  
11 any other person for his or her use or benefit, by the  
12 person filing the statement, and a brief description of  
13 the nature of the services for which the income was  
14 received. This subdivision does not require a person  
15 filing the statement who derives income from a business,  
16 profession or occupation to disclose the individual  
17 sources and items of income that constitute the gross  
18 income of that business, profession or occupation.

19       (4) If the person profited or benefited in the year prior  
20 to the date of filing from a contract for the sale of goods  
21 or services to a state, county, municipal or other local  
22 governmental agency either directly or through a  
23 partnership, corporation or association in which such  
24 person owned or controlled more than ten percent, the  
25 person shall describe the nature of the goods or services  
26 and identify the governmental agencies which pur-  
27 chased the goods or services.

28       (5) Each interest group or category listed below doing  
29 business in this state with which the person filing the  
30 statement did business or furnished services and from  
31 which the person received more than twenty percent of  
32 the person's gross income during the preceding calendar  
33 year. The groups or categories are electric utilities, gas  
34 utilities, telephone utilities, water utilities, cable  
35 television companies, interstate transportation compan-  
36 ies, intrastate transportation companies, oil or gas retail  
37 companies, banks, savings and loan associations, loan or

38 finance companies, manufacturing companies, surface  
39 mining companies, deep mining companies, mining  
40 equipment companies, chemical companies, insurance  
41 companies, retail companies, beer, wine or liquor  
42 companies or distributors, recreation related companies,  
43 timbering companies, hospitals or other health care  
44 providers, trade associations, professional associations,  
45 associations of public employees or public officials,  
46 counties, cities or towns, labor organizations, waste  
47 disposal companies, wholesale companies, groups or  
48 associations seeking to legalize gambling, advertising  
49 companies, media companies, race tracks and promo-  
50 tional companies.

51 (6) The names of all persons, excluding that person's  
52 immediate family, parents, or grandparents residing or  
53 transacting business in the state to whom the person  
54 filing the statement owes, on the date of execution of this  
55 statement in the aggregate in his or her own name or  
56 in the name of any other person more than twenty-five  
57 thousand dollars: *Provided*, That nothing herein shall  
58 require the disclosure of a mortgage on the person's  
59 primary and secondary residences or of automobile  
60 loans on automobiles maintained for the use of the  
61 person's immediate family nor shall this section require  
62 the disclosure of debts which result from the ordinary  
63 conduct of such person's business, profession, or  
64 occupation.

65 (7) The names of all persons except immediate family  
66 members, parents and grandparents residing or tran-  
67 sacting business in the state (other than a demand or  
68 savings account in a bank, savings and loan association,  
69 credit union or building and loan association or other  
70 similar depository) who owes on the date of execution  
71 of this statement, more, in the aggregate, than twenty-  
72 five thousand dollars to the person filing the statement,  
73 either in his or her own name or to any other person  
74 for his or her use or benefit. This subdivision does not  
75 require the disclosure of debts owed to the person filing  
76 the statement which debts result from the ordinary  
77 conduct of such person's business, profession or  
78 occupation.

79 (8) The source of each gift having a value of over five  
80 hundred dollars received from a person having an  
81 interest in a governmental activity by the person filing  
82 the statement when such gift is given to the person filing  
83 the statement in his or her name or by any other person  
84 for his or her use or benefit during the preceding  
85 calendar year, except gifts received by will or by virtue  
86 of the laws of descent and distribution, or received from  
87 one's spouse, child, grandchild, parents or grandparents,  
88 or received by way of distribution from an inter vivos  
89 or testamentary trust established by the spouse or child,  
90 grandchild, or by an ancestor of the person filing the  
91 statement. As used in this subdivision any series or  
92 plurality of gifts which exceeds in the aggregate the  
93 sum of five hundred dollars from the same source or  
94 donor, either directly or indirectly, and in the same  
95 calendar year, shall be regarded as a single gift in  
96 excess of that aggregate amount.

**§6B-2-8. Exceptions to financial disclosure requirements  
and conflicts of interest provisions.**

1 (a) Any person regulated by the provisions of this  
2 article need not report the holdings of or the source of  
3 income from any of the holdings of:

4 (1) any qualified blind trust; or

5 (2) a trust—

6 (A) which was not created directly by such individual,  
7 his spouse, or any dependent child, and

8 (B) the holdings or sources of income of which such  
9 individual, or a member of his or her immediate family  
10 have no knowledge.

11 Failure to report the holdings of or the source of  
12 income of any trust referred to herein in good faith  
13 reliance upon this section shall not constitute a violation  
14 of sections six or seven of this article.

15 (b) The provisions of subsection (d), section five of this  
16 article shall not apply to holdings which are assets  
17 within the trusts referred to in subsection (a) of this  
18 section.

19 (c) For purposes of this section, the term "qualified  
20 blind trust" includes a trust in which a regulated person  
21 or immediate family has a beneficial interest in the  
22 principal or income, and which meets the following  
23 requirements:

24 (1) The trustee of the trust is a financial institution,  
25 an attorney, a certified public accountant, a broker, or  
26 an investment adviser, who (in the case of a financial  
27 institution or investment company, any officer or  
28 employee involved in the management or control of the  
29 trust)—

30 (A) is independent of and unassociated with any  
31 interested party so that the trustee cannot be controlled  
32 or influenced in the administration of the trust by any  
33 interested party;

34 (B) is not or has not been an employee of any  
35 interested party, or any organization affiliated with any  
36 interested party and is not a partner of, or involved in  
37 any joint venture or other investment with, any inter-  
38 ested party; and

39 (C) is not a relative of any interested party.

40 (2) Any asset transferred to the trust by an interested  
41 party is free of any restriction with respect to its  
42 transfer or sale unless such restriction is expressly  
43 approved by the ethics commission;

44 (3) The trust instrument which establishes the trust  
45 provides that—

46 (A) except to the extent provided in paragraph (F) of  
47 this subdivision the trustee in the exercise of his  
48 authority and discretion to manage and control the  
49 assets of the trust shall not consult or notify any  
50 interested party;

51 (B) the trust shall not contain any asset the holding  
52 of which by an interested party is prohibited by any law  
53 or regulation;

54 (C) the trustee shall promptly notify the regulated  
55 person and the ethics commission when the holdings of  
56 any particular asset transferred to the trust by any  
57 interested party are disposed of;

58 (D) the trust tax return shall be prepared by the  
59 trustee or his designee, and such return and any  
60 information relating thereto (other than the trust  
61 income summarized in appropriate categories necessary  
62 to complete an interested party's tax return), shall not  
63 be disclosed to any interested party;

64 (E) an interested party shall not receive any report on  
65 the holdings and sources of income of the trust, except  
66 a report at the end of each calendar quarter with respect  
67 to the total cash value of the interest of the interested  
68 party in the trust or the net income or loss of the trust  
69 or any reports necessary to enable the interested party  
70 to complete an individual tax return required by law,  
71 but such report shall not identify any asset or holding;

72 (F) except for communications which solely consist of  
73 requests for distribution of cash or other unspecified  
74 assets of the trust, there shall be no direct or indirect  
75 communication between the trustee and an interested  
76 party with respect to the trust unless such communica-  
77 tion is in writing and unless it relates only (i) to the  
78 general financial interest and needs of the interested  
79 party (including, but not limited to, an interest in  
80 maximizing income or long-term capital gain), (ii) to  
81 the notification of the trustee of a law or regulation  
82 subsequently applicable to the reporting individual  
83 which prohibits the interested party from holding an  
84 asset, which notification directs that the asset not be  
85 held by the trust, or (iii) to directions to the trustee to  
86 sell all of an asset initially placed in the trust by an  
87 interested party which in the determination of the  
88 reporting individual creates a conflict of interest or the  
89 appearance thereof due to the subsequent assumption of  
90 duties by the reporting individual (but nothing herein  
91 shall require any such direction); and

92 (G) the interested parties shall make no effort to  
93 obtain information with respect to the holdings of the  
94 trust, including obtaining a copy of any trust tax return  
95 filed or any information relating thereto except as  
96 otherwise provided in this subsection.

97 (4) The proposed trust instrument and the proposed

98 trustee is approved by the ethics commission and  
99 approval shall be given if the conditions of this section  
100 are met.

**§6B-2-9. Special prosecutor authorized.**

1 (a) If the ethics commission finds as the result of an  
2 investigation of a complaint that a pattern of ethics  
3 violations or criminal violations under this chapter or  
4 under article five-a, chapter sixty-one of this code, exists  
5 in a state, county or covered municipal government,  
6 county school board or one of their respective depart-  
7 ments, agencies, boards or commissions, and also finds  
8 that the prosecuting attorney of the county in which the  
9 violation occurred is, for some reason, unable or  
10 unwilling to take appropriate action, the chairman of  
11 the ethics commission may, upon a two-thirds vote of the  
12 members of the ethics commission, petition the approp-  
13 riate circuit court for the appointment of a special  
14 prosecutor for the purpose of conducting an investiga-  
15 tion to determine whether a violation of the criminal law  
16 of this state has occurred.

17 (b) A special prosecutor shall have the same authority  
18 as a county prosecutor to investigate and prosecute  
19 persons subject to this act for criminal violations  
20 committed in connection with their public office or  
21 employment which constitute felonies.

22 (c) The ethics committee shall be authorized to  
23 employ and assign the necessary professional and  
24 clerical staff to assist any such special prosecutor in the  
25 performance of his or her duties and to pay and to set  
26 the compensation to be paid to a special prosecutor in  
27 an amount not to exceed seventy-five dollars per hour  
28 up to a maximum of fifty thousand dollars per annum.

29 (d) The special prosecutor shall be empowered to  
30 make a presentment to any regularly or specially  
31 impaneled grand jury in the appointing circuit court.  
32 The special prosecutor shall be empowered to prosecute  
33 any person indicted by such grand jury.

**§6B-2-10. Violations and penalties.**

1 (a) If any person violates the provisions of subsections

2 (e), (f), or (g), section five of this article, or violates the  
3 provisions of subdivision (1), subsection (f), section four  
4 of this article, such person, upon conviction thereof, shall  
5 be guilty of a misdemeanor and shall be punished by  
6 confinement in the county jail for a period not to exceed  
7 six months or shall be fined not more than one thousand  
8 dollars, or both such confinement and fine. If any person  
9 violating the provisions of subdivision (1), subsection (f),  
10 section four of this article shall be a member of the  
11 commission or an employee thereof, he or she shall, upon  
12 conviction, be subject to immediate removal or  
13 discharge.

14 (b) If any person violates the provisions of subsection  
15 (f), section six of this article by willfully and knowingly  
16 filing a false financial statement, such person shall,  
17 upon conviction thereof, be deemed guilty of false  
18 swearing and shall be punished as provided in section  
19 three, article five, chapter sixty-one of this code.

20 (c) If any person knowingly fails or refuses to file a  
21 financial statement required by section six of this  
22 article, such person, upon conviction thereof, shall be  
23 guilty of a misdemeanor and shall be fined not less than  
24 one hundred dollars nor more than one thousand dollars.

25 (d) If any complainant violates the provisions of  
26 subdivision (2), subsection (f), section four, article two  
27 of this chapter by knowingly and willfully disclosing any  
28 information made confidential by an order of the  
29 commission, he or she shall be subject to administrative  
30 sanction by the commission as provided for in subsection  
31 (r), section four of this article.

### §6B-2-11. Termination of commission.

1 The West Virginia ethics commission shall be termi-  
2 nated by the provisions of article ten, chapter four of  
3 this code on the first day of July, one thousand nine  
4 hundred ninety-two, unless sooner terminated or unless  
5 continued or reestablished pursuant to that article.

## ARTICLE 3. LOBBYISTS.

§6B-3-1. Definitions.

§6B-3-2. Registration of lobbyists.



- §6B-3-3. Photograph and information-booklet-publication.
- §6B-3-4. Reporting by lobbyists.
- §6B-3-5. Grass roots lobbying campaigns.
- §6B-3-6. Employment of unregistered persons.
- §6B-3-7. Duties of lobbyists.
- §6B-3-8. Limitation on persons lobbying in legislative chambers.
- §6B-3-9. Penalties.
- §6B-3-10. Provisions may be adopted by local governments.

### §6B-3-1. Definitions.

1 As used in this article, unless the context in which  
2 used clearly indicates otherwise:

3 (1) "Compensation" means money or any other thing  
4 of value received or to be received by a lobbyist from  
5 an employer for services rendered.

6 (2) "Employer" or "lobbyist's employer" means any  
7 person who employs or retains a lobbyist.

8 (3) "Expenditure" means payment, distribution, loan,  
9 advance deposit, reimbursement, or gift of money, real  
10 or personal property or any other thing of value; or a  
11 contract, promise, or agreement, whether or not legally  
12 enforceable.

13 (4) "Government officer or employee" means a  
14 member of the Legislature, a legislative employee, the  
15 governor and other members of the board of public  
16 works, heads of executive departments, and any other  
17 public officer or public employee under the legislative  
18 or executive branch of state government who is empow-  
19 ered or authorized to make policy and perform non-  
20 ministerial functions. In the case of elected offices  
21 included herein, the term "government officer or  
22 employee" shall include candidates who have been  
23 elected but who have not yet assumed office.

24 (5) "Legislation" means bills, resolutions, motions,  
25 amendments, nominations, and other matters pending  
26 or proposed in either house of the Legislature, and  
27 includes any other matters that may be the subject of  
28 action by either house or any committee of the Legis-  
29 lature and all bills or resolutions that, having passed  
30 both houses, are pending approval or veto by the  
31 governor.

32 (6) "Lobbying" or "lobbying activity" means the act of  
33 communicating with a government officer or employee  
34 to promote, advocate or oppose or otherwise attempt to  
35 influence:

36 (i) The passage or defeat or the executive approval or  
37 veto of any legislation which may be considered by the  
38 Legislature of this state; or

39 (ii) The adoption or rejection of any rule, regulation,  
40 legislative rule, standard, rate, fee, or other delegated  
41 legislative or quasi-legislative action to be taken or  
42 withheld by any executive department.

43 (7)(A) "Lobbyist" means a person who, through  
44 communication with a government officer or employee,  
45 promotes, advocates or opposes or otherwise attempts to  
46 influence:

47 (i) The passage or defeat or the executive approval or  
48 veto of any legislation which may be considered by the  
49 Legislature of this state; or

50 (ii) The adoption or rejection of any rule, regulation,  
51 legislative rule, standard, rate, fee, or other delegated  
52 legislative or quasi-legislative action to be taken or  
53 withheld by any executive department.

54 (B) The term "lobbyist" shall not include the following  
55 persons, who shall be exempt from the registration and  
56 reporting requirements set forth in this article, unless  
57 such persons engage in activities which would otherwise  
58 subject them to the registration and reporting  
59 requirements:

60 (i) Persons who limit their lobbying activities to  
61 appearing before public sessions of committees of the  
62 Legislature, or public hearings of state agencies, are  
63 exempt.

64 (ii) Persons who engage in news or feature reporting  
65 activities and editorial comment as working members of  
66 the press, radio, or television, and persons who publish  
67 or disseminate such news, features or editorial comment  
68 through a newspaper, book, regularly published period-  
69 ical, radio station, or television station, are exempt.

70 (iii) Persons who lobby without compensation or other  
71 consideration for acting as lobbyists, when such persons  
72 make no expenditure for or on behalf of any government  
73 officer or employee in connection with such lobbying,  
74 are exempt. The exemption contained in this subpara-  
75 graph (iii) is intended to permit and encourage citizens  
76 of this state to exercise their constitutional rights to  
77 assemble in a peaceable manner, consult for the common  
78 good, instruct their representatives, and apply for a  
79 redress of grievances. Accordingly, such persons may  
80 lobby without incurring any registration or reporting  
81 obligation under this article. Any person exempt under  
82 this subparagraph (iii) may at his or her option register  
83 and report under this article.

84 (iv) Persons who lobby on behalf of a nonprofit  
85 organization with regard to legislation, without compen-  
86 sation, and who restrict their lobbying activities to no  
87 more than twenty days or parts thereof during any  
88 regular session of the Legislature, are exempt. The  
89 commission may promulgate a legislative rule to require  
90 registration and reporting by persons who would  
91 otherwise be exempt under this subparagraph, if it  
92 determines that such rule is necessary to prevent  
93 frustration of the purposes of this article. Any person  
94 exempt under this subparagraph may at his or her  
95 option register and report under this article.

96 (v) The governor, members of the governor's staff,  
97 members of the board of public works, officers and  
98 employees of the executive branch who communicate  
99 with a member of the Legislature on the request of that  
100 member, or who communicate with the Legislature,  
101 through the proper official channels, requests for  
102 legislative action or appropriations which are deemed  
103 necessary for the efficient conduct of the public business  
104 or which are made in the proper performance of their  
105 official duties, are exempt.

106 (vi) Members of the Legislature are exempt.

107 (vii) Persons employed by the Legislature for the  
108 purpose of aiding in the preparation or enactment of

109 legislation or the performance of legislative duties are  
110 exempt.

111 (viii) Persons rendering professional services in  
112 drafting proposed legislation or in advising or rendering  
113 opinions to clients as to the construction and effect of  
114 proposed or pending legislation, are exempt.

115 (8) "Person" means any individual, partnership, trust,  
116 estate, business trust, association, or corporation; any  
117 department, commission, board, publicly supported  
118 college or university, division, institution, bureau, or any  
119 other instrumentality of the state; or any county,  
120 municipal corporation, school district, or any other  
121 political subdivision of the state.

#### §6B-3-2. Registration of lobbyists.

1 (a) Before engaging in any lobbying activity, or  
2 within thirty days after being employed as a lobbyist,  
3 whichever occurs first, a lobbyist shall register with the  
4 ethics commission by filing a lobbyist registration  
5 statement, signed under oath or affirmation. The  
6 registration statement shall contain such information  
7 and be in such form as the ethics commission may  
8 prescribe by legislative rule, including, but not limited to,  
9 the following information:

10 (1) The registrant's name, business address, telephone  
11 numbers and any temporary residential and business  
12 addresses and telephone numbers used or to be used by  
13 the registrant while lobbying during a legislative  
14 session;

15 (2) The name, address and occupation or business of  
16 the registrant's employer;

17 (3) A statement as to whether the registrant is  
18 employed or retained by his or her employer solely as  
19 a lobbyist or is a regular employee performing services  
20 for the employer which include, but are not limited to,  
21 lobbying;

22 (4) A statement as to whether the registrant is  
23 employed or retained by his or her employer under any  
24 agreement, arrangement or understanding according to

25 which the registrant's compensation, or any portion  
26 thereof, is or will be contingent upon the success of his  
27 or her lobbying activity;

28 (5) The general subject or subjects, if known, on  
29 which the registrant will lobby or employ some other  
30 person to lobby in a manner which requires registration  
31 under this article;

32 (6) An appended written authorization from each of  
33 the lobbyist's employers confirming the lobbyist's  
34 employment and the subjects on which the employer is  
35 to be represented.

36 (b) A registrant who lobbys with regard to matters  
37 before the Legislature must file duplicate copies of the  
38 lobbyist's registration statement required by subsections  
39 (a) or (d) of this section with the Clerk of the Senate and  
40 the Clerk of the House of Delegates contemporaneously  
41 with the filing with the ethics commission before  
42 engaging in any lobbying activity.

43 (c) Any lobbyist who receives or is to receive compen-  
44 sation from more than one person for services as a  
45 lobbyist shall file a separate notice of representation  
46 with respect to each person compensating him or her for  
47 services performed as a lobbyist. When a lobbyist whose  
48 fee for lobbying with respect to the same subject is to  
49 be paid or contributed by more than one person, then  
50 such lobbyist may file a single statement, in which he  
51 shall detail the name, business address and occupation  
52 of each person so paying or contributing.

53 (d) Whenever a change, modification, or termination  
54 of the lobbyist's employment occurs, the lobbyist shall,  
55 within one week of such change, modification or  
56 termination, furnish full information regarding the  
57 same by filing with the commission an amended  
58 registration statement.

59 (e) Each lobbyist who has registered shall file a new  
60 registration statement, revised as appropriate, on the  
61 second Monday in January of each odd-numbered year,  
62 and failure to do so shall terminate his registration.  
63 Until such registration is renewed, the person may not

64 engage in lobbying activities unless he or she is  
65 otherwise exempt under paragraph (B), subdivision (7),  
66 section one of this article.

**§6B-3-3. Photograph and information-booklet-publication.**

1 Each lobbyist shall, at the time he or she registers,  
2 submit to the commission a recent photograph of the  
3 lobbyist of a size and format as determined by rule of  
4 the commission, together with the name of the lobbyist's  
5 employer, a brief biographical description, and any  
6 other information the lobbyist may wish to submit, not  
7 to exceed fifty words in length. Such photograph and  
8 information shall be published at least annually in a  
9 booklet form by the commission for distribution to  
10 government officers or employees, lobbyists, and to the  
11 public. The method of distribution shall be in the  
12 discretion of the commission, which shall not be  
13 required to compile and maintain a distribution list of  
14 all persons who may be entitled to receive such booklet.  
15 Each lobbyist, upon registering, shall pay a fee of  
16 twenty dollars to the commission to help defray the costs  
17 of preparing such booklet.

**§6B-3-4. Reporting by lobbyists.**

1 (a) A lobbyist shall file with the commission reports  
2 of his lobbying activities, signed under oath or affirma-  
3 tion by the lobbyist. Lobbyists who are required under  
4 this article to file copies of their registration statements  
5 with the clerks of the respective houses of the Legisla-  
6 ture shall also contemporaneously file copies of all  
7 reports required under this section with the clerks. The  
8 reports shall be made in the form and manner pres-  
9 cribed by legislative rule of the commission. Such  
10 reports shall be filed as follows:

11 (1) On or before the second Monday in January of  
12 each year, a lobbyist shall file an annual report of all  
13 lobbying activities which he or she engaged in during  
14 the preceding calendar year; and

15 (2) If a lobbyist engages in lobbying with respect to  
16 legislation, then:

17 (A) Between the fortieth and forty-fifth days of any

18 regular session of the Legislature in which any such  
19 lobbying occurred, the lobbyist shall file a report  
20 describing all of his or her lobbying activities which  
21 occurred since the beginning of the calendar year; and

22 (B) Within twenty-one days after the adjournment  
23 *sine die* of any regular or extraordinary session of the  
24 Legislature in which any such lobbying occurred, the  
25 lobbyist shall file a report describing all of his or her  
26 lobbying activities which occurred since the beginning  
27 of the calendar year or since the filing of the last report  
28 required by this section, whichever is later.

29 (b) (1) Except as otherwise provided in this section,  
30 each report filed by a lobbyist shall show the total  
31 amount of all expenditures for lobbying made or  
32 incurred by such lobbyist, or on behalf of such lobbyist  
33 by the lobbyist's employer, during the period covered by  
34 the report. The report shall also show subtotals segre-  
35 gated according to financial category, including meals  
36 and beverages; living accommodations; advertising;  
37 travel; contributions; gifts to government officers or  
38 employees or to members of the immediate family of  
39 such persons; and other expenses or services.

40 (2) Lobbyists are not required to report the following:

41 (A) Unreimbursed personal living and travel ex-  
42 penses not incurred directly for lobbying;

43 (B) Any expenses incurred for his or her own living  
44 accommodations;

45 (C) Any expenses incurred for his or her own travel  
46 to and from public meetings or hearings of the legisla-  
47 tive and executive branches;

48 (D) Any expenses incurred for telephone, and any  
49 office expenses, including rent and salaries and wages  
50 paid for staff and secretarial assistance; and

51 (E) Separate expenditures to or on behalf of a  
52 government officer or employee in an amount of less  
53 than five dollars.

54 (c) If a lobbyist is employed by more than one  
55 employer, the report shall show the proportionate

56 amount of such expenditures in each category incurred  
57 on behalf of each of his employers.

58 (d) The report shall describe the subject matter of the  
59 lobbying activities in which the lobbyist has been  
60 engaged during the reporting period.

61 (e) If, during the period covered by the report, the  
62 lobbyist made expenditures, other than for travel, food,  
63 lodging and entertainment governed by subsection (f) of  
64 this section, which expenditures total more than five  
65 hundred dollars to or on behalf of any particular  
66 government officer or employee, the lobbyist shall  
67 report the name of the government officer or employee  
68 to whom or on whose behalf the expenditures were  
69 made, the total amount of the expenditures, and the  
70 subject matter of the lobbying activity, if any. Under  
71 this subsection (e), no portion of the amount of an  
72 expenditure for a dinner, party, or other function  
73 sponsored by a lobbyist or a lobbyist's employer need be  
74 attributed to or counted toward the reporting amount  
75 of five hundred dollars for a particular government  
76 officer or employee who attends such function if the  
77 sponsor has invited to the function all the members of  
78 (1) the Legislature, (2) either house of the Legislature,  
79 (3) a standing or select committee of either house, or  
80 (4) a joint committee of the two houses of the Legisla-  
81 ture. However, the amount spent for such function shall  
82 be added to other expenditures for the purpose of  
83 determining the total amount of expenditures reported  
84 under subsection (b) of this section.

85 (f) If, during the period covered by the report, the  
86 lobbyist made expenditures for travel, food, lodging, and  
87 scheduled entertainment totaling more than five  
88 hundred dollars for or on behalf of a particular  
89 government officer or employee in return for the  
90 participation of the government officer or employee in  
91 a panel or speaking engagement at the meeting, the  
92 lobbyist shall report the name of the government officer  
93 or employee to whom or on whose behalf the expendi-  
94 tures were made and the total amount of the  
95 expenditures.



96 (g) Such other information relevant to lobbying  
97 activities as the commission shall by legislative rule  
98 prescribe. Information supporting such activities as are  
99 required to be reported is subject to audit by the  
100 commission.

**§6B-3-5. Grass roots lobbying campaigns.**

1 (1) Any person who has made expenditures, not  
2 required to be reported under other sections of this  
3 chapter, exceeding five hundred dollars in the aggre-  
4 gate within any three-month period or exceeding two  
5 hundred dollars in the aggregate within any one-month  
6 period in presenting a program addressed to the public,  
7 a substantial portion of which is intended, designed or  
8 calculated primarily to influence legislation, shall be  
9 required to register and report, as provided in subsec-  
10 tion (2) of this section, as a sponsor of a grass roots  
11 lobbying campaign.

12 (2) Within thirty days after becoming a sponsor of a  
13 grass roots lobbying campaign, the sponsor shall  
14 register by filing with the ethics commission a registra-  
15 tion statement, in such detail as the commission shall  
16 prescribe, showing:

17 (a) The sponsor's name, address and business or  
18 occupation, and, if the sponsor is not an individual, the  
19 names, addresses, and titles of the controlling persons  
20 responsible for managing the sponsor's affairs;

21 (b) The names, addresses and business or occupation  
22 of all persons organizing and managing the campaign,  
23 or hired to assist the campaign, including any public  
24 relations or advertising firms participating in the  
25 campaign, and the terms of compensation for all such  
26 persons;

27 (c) The names and addresses of each person contribut-  
28 ing twenty-five dollars or more to the campaign and the  
29 aggregate amount contributed;

30 (d) The purpose of the campaign, including the  
31 specific legislation, rules, rates, standards or proposals  
32 that are the subject matter of the campaign;

33 (e) The totals of all expenditures made or incurred to  
34 date on behalf of the campaign, which totals shall be  
35 segregated according to financial category, including,  
36 but not limited to, the following: Advertising, segre-  
37 gated by media, and, in the case of large expenditures  
38 (as provided by legislative rule of the commission), by  
39 outlet; contributions; entertainment, including meals  
40 and beverages; office expenses, including rent and the  
41 salaries and wages paid for staff and secretarial  
42 assistance, or the proportionate amount thereof paid or  
43 incurred for lobbying campaign activities; consultants;  
44 and printing and mailing expenses.

45 (3) Every sponsor who has registered under this  
46 section shall file reports with the commission, which  
47 reports shall be filed for the same time periods required  
48 for the filing of lobbyists' reports under the provisions  
49 of section four of this article.

50 (4) When the campaign has been terminated, the  
51 sponsor shall file a notice of termination with the final  
52 monthly report, which notice shall state the totals of all  
53 contributions and expenditures made on behalf of the  
54 campaign, in the same manner as provided for in the  
55 registration statement.

#### **§6B-3-6. Employment of unregistered persons.**

1 It shall be a violation of this chapter for any person  
2 to employ for pay or any consideration, or pay or agree  
3 to pay any consideration to, a person to lobby who is not  
4 registered under this chapter except upon condition that  
5 such person register as a lobbyist as provided by this  
6 chapter, and such person does in fact so register as soon  
7 as practicable.

#### **§6B-3-7. Duties of lobbyists.**

1 A person required to register as a lobbyist under this  
2 chapter shall also have the following obligations, the  
3 violation of which shall constitute cause for revocation  
4 of his registration, and may subject such person, and  
5 such person's employer, if such employer aids, abets,  
6 ratifies, or confirms any such act, to other civil  
7 liabilities, as provided by this chapter.

8 (1) Such persons shall obtain and preserve all ac-  
9 counts, bills, receipts, books, papers and documents  
10 necessary to substantiate the financial reports required  
11 to be made under this article for a period of at least five  
12 years from the date of the filing of the statement  
13 containing such items, which accounts, bills, receipts,  
14 books, papers, and documents shall be made available  
15 for inspection by the commission at any time: *Provided*,  
16 That if a lobbyist is required under the terms of his  
17 employment contract to turn any records over to his  
18 employer, responsibility for the preservation of such  
19 records under this subsection shall rest with such  
20 employer.

21 (2) In addition, a person required to register as a  
22 lobbyist shall not:

23 (A) Engage in any activity as a lobbyist before  
24 registering as such;

25 (B) Knowingly deceive or attempt to deceive any  
26 government officer or employee as to any fact pertaining  
27 to a matter which is the subject of lobbying activity;

28 (C) Cause or influence the introduction of any legis-  
29 lation for the purpose of thereafter being employed to  
30 secure its defeat;

31 (D) Exercise any undue influence, extortion, or  
32 unlawful retaliation upon any government officer or  
33 employee by reason of such government officer or  
34 employee's position with respect to, or his vote upon, any  
35 matter which is the subject of lobbying activity;

36 (E) Exercise undue influence upon any legislator or  
37 other privately employed government officer or em-  
38 ployee through communications with such person's  
39 employer;

40 (F) Give a gift to any government officer or employee  
41 in excess of or in violation of any limitations on gifts set  
42 forth in subsection (c), section five, article two of this  
43 chapter, or give any gift, whether lawful or unlawful,  
44 to a government officer or employee without such  
45 government officer or employee's knowledge and  
46 consent.

**§6B-3-8. Limitation on persons lobbying in legislative chambers.**

1 Former legislators and other persons having the  
2 privilege of the floor are prohibited from lobbying upon  
3 the floor of either house of the Legislature or the foyer  
4 thereof while such house is in session.

**§6B-3-9. Penalties.**

1 (a) A person who is required under the provisions of  
2 this article to file a statement or report is guilty of false  
3 swearing when such person willfully and knowingly,  
4 under oath or affirmation, files a false statement or  
5 report concerning a matter or thing material. Any  
6 person who violates the provisions of this subsection (a)  
7 shall be guilty of a misdemeanor, and upon conviction  
8 thereof shall be fined or fined and confined in accor-  
9 dance with the provisions of section three, article five,  
10 chapter sixty-one of this code.

11 (b) A person who is subject to the registration and  
12 reporting requirements of this article and who fails or  
13 refuses to register or who fails or refuses to file a  
14 required statement or report or who otherwise violates  
15 the provisions of this article may be the subject of a  
16 complaint filed with the ethics commission and may be  
17 proceeded against in the same manner and to the same  
18 ends as a public officer or public employee under the  
19 provisions of this chapter.

20 (c) A person who willfully and knowingly files a false  
21 report under the provisions of this article is liable in a  
22 civil action to any government officer or employee who  
23 sustains damage as a result of the filing or publication  
24 of the report.

**§6B-3-10. Provisions may be adopted by local governments.**

1 An incorporated municipality may enact lobbyist  
2 regulation provisions substantially similar to the  
3 provisions of this article which may be modified to the  
4 extent necessary to make the provisions relevant to that  
5 jurisdiction and which may be further modified to the  
6 extent deemed necessary and appropriate by and for  
7 that jurisdiction.

## CHAPTER 2

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

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[Passed January 31, 1989; in effect March 1, 1989. Approved by the Governor.]

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AN ACT to repeal sections two-a, two-b, two-c, two-g, two-h, two-i, two-j, two-k and two-l, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections three-a and eleven, article fifteen of said chapter; to amend and reenact sections one, two, two-d, two-e and two-m, article thirteen, chapter eleven of said code; to further amend said article thirteen by adding thereto a new section, designated section two-n; to amend and reenact section three, article thirteen-a of said chapter; to amend and reenact sections two, three and nine, article fifteen of said chapter; to further amend said article fifteen by adding thereto two new sections, designated sections eight-a and thirty-three; to amend and reenact section two, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto a new section, designated section twenty-nine; and to amend and reenact sections six and seventeen, article twenty-three of said chapter, all relating to the Fiscal Responsibility Act of 1989; amending and reenacting existing provisions of the business and occupation tax, the severance tax, the consumers sales and service tax, the use tax and the business franchise tax; eliminating the expiration of the temporary one cent increase in the consumers sales and service tax and the use tax, making the increase in these taxes permanent, preserving the dedication of certain additional revenues therefrom for repayment of pneumoconiosis fund debt; defining terms used in the business and occupation tax; imposing the business and occupation tax, beginning the first day of March, one thousand nine hundred eighty-nine, upon the service of gas storage and prescribing the rate thereof and due dates of installment payments; setting forth an alternative method of calculating the business and occupation tax due from electric power and light

companies and from generators of electric power; imposing such tax based on the number of kilowatt hours of electric power generated or sold within this state; specifying different rates of tax and exempting from tax kilowatt hours of electric power sold for certain purposes; requiring tax to be computed based on current law and under the alternative method, with liability for tax being the greater of the two; increasing the severance tax rates effective the first day of March, one thousand nine hundred eighty-nine; eliminating the exemption from the consumers sales and service tax and use tax for sales of property or services to persons in the business of contracting when such property or services are directly used in the activities of contracting; eliminating references to contracting in the definition of "directly used and consumed" for purposes of the consumers sales and service tax and the use tax; providing that property installed, fixed or incorporated into realty by a contractor is not subject to the consumers sales and service tax exemption for resale; removing the sales tax exemption for food intended for human consumption; providing an exemption mandated under Title forty-two, United States Code section one thousand seven hundred eighty-six; providing transition rules; making the effective date for all such changes to the consumers sales and service and use tax laws the first day of March, one thousand nine hundred eighty-nine; eliminating the credit against the business franchise tax for the amount of tax that would be attributable to the portion of the business franchise tax base giving rise to a severance tax liability for taxable years ending after the twenty-eighth day of February, one thousand nine hundred eighty-nine, prorating the credit as to months before the first day of March, one thousand nine hundred eighty-nine; increasing the rate of the business franchise tax for taxable years beginning on or after specified date; permitting proration of tax when taxable year is less than twelve months; providing for a minimum tax; clarifying that charitable organizations and churches may continue to be exempt from sales and use tax on purchases of food for meals for which no charge is made; and providing that certain

sales to persons engaged in contracting or subcontracting pursuant to a written contract with this state, a political subdivision thereof or a public corporation are exempt from the sales and use tax in certain instances.

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

That sections two-a, two-b, two-c, two-g, two-h, two-i, two-j, two-k and two-l, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three-a and eleven, article fifteen of said chapter eleven be repealed; that sections one, two, two-d, two-e and two-m, article thirteen, chapter eleven of said code be amended and reenacted; that said article thirteen be further amended by adding thereto a new section, designated section two-n; that section three, article thirteen-a of said chapter be amended and reenacted; that sections two, three and nine, article fifteen of said chapter be amended and reenacted; that said article fifteen be further amended by adding thereto two new sections, designated sections eight-a and thirty-three; that section two, article fifteen-a of said chapter be amended and reenacted; that said article fifteen-a be further amended by adding thereto a new section, designated section twenty-nine; and that sections six and seventeen, article twenty-three of said chapter be amended and reenacted, all to read as follows:

## CHAPTER 11. TAXATION.

### Article

- 13. Business and Occupation Tax.
- 13A. Severance Taxes.
- 15. Consumers Sales Tax.
- 15A. Use Tax.
- 23. Business Franchise Tax.

### ARTICLE 13. BUSINESS AND OCCUPATION TAX.

- §11-13-1. Definitions.
- §11-13-2. Imposition of privilege tax.
- §11-13-2d. Public service or utility business.
- §11-13-2e. Business of gas storage; effective date.
- §11-13-2m. Business of generating or producing electric power; exception; rates.
- §11-13-2n. Business of generating or producing or selling electric power; exemptions; rates.

**§11-13-1. Definitions.**

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

7 (b) *Terms defined.*

8 (1) “Person” or the term “company,” herein used  
9 interchangeably, includes any individual, firm, copart-  
10 nership, joint adventure, association, corporation, trust  
11 or any other group or combination acting as a unit, and  
12 the plural as well as the singular number, unless the  
13 intention to give a more limited meaning is disclosed by  
14 the context.

15 (2) “Sale,” “sales” or “selling” includes any transfer of  
16 or title to property or electricity, whether for money or  
17 in exchange for other property.

18 (3) “Taxpayer” means any person liable for any tax  
19 hereunder.

20 (4) “Gross income” means the gross receipts of the  
21 taxpayer, received as compensation for personal services  
22 and the gross receipts of the taxpayer derived from  
23 trade, business, commerce or sales and the value  
24 proceeding or accruing from the sale of tangible  
25 property (real or personal), or service, or both, and all  
26 receipts by reason of the investment of the capital of the  
27 business engaged in, including rentals, royalties, fees,  
28 reimbursed costs or expenses or other emoluments  
29 however designated and including all interest, carrying  
30 charges, fees or other like income, however denomi-  
31 nated, derived by the taxpayer from repetitive carrying  
32 of accounts, in the regular course and conduct of his  
33 business, and extension of credit in connection with the  
34 sale of any tangible personal property or service, and  
35 without any deductions on account of the cost of  
36 property sold, the cost of materials used, labor costs,  
37 taxes, royalties paid in cash or in kind or otherwise,  
38 interest or discount paid or any other expenses what-  
39 soever.



40 (5) "Gross proceeds of sales" means the value, whether  
41 in money or other property, actually proceeding from  
42 the sale of tangible property without any deduction on  
43 account of the cost of property sold or expenses of any  
44 kind.

45 (6) "Business" shall include all activities engaged in  
46 or caused to be engaged in with the object of gain or  
47 economic benefit, either direct or indirect. "Business"  
48 shall include the rendering of gas storage service by any  
49 person for the gain or economic benefit of any person,  
50 including, but not limited to, the storage operator,  
51 whether or not incident to any other business activity.

52 (7) "Gas" means either natural gas unmixed, or any  
53 mixture of natural and artificial gas or any other gas.

54 (8) "Storage reservoir" means that portion of any  
55 subterranean sand or rock stratum or strata into which  
56 gas is or may be injected for the purpose of storage.

57 (9) "Gas storage service" means the injection of gas  
58 into a storage reservoir, the storage of gas for any period  
59 of time in a storage reservoir, or the withdrawal of gas  
60 from a storage reservoir. Such gas may be owned by the  
61 storage operator or any other person.

62 (10) "Gas storage operator" means any person who  
63 operates a storage reservoir or provides a storage  
64 service as defined herein, either as owner or lessee.

65 (11) "Month" or "tax month" means the calendar  
66 month.

67 (12) "Dekatherm" means the thermal energy unit  
68 equal to one million British thermal units (BTU's) or the  
69 equivalent of one thousand cubic feet of gas having a  
70 heating content of one thousand BTU's per cubic foot.

71 (13) "Taxable year" means the calendar year, or the  
72 fiscal year ending during such calendar year, upon the  
73 basis of which tax liability is computed under this  
74 article. "Taxable year" means, in case of a return made  
75 for a fractional part of a year under the provisions of  
76 this article, or under regulations promulgated by the tax  
77 commissioner, the period for which such return is made.

**§11-13-2. Imposition of privilege tax.**

1       (a) *Periods before July 1, 1987.*—For taxable years or  
2 months thereof ending prior to the first day of July, one  
3 thousand nine hundred eighty-seven, there is hereby  
4 levied and shall be collected annual privilege taxes  
5 against the persons, on account of the business and other  
6 activities, and in the amounts to be determined by the  
7 application of rates against values or gross income as set  
8 forth in sections two-a to two-m, both inclusive, of this  
9 article and the application of the surtax rate against  
10 gross income as set forth in section two-k: *Provided,*  
11 That on the first day of July, one thousand nine hundred  
12 eighty-five, the taxes imposed by this section, at the  
13 rates set forth in sections two-b through two-m, both  
14 inclusive, of this article, and in effect on the first day  
15 of January, one thousand nine hundred eighty-five,  
16 exclusive of any surtaxes, shall be reduced by five  
17 percent for taxable months beginning on and after said  
18 first day of July: *Provided, however,* That on and after  
19 the first day of July, one thousand nine hundred eighty-  
20 five, the rate of tax under section two-b of this article  
21 shall not be less than eight tenths of one percent:  
22 *Provided further,* That there shall be no such reduction  
23 of the rates set forth in section two-a or two-l of this  
24 article.

25       (b) *Periods after June 30, 1987.*—For taxable years or  
26 months beginning after the thirtieth day of June, one  
27 thousand nine hundred eighty-seven, there is hereby  
28 levied and shall be collected annual privilege taxes  
29 against the persons, on account of the business and other  
30 activities, and in the amount to be determined by the  
31 application of rates against values or gross income as set  
32 forth in sections two-d and two-m of this article:  
33 *Provided,* That on and after the first day of July, one  
34 thousand nine hundred eighty-seven, the rates applica-  
35 ble to the privileges exercised in sections two-d and two-  
36 m of this article shall be restored and returned to those  
37 which were in effect as to such privileges on the first  
38 day of January, one thousand nine hundred eighty-five:  
39 *Provided, however,* That for taxable months or taxable  
40 years beginning after the twenty-eighth day of Febru-

41 ary, one thousand nine hundred eighty-nine, there is  
42 hereby levied and shall be collected annual privilege  
43 taxes against the persons, on account of the business and  
44 other activities, and in the amount to be determined by  
45 the application of rates against the measure of the tax  
46 as set forth in sections two-d, two-e, two-m and two-n  
47 of this article.

48 (c) If any person liable for any tax under section two-  
49 m shall ship or transport his products or any part  
50 thereof out of the state without making sale of such  
51 products, the value of the products in the condition or  
52 form in which they exist immediately before transpor-  
53 tation out of the state shall be the basis for the  
54 assessment of the tax imposed in such section, except in  
55 those instances in which another measure of the tax is  
56 expressly provided. The tax commissioner shall pre-  
57 scribe equitable and uniform rules for ascertaining such  
58 value.

59 (d) In determining value, however, as regards sales  
60 from one to another of affiliated companies or persons,  
61 or under other circumstances where the relation  
62 between the buyer and seller is such that the gross  
63 proceeds from the sale are not indicative of the true  
64 value of the subject matter of the sale, the tax commis-  
65 sioner shall prescribe uniform and equitable rules for  
66 determining the value upon which such privilege tax  
67 shall be levied, corresponding as nearly as possible to  
68 the gross proceeds from the sale of similar products of  
69 like quality or character where no common interest  
70 exists between the buyer and seller but the circumstan-  
71 ces and conditions are otherwise similar.

**§11-13-2d. Public service or utility business.**

1 (a) Upon any person engaging or continuing within  
2 this state in any public service or utility business, except  
3 railroad, railroad car, express, pipeline, telephone and  
4 telegraph companies, water carriers by steamboat or  
5 steamship and motor carriers, the tax imposed by  
6 section two of this article shall be equal to the gross  
7 income of the business derived from such activity or  
8 activities multiplied by the respective rates as follows:

9 (1) Street and interurban and electric railways, one  
10 and four-tenths percent;

11 (2) Water companies, four and four-tenths percent,  
12 except as to income received by municipally owned  
13 water plants;

14 (3) Electric light and power companies, four percent  
15 on sales and demand charges for domestic purposes and  
16 commercial lighting and four percent on sales and  
17 demand charges for all other purposes, and except as  
18 to income received by municipally owned plants produc-  
19 ing or purchasing electricity and distributing same:  
20 *Provided*, That electric light and power companies  
21 which engage in the supplying of public service but  
22 which do not generate or produce in this state the  
23 electric power they supply shall be taxed on the gross  
24 income derived from sales of power which they do not  
25 generate in this state at the rate of three percent on sales  
26 and demand charges for domestic purposes and com-  
27 mercial lighting and three percent on sales and demand  
28 charges for all other purposes, except as to income  
29 received by municipally owned plants: *Provided*,  
30 *however*, That the sale of electric power under this  
31 section shall be taxed at the rate of two percent on that  
32 portion of the gross proceeds derived from the sale of  
33 electric power to a plant location of a customer engaged  
34 in a manufacturing activity, if the contract demand at  
35 such plant location exceeds two hundred thousand  
36 kilowatts per hour per year, or if the usage of such plant  
37 location exceeds two hundred thousand kilowatts per  
38 hour in a year: *Provided further*, That the sale of electric  
39 power under this section shall be exempt from the tax  
40 imposed by this section and section two of this article  
41 if it is separately metered and consumed in an electro-  
42 lytic process for the manufacture of chlorine in this  
43 state, or is separately metered and consumed in the  
44 manufacture of ferroalloy in this state, and the rate  
45 reduction herein provided to the taxpayer shall be  
46 passed on to the manufacturer of the chlorine or  
47 ferroalloy. As used in this section, the term "ferroalloy"  
48 means any of various alloys of iron and one or more  
49 other elements used as a raw material in the production

50 of steel: *And provided further*, That the term does not  
51 include the final production of steel;

52 (4) Natural gas companies, four and twenty-nine  
53 hundredths percent on the gross income: *Provided*, That  
54 the sale of natural gas under this section shall be exempt  
55 from the tax imposed by this section and section two of  
56 this article to the extent that the natural gas is  
57 separately metered and is gas from which the purchaser  
58 derives hydrogen and carbon monoxide for use in the  
59 manufacture of chemicals in this state, and the full  
60 economic benefit of the exception herein provided to the  
61 taxpayer shall be passed on to such purchaser of the  
62 natural gas: *Provided, however*, That there shall be no  
63 exemption for the sale of any natural gas from which  
64 the purchaser derives carbon monoxide or hydrogen for  
65 the purpose of resale;

66 (5) Toll bridge companies, four and twenty-nine  
67 hundredths percent; and

68 (6) Upon all other public service or utility business,  
69 two and eighty-six hundredths percent.

70 (b) The measure of this tax shall not include gross  
71 income derived from commerce between this state and  
72 other states of the United States or between this state  
73 and foreign countries. The measure of the tax under this  
74 section shall include only gross income received from the  
75 supplying of public service. The gross income of the  
76 taxpayer from any other activity shall be included in the  
77 measure of the tax imposed upon such other activity by  
78 the appropriate section or sections of this article.

79 (c) Beginning the first day of March, one thousand  
80 nine hundred eighty-nine, electric light and power  
81 companies shall determine their liability for payment of  
82 tax under this section and sections two-m and two-n of  
83 this article. If for taxable months beginning on or after  
84 the first day of March, one thousand nine hundred  
85 eighty-nine, liability for tax under section two-n of this  
86 article is equal to or greater than the sum of the power  
87 company's liability for payment of tax under paragraph  
88 (3), subsection (a) of this section and section two-m of  
89 this article, then the company shall pay the tax due

90 under section two-n of this article and not the tax due  
91 under paragraph (3), subsection (a) of this section and  
92 section two-m of this article. If tax liability under  
93 section two-n is less, then tax shall be paid under  
94 paragraph (3), subsection (a) of this section and section  
95 two-m of this article and the tax due under section two-  
96 n shall not be paid. The provisions of paragraph (3),  
97 subsection (a) of this section shall expire and become  
98 null and void for taxable years beginning on or after the  
99 first day of January, one thousand nine hundred ninety-  
100 eight.

**§11-13-2e. Business of gas storage; effective date.**

1 (a) *Rate of tax.*—Upon every person engaging or  
2 continuing within this state in any gas storage business  
3 utilizing one or more gas storage reservoirs located  
4 within this state, the tax imposed by section two of this  
5 article shall be equal to five cents multiplied by the sum  
6 of (1) the number of dekatherms of gas injected into such  
7 a gas storage reservoir during a tax month and (2) the  
8 number of dekatherms of gas withdrawn from such a  
9 gas storage reservoir during a tax month, whether or  
10 not such gas is owned by, or is injected or withdrawn  
11 for, the storage operator or any other person. Fractional  
12 parts of dekatherms shall be included in the measure  
13 of tax as provided in regulations promulgated by the tax  
14 commissioner.

15 (b) *Effective date.*—The measure of tax under this  
16 section shall include gas injected into, or withdrawn  
17 from, a gas storage reservoir after the twenty-eighth  
18 day of February, one thousand nine hundred eighty-  
19 nine.

20 (c) *Administration; installment payments.*—The tax  
21 due under this section shall be administered, collected  
22 and enforced as provided in this article and articles nine  
23 and ten of this chapter. The tax due under this section  
24 shall be remitted in periodic installments as provided in  
25 section four of this article, except that such periodic  
26 installment payments shall be remitted on or before the  
27 twentieth day of the month following the month or  
28 quarter in which the tax accrues.

**§11-13-2m. Business of generating or producing electric power; exception; rates.**

1 (a) Upon every person engaging or continuing within  
2 this state in the business of generating or producing  
3 electric power for sale, profit or commercial use, either  
4 directly or through the activity of others, in whole or in  
5 part, when the sale thereof is not subject to tax under  
6 section two-d of this article, the amount of the tax to be  
7 equal to the value of the electric power, as shown by the  
8 gross proceeds derived from the sale thereof by the  
9 generator or producer of the same multiplied by a rate  
10 of four percent, except that the rate shall be two percent  
11 on that portion of the gross proceeds derived from the  
12 sale of electric power to a plant location of a customer  
13 engaged in a manufacturing activity, if the contract  
14 demand at such plant location exceeds two hundred  
15 thousand kilowatts per hour per year, or if the usage at  
16 such plant location exceeds two hundred thousand  
17 kilowatts per hour in a year.

18 (b) The measure of this tax shall be the value of all  
19 electric power generated or produced in this state for  
20 sale, profit or commercial use, regardless of the place  
21 of sale or the fact that transmission may be to points  
22 outside this state: *Provided*, That the gross income  
23 received by municipally owned plants generating or  
24 producing electricity shall not be subject to tax under  
25 this article.

26 (c) Beginning the first day of March, one thousand  
27 nine hundred eighty-nine, every person taxable under  
28 this section shall determine their liability for payment  
29 of tax under this section and under paragraph (3),  
30 subsection (a), section two-d of this article and section  
31 two-n of this article. If for taxable months beginning on  
32 or after the first day of March, one thousand nine  
33 hundred eighty-nine, such person's liability for payment  
34 of tax under this section and paragraph (3), subsection  
35 (a), section two-d of this article is less than the amount  
36 of such person's liability for payment of tax under  
37 section two-n of this article, then such person shall pay  
38 the tax due under section two-n and not the sum of the  
39 amount of tax due under this section and under

40 paragraph (3), subsection (a), section two-d of this  
41 article. If the tax due under section two-n of this article  
42 is less, then the amount of tax due under this section  
43 and paragraph (3), subsection (a), section two-d of this  
44 article shall be paid. The provisions of this section shall  
45 expire and become null and void for taxable years  
46 beginning on or after the first day of January, one  
47 thousand nine hundred ninety-eight.

**§11-13-2n. Business of generating or producing or selling  
electric power; exemptions; rates.**

1 (a) *Rate of tax.*—Upon every person engaging or  
2 continuing within this state in the business of generat-  
3 ing or producing electricity for sale, profit or commer-  
4 cial use, either directly or indirectly through the activity  
5 of others, in whole or in part, or in the business of selling  
6 electricity to consumers, or in both businesses, the tax  
7 imposed by section two of this article shall be equal to:

8 (1) Two tenths of one cent times the kilowatt hours of  
9 net generation available for sale that was generated or  
10 produced in this state by the taxpayer during the  
11 taxable year, except that this rate shall be five hun-  
12 dredths of one cent times the kilowatt hours of net  
13 generation available for sale that was generated or  
14 produced in this state by the taxpayer and sold to a  
15 plant location of a customer engaged in manufacturing  
16 activity if the contract demand at such plant location  
17 exceeds two hundred thousand kilowatts per hour per  
18 year or if the usage at such plant location exceeds two  
19 hundred thousand kilowatts per hour in a year: *Pro-*  
20 *vided,* That in order to encourage the development of  
21 industry to improve the environment of this state, the  
22 tax imposed by this section on any person generating or  
23 producing electric power and an alternative form of  
24 energy at a facility located within this state substan-  
25 tially from gob or other mine refuse shall be equal to  
26 five hundredths of one cent times the kilowatt hours of  
27 net generation or production available for sale. The  
28 measure of tax under this paragraph shall be equal to  
29 the total kilowatt hours of net generation available for  
30 sale that was generated or produced in this state by the  
31 taxpayer after the twenty-eighth day of February, one



32 thousand nine hundred eighty-nine, regardless of the  
33 place of sale or use, or the fact that transmission may  
34 be made to points outside this state.

35 (2) Fifteen hundredths of one cent times the kilowatt  
36 hours of electricity sold to consumers in this state that  
37 were not generated or produced in this state by the  
38 taxpayer, except that the rate shall be five hundredths  
39 of one cent times the kilowatt hours of electricity not  
40 generated or produced in this state by the taxpayer  
41 which is sold to a plant location in this state of a  
42 customer engaged in manufacturing activity if the  
43 contract demand at such plant location exceeds two  
44 hundred thousand kilowatts per hour per year or if the  
45 usage at such plant location exceeds two hundred  
46 thousand kilowatts per hour in a year. The measure of  
47 tax under this paragraph shall be equal to the total  
48 kilowatt hours of electricity sold to consumers in this  
49 state after the twenty-eighth day of February, one  
50 thousand nine hundred eighty-nine, that were not  
51 generated or produced in this state by the taxpayer, to  
52 be determined by subtracting from the total kilowatt  
53 hours of electricity sold to consumers in the state the net  
54 kilowatt hours of electricity generated or produced in  
55 the state by the taxpayer during the taxable year.

56 (b) *Exemptions.*—The provisions of this section shall  
57 not apply to:

58 (1) Kilowatt hours of electricity generated and sold, or  
59 purchased and resold, by a municipally owned plant.

60 (2) Kilowatt hours of electric power that are separ-  
61 ately metered and consumed in an electrolytic process  
62 for the manufacture of chlorine.

63 (3) Kilowatt hours of electric power that are separ-  
64 ately metered and consumed in the manufacture of  
65 ferroalloy. As used in this paragraph, the term “ferroal-  
66 loy” means any of the various alloys of iron and one or  
67 more other elements used as a raw material in the  
68 production of steel but shall not include electric power  
69 used in the production of steel.

70 (4) The full economic benefits provided to the tax-

71 payer by paragraphs (2) and (3) of this subsection shall  
72 be passed on to the manufacturer of the chlorine or  
73 ferroalloy.

74 (c) *Credit*.—Any person taxable under paragraph (2),  
75 subsection (a) of this section shall be allowed a credit  
76 against the amount of tax due under that paragraph for  
77 any electric power generation taxes paid by the  
78 taxpayer with respect to such electric power to the state  
79 in which such power was generated or produced. The  
80 amount of credit allowed shall not exceed the tax  
81 liability arising under paragraph (2), subsection (a) of  
82 this section with respect to the sale of such power.

83 (d) *Transition rule*.—Beginning the first day of  
84 March, one thousand nine hundred eighty-nine, electric  
85 light and power companies shall determine their  
86 liability for payment of tax under this section and  
87 sections two-d and two-m of this article. If for taxable  
88 months beginning on or after the first day of March, one  
89 thousand nine hundred eighty-nine, liability for tax  
90 under section two-n of this article is equal to or greater  
91 than the sum of the power company's liability for  
92 payment of tax under paragraph (3), subsection (a),  
93 section two-d and section two-m of this article, then the  
94 company shall pay the tax due under section two-n of  
95 this article and not the tax due under paragraph (3),  
96 subsection (a) of section two-d and section two-m of this  
97 article. If tax liability under section two-n is less, then  
98 tax shall be paid under paragraph (3), subsection (a),  
99 section two-d and section two-m of this article and the  
100 tax due under section two-n shall not be paid. The  
101 provisions of this subsection (d) shall expire and become  
102 null and void for taxable years beginning on or after the  
103 first day of January, one thousand nine hundred ninety-  
104 eight.

#### ARTICLE 13A. SEVERANCE TAXES.

##### §11-13A-3. Imposition of privilege tax; phase-in of modified rates and effective dates therefor.

1 (a) Upon every person exercising the privilege of  
2 engaging or continuing within this state in severing,

3 extracting, reducing to possession and producing for  
4 sale, profit or commercial use any natural resource  
5 product or products, there is hereby imposed a tax in  
6 the amount to be determined by the application of rates  
7 against the gross value of the articles produced, as  
8 shown by the gross proceeds derived from the sale  
9 thereof by the producer, except as otherwise provided,  
10 multiplied by the rates, in the classifications and  
11 according to the effective dates in subsection (b) of this  
12 section.

13 (b) *Tax rates; classifications; effective dates.*—Begin-  
14 ning on and after the first day of July, one thousand nine  
15 hundred eighty-seven, and for each date, as specified  
16 below, the rates of tax on each respective classification  
17 and for each respective year are as follows:

18 (1) On coal, and including the thirty-five one hun-  
19 dredths (.35) of one percent additional severance tax on  
20 such coal for the benefit of counties and municipalities,  
21 as provided in section six of this article, on

22 July 1, 1987—three and eighty-five one hundredths  
23 (3.85) percent;

24 July 1, 1988—three and eighty-eight one hundredths  
25 (3.88) percent; and

26 March 1, 1989—and thereafter — five (5.0) percent.

27 (2) On limestone or sandstone quarried or mined, on

28 July 1, 1987—two and two-tenths (2.2) percent;

29 July 1, 1988—two and fifty-six one hundredths (2.56)  
30 percent;

31 July 1, 1989—two and ninety-two one hundredths  
32 (2.92) percent;

33 July 1, 1990—three and twenty-eight one hundredths  
34 (3.28) percent;

35 July 1, 1991—three and sixty-four one hundredths  
36 (3.64) percent;

37 July 1, 1992—four (4.0) percent;

38 July 1, 1993—four and fifty one hundredths (4.5)  
39 percent; and

40 July 1, 1994—and thereafter—five (5.0) percent.

41 (3) On oil, on

42 July 1, 1987—four and thirty-four one hundredths  
43 (4.34) percent;

44 July 1, 1988—four and two hundred seventy-two one  
45 thousandths (4.272) percent; and

46 March 1, 1989—and thereafter—five (5.0) percent.

47 (4)(a) On natural gas, on

48 July 1, 1987—six and five-tenths (6.5) percent;

49 July 1, 1988—six (6.0) percent;

50 July 1, 1989—five and five-tenths (5.5) percent; and

51 July 1, 1990—and thereafter—five (5.0) percent.

52 (4)(b) On natural gas produced from new wells drilled  
53 and placed in service on and after July 1, 1987, on

54 July 1, 1987—four (4.0) percent; and

55 March 1, 1989—and thereafter—five (5.0) percent.

56 (5) On sand, gravel or other mineral product not  
57 quarried or mined, on

58 July 1, 1987—four and thirty-four one hundredths  
59 (4.34) percent;

60 July 1, 1988—four and two hundred seventy-two one  
61 thousandths (4.272) percent; and

62 March 1, 1989—and thereafter—five (5.0) percent.

63 (6) On timber, on

64 July 1, 1987—two and five-tenths (2.5) percent; and

65 March 1, 1989—and thereafter—three and twenty-two  
66 hundredths (3.22) percent.

67 (7) On other natural resources, on

68 July 1, 1987—two and eighty-six one hundredths (2.86)  
69 percent;

70 July 1, 1988—three and eighty-eight one thousandths  
71 (3.088) percent;

72 July 1, 1989—three and three hundred sixteen one  
73 thousandths (3.316) percent;

74 July 1, 1990—three and five hundred forty-four one  
75 thousandths (3.544) percent;

76 July 1, 1991—three and seven hundred seventy-two  
77 one thousandths (3.772) percent;

78 July 1, 1992—four (4.0) percent;

79 July 1, 1993—four and fifty one hundredths (4.5)  
80 percent; and

81 July 1, 1994—and thereafter—five (5.0) percent.

82 (c) *Tax in addition to other taxes.*—The taxes imposed  
83 by this article shall apply to all persons severing or  
84 processing (or both severing and processing) natural  
85 resources in this state and shall be in addition to all  
86 other taxes imposed by law.

87 (d) *Statement of purpose; relationship to existing*  
88 *contracts.*—It is the intent of the Legislature in enacting  
89 this article to continue the imposition of the tax upon  
90 exercising the privilege of engaging in or continuing  
91 within this state the business of severing, extracting,  
92 reducing to possession and producing for sale, profit or  
93 commercial use, natural resource products, which was  
94 imposed by section two-a, article thirteen of this chapter  
95 prior to the first day of July, one thousand nine hundred  
96 eighty-seven, by such act. The provisions of any contract  
97 entered into prior to the effective date of this act and  
98 relating to the allocation, reimbursement, payment or  
99 assessment of the tax imposed by section two-a, article  
100 thirteen of this chapter, formerly, shall apply with full  
101 force and effect to the tax imposed by this article; it  
102 being the intent of the Legislature that, for purposes of  
103 any such contractual provision, the tax imposed by this  
104 article shall be considered the same as the tax imposed  
105 by section two-a, article thirteen of this chapter prior  
106 to the first day of July, one thousand nine hundred  
107 eighty-seven.

**ARTICLE 15. CONSUMERS SALES TAX.**

§11-15-2. Definitions.

§11-15-3. Amount of tax; allocation of tax and transfers.

§11-15-8a. Contractors.

§11-15-9. Exemptions.

§11-15-33. Effective date.

**§11-15-2. Definitions.**

1 For purposes of this article:

2 (a) "Persons" shall mean any individual, partnership,  
3 association, corporation, municipal corporation,  
4 guardian, trustee, committee, executor or administrator.

5 (b) "Tax commissioner" shall mean the state tax  
6 commissioner.

7 (c) "Gross proceeds" shall mean the amount received  
8 in money, credits, property or other consideration from  
9 sales and services within this state, without deduction  
10 on account of the cost of property sold, amounts paid for  
11 interest or discounts or other expenses whatsoever.  
12 Losses shall not be deducted, but any credit or refund  
13 made for goods returned may be deducted.

14 (d) "Sale," "sales" or "selling" shall include any  
15 transfer of the possession or ownership of tangible  
16 personal property for a consideration, including a lease  
17 or rental, when the transfer or delivery is made in the  
18 ordinary course of the transferor's business and is made  
19 to the transferee or his agent for consumption or use or  
20 any other purpose.

21 (e) "Vendor" shall mean any person engaged in this  
22 state in furnishing services taxed by this article or  
23 making sales of tangible personal property.

24 (f) "Ultimate consumer" or "consumer" shall mean a  
25 person who uses or consumes services or personal  
26 property.

27 (g) "Business" shall include all activities engaged in  
28 or caused to be engaged in with the object of gain or  
29 economic benefit, direct or indirect, and all activities of  
30 the state and its political subdivisions which involve  
31 sales of tangible personal property or the rendering of

32 services when those service activities compete with or  
33 may compete with the activities of other persons.

34 (h) "Tax" shall include all taxes, interest and penalties  
35 levied hereunder.

36 (i) "Service" or "selected service" shall include all  
37 nonprofessional activities engaged in for other persons  
38 for a consideration, which involve the rendering of a  
39 service as distinguished from the sale of tangible  
40 personal property, but shall not include contracting,  
41 personal services or the services rendered by an  
42 employee to his employer or any service rendered for  
43 resale.

44 (j) "Purchaser" shall mean a person who purchases  
45 tangible personal property or a service taxed by this  
46 article.

47 (k) "Personal service" shall include those:

48 (1) Compensated by the payment of wages in the  
49 ordinary course of employment; and

50 (2) Rendered to the person of an individual without,  
51 at the same time, selling tangible personal property,  
52 such as nursing, barbering, shoeshining, manicuring  
53 and similar services.

54 (l) "Taxpayer" shall mean any person liable for the  
55 tax imposed by this article.

56 (m) "Drugs" shall include all sales of drugs or  
57 appliances to a purchaser, upon prescription of a  
58 physician or dentist and any other professional person  
59 licensed to prescribe.

60 (n) (1) "Directly used or consumed" in the activities of  
61 manufacturing, transportation, transmission, communi-  
62 cation or the production of natural resources shall mean  
63 used or consumed in those activities or operations which  
64 constitute an integral and essential part of such  
65 activities, as contrasted with and distinguished from  
66 those activities or operations which are simply inciden-  
67 tal, convenient or remote to such activities.

68 (2) Uses of property or consumption of services which

69 constitute direct use or consumption in the activities of  
70 manufacturing, transportation, transmission, communi-  
71 cation or the production of natural resources shall  
72 include only:

73 (A) In the case of tangible personal property, physical  
74 incorporation of property into a finished product  
75 resulting from manufacturing production or the produc-  
76 tion of natural resources;

77 (B) Causing a direct physical, chemical or other  
78 change upon property undergoing manufacturing  
79 production or production of natural resources;

80 (C) Transporting or storing property undergoing  
81 transportation, communication, transmission, manufac-  
82 turing production or production of natural resources;

83 (D) Measuring or verifying a change in property  
84 directly used in transportation, communication, trans-  
85 mission, manufacturing production or production of  
86 natural resources;

87 (E) Physically controlling or directing the physical  
88 movement or operation of property directly used in  
89 transportation, communication, transmission, manufac-  
90 turing production or production of natural resources;

91 (F) Directly and physically recording the flow of  
92 property undergoing transportation, communication,  
93 transmission, manufacturing production or production  
94 of natural resources;

95 (G) Producing energy for property directly used in  
96 transportation, communication, transmission, manufac-  
97 turing production or production of natural resources;

98 (H) Facilitating the transmission of gas, water, steam  
99 or electricity from the point of their diversion to  
100 property directly used in transportation, communi-  
101 cation, transmission, manufacturing production or produc-  
102 tion of natural resources;

103 (I) Controlling or otherwise regulating atmospheric  
104 conditions required for transportation, communication,  
105 transmission, manufacturing production or production  
106 of natural resources;



107 (J) Serving as an operating supply for property  
108 undergoing transmission, manufacturing production or  
109 production of natural resources or for property directly  
110 used in transportation, communication, transmission,  
111 manufacturing production or production of natural  
112 resources;

113 (K) Maintenance or repair of property directly used  
114 in transportation, communication, transmission, manu-  
115 facturing production or production of natural resources;

116 (L) Storage, removal or transportation of economic  
117 waste resulting from the activities of manufacturing,  
118 transportation, communication, transmission or the  
119 production of natural resources;

120 (M) Pollution control or environmental quality or  
121 protection activity directly relating to the activities of  
122 manufacturing, transportation, communication, trans-  
123 mission or the production of natural resources and  
124 personnel, plant, product or community safety or  
125 security activity directly relating to the activities of  
126 manufacturing, transportation, communication, trans-  
127 mission or the production of natural resources; or

128 (N) Otherwise be used as an integral and essential  
129 part of transportation, communication, transmission,  
130 manufacturing production or production of natural  
131 resources.

132 (3) Uses of property or services which would not  
133 constitute direct use or consumption in the activities of  
134 manufacturing, transportation, transmission, communi-  
135 cation or the production of natural resources shall  
136 include, but not be limited to:

137 (A) Heating and illumination of office buildings;

138 (B) Janitorial or general cleaning activities;

139 (C) Personal comfort of personnel;

140 (D) Production planning, scheduling of work, or  
141 inventory control;

142 (E) Marketing, general management, supervision,  
143 finance, training, accounting and administration; or

144 (F) An activity or function incidental or convenient to  
145 transportation, communication, transmission, manufac-  
146 turing production or production of natural resources,  
147 rather than an integral and essential part of such  
148 activities.

149 (o) "Contracting" shall mean the furnishing of work,  
150 or both materials and work, in fulfillment of a contract  
151 for the construction, alteration, repair, decoration or  
152 improvement of a new or existing building or structure,  
153 or any part thereof, or for removal or demolition of a  
154 building or structure, or any part thereof, or for the  
155 alteration, improvement or development of real prop-  
156 erty. For purposes of this definition, the term "struc-  
157 ture" shall include, but not be limited to, everything  
158 built up or composed of parts joined together in some  
159 definite manner and attached to real property, or which  
160 adds utility to a particular parcel of property and is  
161 intended to remain there for an indefinite period of  
162 time.

163 (p) "Manufacturing" shall mean a systematic opera-  
164 tion or integrated series of systematic operations  
165 engaged in as a business or segment of a business which  
166 transforms or converts tangible personal property by  
167 physical, chemical or other means into a different form,  
168 composition or character from that in which it originally  
169 existed.

170 (q) "Transportation" shall mean the act or process of  
171 conveying, as a commercial enterprise, passengers or  
172 goods from one place or geographical location to another  
173 place or geographical location.

174 (r) "Transmission" shall mean the act or process of  
175 causing liquid, natural gas or electricity to pass or be  
176 conveyed from one place or geographical location to  
177 another place or geographical location through a  
178 pipeline or other medium for commercial purposes.

179 (s) "Communication" shall mean all telephone, radio,  
180 light, light wave, radio telephone, telegraph and other  
181 communication or means of communication, whether  
182 used for voice communication, computer data transmis-  
183 sion or other encoded symbolic information transfers

184 and shall include commercial broadcast radio, commer-  
185 cial broadcast television and cable television.

186 (t) "Production of natural resources" shall mean the  
187 performance, by either the owner of the natural  
188 resources or another, of the act or process of exploring,  
189 developing, severing, extracting, reducing to possession  
190 and loading for shipment for sale, profit or commercial  
191 use of any natural resource products and any reclama-  
192 tion, waste disposal or environmental activities asso-  
193 ciated therewith.

**§11-15-3. Amount of tax; allocation of tax and transfers.**

1 (a) For the privilege of selling tangible personal  
2 property and of dispensing certain selected services  
3 defined in sections two and eight of this article, the  
4 vendor shall collect from the purchaser the tax as  
5 provided under this article, and shall pay the amount  
6 of tax to the tax commissioner in accordance with the  
7 provisions of this article.

8 (b) Beginning on the first day of March, one thousand  
9 nine hundred eighty-nine, the general consumers sales  
10 and service tax imposed by this article shall be at the  
11 rate of six cents on the dollar of sales or services,  
12 excluding gasoline and special fuel sales, which remain  
13 taxable at the rate of five cents on the dollar of sales.

14 (c) There shall be no tax on sales where the monetary  
15 consideration is five cents or less. The amount of the tax  
16 shall be computed as follows:

17 (1) On each sale, where the monetary consideration is  
18 from six cents to sixteen cents, both inclusive, one cent.

19 (2) On each sale, where the monetary consideration is  
20 from seventeen cents to thirty-three cents, both inclu-  
21 sive, two cents.

22 (3) On each sale, where the monetary consideration is  
23 from thirty-four cents to fifty cents, both inclusive, three  
24 cents.

25 (4) On each sale, where the monetary consideration is  
26 from fifty-one cents to sixty-seven cents, both inclusive,  
27 four cents.

28 (5) On each sale, where the monetary consideration is  
29 from sixty-eight cents to eighty-four cents, both inclu-  
30 sive, five cents.

31 (6) On each sale, where the monetary consideration is  
32 from eighty-five cents to one dollar, both inclusive, six  
33 cents.

34 (7) If the sale price is in excess of one dollar, six cents  
35 on each whole dollar of sale price, and upon any  
36 fractional part of a dollar in excess of whole dollars as  
37 follows: One cent on the fractional part of the dollar if  
38 less than seventeen cents; two cents on the fractional  
39 part of the dollar if in excess of sixteen cents but less  
40 than thirty-four cents; three cents on the fractional part  
41 of the dollar if in excess of thirty-three cents but less  
42 than fifty-one cents; four cents on the fractional part of  
43 the dollar if in excess of fifty cents but less than sixty-  
44 eight cents; five cents on the fractional part of the dollar  
45 if in excess of sixty-seven cents but less than eighty-five  
46 cents; and six cents on the fractional part of the dollar  
47 if in excess of eighty-four cents. For example, the tax  
48 on sales from one dollar and one cent to one dollar and  
49 sixteen cents, both inclusive, seven cents; on sales from  
50 one dollar and seventeen cents to one dollar and thirty-  
51 three cents, both inclusive, eight cents; on sales from one  
52 dollar and thirty-four cents to one dollar and fifty cents,  
53 both inclusive, nine cents; on sales from one dollar and  
54 fifty-one cents to one dollar and sixty-seven cents, both  
55 inclusive, ten cents; on sales from one dollar and sixty-  
56 eight cents to one dollar and eighty-four cents, both  
57 inclusive, eleven cents and on sales from one dollar and  
58 eighty-five cents to two dollars, both inclusive, twelve  
59 cents.

60 (d) Separate sales, such as daily or weekly deliveries,  
61 shall not be aggregated for the purpose of computation  
62 of the tax even though such sales are aggregated in the  
63 billing or payment therefor. Notwithstanding any other  
64 provision, coin-operated amusement and vending ma-  
65 chine sales shall be aggregated for the purpose of  
66 computation of this tax.

67 (e) Of the taxes collected under the provisions of this

68 article, one sixth of such taxes collected for the period  
69 subsequent to the thirty-first day of May, one thousand  
70 nine hundred eighty-eight, prior to the first day of July,  
71 one thousand nine hundred eighty-nine, and not attrib-  
72 utable to or resulting from the repeal of section eleven  
73 of this article or attributable to tax on purchases of  
74 gasoline and special fuel, shall be reasonably allocated,  
75 with allowance for refunds and net of reasonable costs  
76 of administration, to and deposited by the tax commis-  
77 sioner in the special account created in the treasury by  
78 section eight-a, article four-b, chapter twenty-three of  
79 this code, not to exceed the amount sufficient for making  
80 timely repayment of the principal and interest under the  
81 first payment due, by the thirtieth day of June, one  
82 thousand nine hundred eighty-nine, in repayment for  
83 the moneys previously transferred from such pneumo-  
84 coniosis fund.

**§11-15-8a. Contractors.**

1 (a) The provisions of this article shall not apply to  
2 contracting services. However, purchases by a contrac-  
3 tor of tangible personal property or taxable services for  
4 use or consumption in the providing of a contracting  
5 service shall be taxable beginning the first day of  
6 March, one thousand nine hundred eighty-nine, except  
7 as otherwise provided in this article.

8 (b) *Transition rules.*—The exemption from payment  
9 of tax on purchases of tangible personal property or  
10 taxable services directly used or consumed in the  
11 activity of contracting, as defined in section two of this  
12 article, which expires as of the first day of March, one  
13 thousand nine hundred eighty-nine, shall nevertheless  
14 remain in effect with respect to:

15 (1) Tangible personal property or taxable services  
16 purchased by a contractor on or after said first day of  
17 March in fulfillment of a written contract for contract-  
18 ing, as defined in section two of this article, that was  
19 executed and legally binding on the parties thereto on  
20 or before the fifteenth day of February, one thousand  
21 nine hundred eighty-nine; or in fulfillment of a written  
22 contract entered into after the said fifteenth day of

23 February pursuant to a written bid for contracting that  
24 was made on or before the said fifteenth day of  
25 February that was binding on the contractor, but only  
26 to the extent that the bid is subsequently incorporated  
27 into a written contract; or

28 (2) Tangible personal property or taxable services  
29 purchased by a contractor on or after the said first day  
30 of March pursuant to a written contract executed on or  
31 before the fifteenth day of February, one thousand nine  
32 hundred eighty-nine, to purchase in specified quantities  
33 identified tangible personal property or specified  
34 taxable services.

35 (3) Tangible personal property or taxable services  
36 purchased by a contractor for consumption or use in  
37 fulfillment of a written contract entered into before the  
38 first day of September, one thousand nine hundred  
39 eighty-nine, when such contract is for the construction  
40 of a new improvement to real property the construction  
41 or operation of which was approved by a federal or state  
42 regulatory body prior to the first day of February, one  
43 thousand nine hundred eighty-nine.

44 (c) *Renewals and extensions.*—A renewal of any  
45 contract shall constitute a new contract for purposes of  
46 this section, and the date of entry into a contract  
47 renewal by the parties, the date or dates of tender of  
48 consideration and the time of performance of any  
49 contractual obligations under a renewed contract shall  
50 be treated as the dates for determining application of  
51 this section to the renewed contract. Extensions of time  
52 granted or agreed upon by the parties to a contract for  
53 performance of the contract or for tender of consider-  
54 ation under the contract shall not be treated as contract  
55 renewals. Contracts to which such extensions apply shall  
56 be treated under these transition rules as if the original  
57 contractual provisions for performance and tender of  
58 consideration remain in effect.

59 (d) *Definitions.*—For purposes of this section:

60 (1) The term “contract” or “contracts” means written  
61 agreements reciting or setting forth a fixed price  
62 consideration or a consideration based upon cost plus a

63 stated percentage or a stated monetary increment. This  
64 term shall not mean or include ongoing sales contracts,  
65 contracts whereby any element of the consideration or  
66 the property or services sold or to be rendered in  
67 performance of the contract are undefined, or deter-  
68 mined, as to either nature or quantity, subsequent to the  
69 making of the contract, or any open-ended contract.

70 (2) The term "contract renewal" or "renewal" means  
71 a covenant or agreement entered into or assumed by  
72 parties which have a current contractual relation or  
73 which have had a past contractual relation, whereby the  
74 parties agree to incur obligations beyond those which  
75 they were, or would have been, required, at the  
76 minimum, to carry out under their current or past  
77 contractual relation.

#### §11-15-9. Exemptions.

1 (a) Sales of gas, steam and water delivered to consu-  
2 mers through mains or pipes, and sales of electricity;

3 (b) Sales of textbooks required to be used in any of  
4 the schools of this state;

5 (c) Sales of property or services to the state, its  
6 institutions or subdivisions, and to the United States,  
7 including agencies of federal, state or local governments  
8 for distribution in public welfare or relief work;

9 (d) Sales of motor vehicles which are titled by the  
10 department of motor vehicles and which are subject to  
11 the tax imposed by section four, article three, chapter  
12 seventeen-a of the code;

13 (e) Sales of property or services to churches and bona  
14 fide charitable organizations who make no charge  
15 whatsoever for the services they render: *Provided*, That  
16 the exemption herein granted shall apply only to  
17 services, equipment, supplies, food for meals and  
18 materials directly used or consumed by these organiza-  
19 tions, and shall not apply to purchases of gasoline or  
20 special fuel;

21 (f) Sales of property or services to corporations or  
22 organizations qualified under section 501(c)(3) of the

23 Internal Revenue Code of 1986, as amended, or under  
24 section 501(c)(4) of the Internal Revenue Code of 1986,  
25 as amended, who make casual and occasional sales not  
26 conducted in a repeated manner or in the ordinary  
27 course of repetitive and successive transactions of like  
28 character: *Provided*, That the exemption herein granted  
29 shall apply only to services, equipment, supplies and  
30 materials directly used or consumed in the activities for  
31 which such organizations qualify as tax exempt organ-  
32 izations under the Internal Revenue Code by these  
33 organizations and shall not apply to purchases of  
34 gasoline or special fuel;

35 (g) Sales of property or services to persons engaged  
36 in this state in the business of manufacturing, transpor-  
37 tation, transmission, communication or in the produc-  
38 tion of natural resources: *Provided*, That the exemption  
39 herein granted shall apply only to services, machinery,  
40 supplies and materials directly used or consumed in the  
41 businesses or organizations named above, and shall not  
42 apply to purchases of gasoline or special fuel: *Provided*,  
43 *however*, That on and after the first day of July, one  
44 thousand nine hundred eighty-seven, the exemption  
45 provided in this subsection shall apply only to services,  
46 machinery, supplies and materials directly used or  
47 consumed in the activities of manufacturing, transpor-  
48 tation, transmission, communication or the production of  
49 natural resources in the businesses or organizations  
50 named above and shall not apply to purchases of  
51 gasoline or special fuel;

52 (h) An isolated transaction in which any tangible  
53 personal property is sold, transferred, offered for sale  
54 or delivered by the owner thereof or by his representa-  
55 tive for the owner's account, such sale, transfer, offer for  
56 sale or delivery not being made in the ordinary course  
57 of repeated and successive transactions of like character  
58 by such owner or on his account by such representative;

59 (i) Sales of tangible personal property and services  
60 rendered for use or consumption in connection with the  
61 business of dispensing a service subject to tax under this  
62 article and sales of tangible personal property and  
63 services rendered for use or consumption in connection



64 with the commercial production of an agricultural  
65 product the ultimate sale of which will be subject to the  
66 tax imposed by this article or which would have been  
67 subject to tax under this article: *Provided*, That sales of  
68 tangible personal property and services to be used or  
69 consumed in the construction of or permanent improve-  
70 ment to real property and sales of gasoline and special  
71 fuel shall not be exempt;

72 (j) Sales of tangible personal property to a person for  
73 the purpose of resale in the form of tangible personal  
74 property: *Provided*, That sales of gasoline and special  
75 fuel by distributors and importers shall be taxable  
76 except when the sale is to another distributor for resale:  
77 *Provided, however*, That sales of building materials or  
78 building supplies or other property to any person  
79 engaging in the activity of contracting, as defined in this  
80 article, which is to be installed in, affixed to or  
81 incorporated by such person or his agent into any real  
82 property, building or structure shall not be exempt  
83 under this subsection, except that sales of tangible  
84 personal property to a person engaging in the activity  
85 of contracting pursuant to a written contract with this  
86 state, or with a political subdivision thereof, or with a  
87 public corporation created by the Legislature or by  
88 another government entity pursuant to an act of the  
89 Legislature, for a building or structure (or improvement  
90 thereto) or other improvement to real property that is  
91 or will be owned and used by the governmental entity  
92 for a governmental or proprietary purpose, who incor-  
93 porates such property in such building, structure or  
94 improvement shall, with respect to such tangible  
95 personal property, nevertheless be deemed to be the  
96 vendor of such property to the governmental entity and  
97 any person seeking to qualify for and assert this  
98 exception must do so pursuant to such legislative rules  
99 and regulations as the tax commissioner may promul-  
100 gate and upon such forms as the tax commissioner may  
101 prescribe. A subcontractor who, pursuant to a written  
102 subcontract with a prime contractor who qualifies for  
103 this exception, provides equipment, or materials, and  
104 labor to such a prime contractor shall be treated in the  
105 same manner as the prime contractor is treated with

106 respect to the prime contract under this exception and  
107 the legislative rules and regulations promulgated by the  
108 tax commissioner;

109 (k) Sales of property or services to nationally char-  
110 tered fraternal or social organizations for the sole  
111 purpose of free distribution in public welfare or relief  
112 work: *Provided*, That sales of gasoline and special fuel  
113 shall be taxable;

114 (l) Sales and services, fire fighting or station house  
115 equipment, including construction and automotive,  
116 made to any volunteer fire department organized and  
117 incorporated under the laws of the state of West  
118 Virginia: *Provided*, That sales of gasoline and special  
119 fuel shall be taxable;

120 (m) Sales of newspapers when delivered to consumers  
121 by route carriers;

122 (n) Sales of drugs dispensed upon prescription and  
123 sales of insulin to consumers for medical purposes;

124 (o) Sales of radio and television broadcasting time,  
125 preprinted advertising circulars and newspaper and  
126 outdoor advertising space for the advertisement of goods  
127 or services;

128 (p) Sales and services performed by day-care centers;

129 (q) Casual and occasional sales of property or services  
130 not conducted in a repeated manner or in the ordinary  
131 course of repetitive and successive transactions of like  
132 character by corporations or organizations qualified  
133 under section 501(c)(3) of the Internal Revenue Code of  
134 1986, as amended, or under section 501(c)(4) of the  
135 Internal Revenue Code of 1986, as amended;

136 (r) Sales of property or services to a school which has  
137 approval from the West Virginia board of regents to  
138 award degrees, which has its principal campus in this  
139 state, and which is exempt from federal and state  
140 income taxes under section 501(c)(3) of the Internal  
141 Revenue Code of 1986, as amended: *Provided*, That sales  
142 of gasoline and special fuel shall be taxable;

143 (s) Sales of mobile homes to be utilized by purchasers

144 as their principal year-round residence and dwelling;  
145 *Provided*, That these mobile homes shall be subject to  
146 tax at the three percent rate;

147 (t) Sales of lottery tickets and materials by licensed  
148 lottery sales agents and lottery retailers authorized by  
149 the state lottery commission, under the provisions of  
150 article twenty-two, chapter twenty-nine of this code;

151 (u) Leases of motor vehicles titled pursuant to the  
152 provisions of article three, chapter seventeen-a of this  
153 code to lessees for a period of thirty or more consecutive  
154 days. This exemption shall apply to leases executed on  
155 or after the first day of July, one thousand nine hundred  
156 eighty-seven, and to payments under long-term leases  
157 executed before such date, for months thereof beginning  
158 on or after such date;

159 (v) Notwithstanding the provisions of subsection (g) of  
160 this section or any provisions of this article to the  
161 contrary, sales of property and services to persons  
162 subject to tax under article thirteen, thirteen-a or  
163 thirteen-b of this chapter: *Provided*, That the exemption  
164 herein granted shall apply both to property or services  
165 directly or not directly used or consumed in the conduct  
166 of privileges which are subject to tax under such articles  
167 but shall not apply to purchases of gasoline or special  
168 fuel;

169 (w) Sales of propane to consumers for poultry house  
170 heating purposes, with any seller to such consumer who  
171 may have prior paid such tax in his price, to not pass  
172 on the same to the consumer, but to make application  
173 and receive refund of such tax from the tax commis-  
174 sioner, pursuant to rules and regulations which shall be  
175 promulgated by the tax commissioner; and notwith-  
176 standing the provisions of section eighteen of this article  
177 or any other provisions of such article to the contrary;

178 (x) Any sales of tangible personal property or services  
179 purchased after the thirtieth day of September, one  
180 thousand nine hundred eighty-seven, and lawfully paid  
181 for with food stamps pursuant to the federal food stamp  
182 program codified in 7 United States Code, §2011, et seq.,  
183 as amended, or with drafts issued through the West

184 Virginia special supplemental food program for women,  
185 infants and children codified in 42 United States Code,  
186 §1786;

187 (y) Sales of tickets for activities sponsored by elemen-  
188 tary and secondary schools located within this state; and

189 (z) Sales of electronic data processing services and  
190 related software: *Provided*, That for the purposes of this  
191 subsection (z) "electronic data processing services"  
192 means (1) the processing of another's data, including all  
193 processes incident to processing of data such as key-  
194 punching, keystroke verification, rearranging or sorting  
195 of previously documented data for the purpose of data  
196 entry or automatic processing, and changing the  
197 medium on which data is sorted, whether these pro-  
198 cesses are done by the same person or several persons;  
199 and (2) providing access to computer equipment for the  
200 purpose of processing data or examining or acquiring  
201 data stored in or accessible to such computer equipment.

### §11-15-33. Effective date.

1 The provisions of this article as amended or added by  
2 this act shall take effect on the first day of March, one  
3 thousand nine hundred eighty-nine, and apply to all  
4 taxable years ending after that date: *Provided*, That if  
5 an effective date is expressly provided in such provision,  
6 that specific effective date shall control in lieu of this  
7 general effective date provision.

### ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; six percent tax rate beginning March one, one thousand nine hundred eighty-nine; inclusion of services as taxable on and after the first day of July, one thousand nine hundred eighty-seven; transition rules; allocation of tax and transfers.

§11-15A-29. Effective date.

§11-15A-2. Imposition of tax; six percent tax rate beginning March one, one thousand nine hundred eighty-nine; inclusion of services as taxable on and after the first day of July, one thousand nine hundred eighty-seven; transition rules; allocation of tax and transfers.

§11-15A-29. Effective date.

§11-15A-2. **Imposition of tax; six percent tax rate beginning March one, one thousand nine hundred eighty-nine; inclusion of services as taxable on and after the first day of July, one thousand nine hundred eighty-seven; transition rules; allocation of tax and transfers.**

1 (a) An excise tax is hereby levied and imposed on the  
2 use in this state of tangible personal property or taxable  
3 services, to be collected and paid as hereinafter  
4 provided, at the rate of six percent of the purchase price  
5 of such property or taxable services, beginning on the  
6 first day of March, one thousand nine hundred eighty-  
7 nine, except that sales of gasoline and special fuel shall  
8 remain taxable at five percent. "Taxable services," for  
9 the purposes of this article, means services of the nature  
10 that are subject to the tax imposed by article fifteen of  
11 this chapter. In this article, wherever the words  
12 "tangible personal property" or "property" appear, the  
13 same shall include the words "or taxable services,"  
14 where the context so requires.

15 (b) Such tax is hereby imposed upon every person  
16 using tangible personal property or taxable services  
17 within this state. That person's liability is not extin-  
18 guished until such tax has been paid. A receipt with the  
19 tax separately stated thereon issued by a retailer  
20 engaged in business in this state, or by a foreign retailer  
21 who is authorized by the tax commissioner to collect the  
22 tax imposed by this article, relieves the purchaser from  
23 further liability for the tax to which the receipt refers.

24 (c) Purchases of tangible personal property or taxable  
25 services made for the government of the United States  
26 or any of its agencies by ultimate consumers shall be  
27 subject to the tax imposed by this section. Industrial  
28 materials and equipment owned by the federal govern-  
29 ment within the state of West Virginia of a character  
30 not ordinarily readily obtainable within the state shall  
31 not be subject to use tax when sold, if such industrial  
32 materials and equipment would not be subject to use

41 (f) Of the taxes collected under the provisions of this  
42 article, one sixth of such taxes collected for the period  
43 subsequent to the thirty-first day of May, one thousand  
44 nine hundred eighty-eight, and prior to the first day of  
45 July, one thousand nine hundred eighty-nine, and not  
46 attributable to or resulting from the repeal of section  
47 eleven, article fifteen of this chapter or attributable to  
48 tax on gasoline and special fuel, shall be reasonably  
49 allocated, with allowances for refunds and net of  
50 reasonable costs of administration, to, and deposited by  
51 the tax commissioner in the special account created in  
52 the treasury by section eight-a, article four-b, chapter  
53 twenty-three of this code, not to exceed the amount  
54 sufficient for making timely repayment of the principal  
55 and interest under the first payment due, by the  
56 thirtieth day of June, one thousand nine hundred eighty-  
57 nine, in repayment for the moneys previously trans-  
58 ferred from such pneumoconiosis fund.

#### §11-15A-29. Effective date.

1 The provisions of this article as amended or added by  
2 this act shall take effect on the first day of March, one  
3 thousand nine hundred eighty-nine, and apply to all  
4 taxable years ending after that date: *Provided*, That if  
5 an effective date is expressly provided in such provision,  
6 that specific effective date shall control in lieu of this  
7 general effective date provision.

#### ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-6. Imposition of tax; change in rate of tax.

§11-23-17. Credits against tax; expiration of credits.

#### §11-23-6. Imposition of tax; change in rate of tax.

1 (a) *General*.—An annual business franchise tax is  
2 hereby imposed on the privilege of doing business in this  
3 state and in respect of the benefits and protections  
4 conferred. Such tax shall be collected from every  
5 domestic corporation, every corporation having its  
6 commercial domicile in this state, every foreign or  
7 domestic corporation owning or leasing real or tangible  
8 personal property located in this state or doing business  
9 in this state and from every partnership owning or  
10 leasing real or tangible personal property located in this

11 state or doing business in this state, effective on and  
12 after the first day of July, one thousand nine hundred  
13 eighty-seven.

14 (b) *Amount of tax and rate; effective date.*

15 (1) On and after the first day of July, one thousand  
16 nine hundred eighty-seven, the amount of tax shall be  
17 the greater of fifty dollars or fifty-five one hundredths  
18 of one percent of the value of the tax base, as determined  
19 under this article: *Provided*, That when the taxpayer's  
20 first taxable year under this article is a short taxable  
21 year, the taxpayer's liability shall be prorated based  
22 upon the ratio which the number of months in which  
23 such short taxable year bears to twelve: *Provided*,  
24 *however*, That this subdivision (1) shall not apply to  
25 taxable years beginning on or after the first day of  
26 January, one thousand nine hundred eighty-nine.

27 (2) *Taxable years after December 31, 1988.*—For  
28 taxable years beginning on or after the first day of  
29 January, one thousand nine hundred eighty-nine, the  
30 amount of tax due under this article shall be the greater  
31 of fifty dollars or seventy-five one hundredths of one  
32 percent of the value of the tax base as determined under  
33 this article: *Provided*, That when the taxpayer's taxable  
34 year for federal income tax purposes is a short taxable  
35 year, the tax determined by application of the tax rate  
36 to the taxpayer's tax base shall be prorated based upon  
37 the ratio which the number of months in such short  
38 taxable year bears to twelve: *Provided, however*, That  
39 when the taxpayer's first taxable year under this article  
40 is less than twelve months, the taxpayer's liability shall  
41 be prorated based upon the ratio which the number of  
42 months taxpayer was doing business in this state bears  
43 to twelve but in no event shall the tax due be less than  
44 fifty dollars.

**§11-23-17. Credits against tax; expiration of credits.**

1 (a) A credit shall be allowed against the tax imposed  
2 by this article equal to the amount of franchise tax  
3 liability due under this article, for the taxable year  
4 (determined before application of other allowable  
5 credits) multiplied by a fraction, the numerator of which

6 is the gross income of the business subject to tax under  
7 article thirteen-a of this chapter and the denominator of  
8 which is the total amount of gross receipts derived from  
9 or attributable to all of taxpayer's activity in West  
10 Virginia.

11 (b) For taxable years ending after the thirtieth day  
12 of June, one thousand nine hundred eighty-eight, a  
13 credit shall be allowed against the tax imposed by this  
14 article equal to the amount of franchise tax liability due  
15 under this article, for the taxable year (determined  
16 before application of other allowable credits) multiplied  
17 by a fraction, the numerator of which is the gross  
18 income of the business subject to tax under article  
19 thirteen of this chapter and the denominator of which  
20 is the total amount of gross receipts derived from or  
21 attributable to all of taxpayer's activity in West  
22 Virginia: *Provided*, That such credit shall be prorated  
23 and only that amount attributable to months of the  
24 taxable year beginning after June thirtieth, one thou-  
25 sand nine hundred eighty-eight, shall be allowed as a  
26 credit.

27 (c) A parent taxpayer who files a separate return  
28 under this article shall be allowed a credit against such  
29 taxpayer's liability for the tax under this article for the  
30 amount of net taxes that would have been paid without  
31 regard to the adjustment required by subparagraph (D),  
32 paragraph (2), subsection (b), section three of this article  
33 for the taxable year by a subsidiary corporation or  
34 partnership: *Provided*, That the amount of credit  
35 allowed shall not exceed the amount of tax that would  
36 have been paid, without regard to such adjustment,  
37 under this article by the subsidiary or partnership,  
38 multiplied by the percentage of the parent's ownership  
39 of the subsidiary corporation or partnership. In the case  
40 of corporations, this percentage shall be equal to the  
41 percentage of stock of all classes owned by the parent.  
42 In no case shall any credit allowable by this section,  
43 which is not used on an annual return, be carried  
44 forward or back, but instead the same shall be forfeited.

45 (d) A credit shall be allowed against the tax imposed  
46 by this article for the taxable year equal to the amount



47 of liability of the taxpayer for the taxable year for the  
48 full amount of any tax imposed pursuant to article eight  
49 of this chapter on the capital of the business, as  
50 determined under sections fourteen and fourteen-a,  
51 article three of this chapter.

52 (e) *Expiration of credits.*—The credits authorized in  
53 subsection (a) of this section shall expire and not be  
54 authorized or allowed for any taxable month beginning  
55 on or after the first day of March, one thousand nine  
56 hundred eighty-nine. For taxable years beginning  
57 before said first day of March and ending after such  
58 date, the annual credit heretofore allowed by subsection  
59 (a) of this section shall be prorated by the number of  
60 months in the taxable year and only that portion of the  
61 credit attributable to months ending prior to said first  
62 day of March shall be allowable under this section.

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## CHAPTER 3

(Com. Sub. for S. B. 2—By Senators Tucker, Mr. President, and Harman,  
By Request of the Executive)

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[Passed February 1, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter five-f, relating to the reorganization of the executive branch of state government; setting forth certain legislative findings and declarations; providing a rule of construction; creating seven new departments in the executive branch of state government; creating the office of secretary as the administrative head of each such department; specifying the appointment, term, oath, bond and compensation of each such secretary and funding for expenditures for personal services of the secretary's office; defining terms; providing for the transfer to and incorporation in such departments of numerous state agencies and boards and their allied, advisory, affiliated and related entities and funds; retaining the existence, powers,

authority, duties and status of administrators, agencies and boards; providing for code references elsewhere; relating to the powers and authority of the secretary of each such department; providing rule-making authority; making special provisions for federal law or regulation, federal-state programs or federally delegated programs; specifying the appointment, term, qualifications, oath, bond and compensation of administrators of all transferred and incorporated agencies and boards; authorizing dual office-holding; providing for the transfer of records, property and personnel; providing for a report to the Legislature concerning further reorganization of the executive branch of state government; providing operative date for implementation; and providing a severability clause.

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

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter five-f, to read as follows:

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

### Article

1. General provisions.
2. Transfer of Agencies and Boards.
3. Future Reorganizations; Severability.

### ARTICLE 1. GENERAL PROVISIONS.

§5F-1-1. Legislative findings and declarations.

§5F-1-2. Executive departments created; offices of secretary created; funds.

§5F-1-3. Oath; bond; compensation.

§5F-1-4. Definitions.

#### §5F-1-1. Legislative findings and declarations.

- 1 (a) The Legislature hereby finds and declares that
- 2 state government must be made more responsive to the
- 3 citizens of the state; that the various agencies and
- 4 boards responsible for the execution of the laws of this
- 5 state must be improved; that more effective manage-
- 6 ment of the executive branch of state government must
- 7 be achieved; that the efficiency of the operations of the
- 8 agencies and boards of state government must be

9 increased; and that in view of the financial crisis facing  
10 the state of West Virginia, it is essential to compel a  
11 curtailment and reduction of governmental expenses  
12 and hold them within reasonable bounds consistent with  
13 the economical and efficient administration of govern-  
14 mental services and to ensure the strictest economy in  
15 the matter of governmental expenditures to the end that  
16 agencies and boards of government may not be com-  
17 pelled to abdicate their responsibilities or cease to  
18 function but that in carrying out their responsibilities  
19 they shall not place upon the public any expense which  
20 is not necessary. The Legislature further hereby finds  
21 and declares that in order to achieve these purposes, it  
22 is essential to reorganize the executive branch of state  
23 government so as to:

24 (1) Promote the execution of the laws, the more  
25 effective management of the executive branch and of its  
26 agencies, boards and functions, and the expeditious  
27 administration of the public business;

28 (2) Reduce expenditures and promote economy to the  
29 fullest extent consistent with the efficient operation of  
30 state government;

31 (3) Increase the efficiency of the operations of state  
32 government to the fullest extent practicable;

33 (4) Group, coordinate and consolidate agencies and  
34 functions of state government, as nearly as may be,  
35 according to purposes;

36 (5) Consolidate or combine those agencies having  
37 similar or complementary functions under a single head,  
38 and, after observing and analyzing the operation of such  
39 consolidated or combined agencies for a period of time,  
40 abolish by legislative act, where legislative action is  
41 required, such agencies or functions thereof as are  
42 determined not to be necessary or desirable for the  
43 efficient conduct of the state government;

44 (6) Eliminate duplication of effort;

45 (7) Provide for appropriate legislative oversight as  
46 mandated in the constitution of this state; and

47 (8) Provide for a spirit of cooperation and unity  
48 between the executive and legislative branches in  
49 addressing and developing solutions to the problems  
50 facing the state.

51 (b) This chapter is enacted in view and because of the  
52 findings and declarations set forth in subsection (a) of  
53 this section and shall be construed in the light thereof.

**§5F-1-2. Executive departments created; offices of  
secretary created; funds.**

1 (a) There are hereby created, within the executive  
2 branch of the state government, the following  
3 departments:

4 (1) Department of administration;

5 (2) Department of commerce, labor and environmen-  
6 tal resources;

7 (3) Department of education and the arts;

8 (4) Department of health and human resources;

9 (5) Department of public safety;

10 (6) Department of tax and revenue; and

11 (7) Department of transportation.

12 (b) Each department shall be headed by a secretary  
13 who shall be appointed by the governor by and with the  
14 advice and consent of the Senate and who shall serve at  
15 the will and pleasure of the governor.

**§5F-1-3. Oath; bond; compensation.**

1 (a) Each person appointed to serve as a secretary shall  
2 take the oath or affirmation prescribed by section five,  
3 article four of the constitution, and such oath shall be  
4 certified by the person who administers the same and  
5 filed in the office of the secretary of state.

6 (b) Each person so appointed shall give bond in the  
7 penalty of twenty-five thousand dollars conditioned for  
8 the faithful performance of the duties of the office,  
9 which bond shall be approved by the attorney general  
10 as to form and by the governor as to sufficiency. The

11 surety of such bond may be a bonding or surety  
12 company, in which case the premium shall be paid out  
13 of the appropriation made for the administration of the  
14 department.

15 (c) Each secretary shall receive an annual salary as  
16 shall be fixed from time to time by the governor within  
17 the limit of funds appropriated to the department and  
18 available for such purpose.

19 (d) The salary and expenses necessary for each  
20 secretary and all expenditures for personal services for  
21 the office of secretary shall be paid from and within  
22 existing appropriations made to the agencies and boards  
23 transferred to the department headed by that secretary,  
24 and revised expenditure schedules shall be submitted to  
25 the commissioner of finance and administration and the  
26 legislative auditor stating the amount and source of  
27 funds to be expended: *Provided*, That for fiscal years  
28 beginning the first day of July, one thousand nine  
29 hundred eighty-nine, such amounts shall follow the  
30 procedures described in chapter five-a of this code.

#### §5F-1-4. Definitions.

1 (a) As used in this chapter, unless the context clearly  
2 requires a different meaning:

3 (1) "Administrator" means any person who fills a  
4 statutorily created position within or related to an  
5 agency or board (other than a board member) and who  
6 is designated by statute as commissioner, deputy  
7 commissioner, assistant commissioner, director, chancel-  
8 lor, chief, executive director, executive secretary,  
9 superintendent, deputy superintendent, or other admi-  
10 nistrative title, however designated;

11 (2) "Agency" means any department, division, fund,  
12 office, position, system, survey or other entity of state  
13 government, however designated, transferred to and  
14 incorporated in one of the departments created in  
15 section two of this article;

16 (3) "Board" means any board, commission, authority,  
17 council, or other body, however designated, consisting of  
18 two or more members, transferred to and incorporated

19 in one of the departments created in section two of this  
20 article;

21 (4) "Code" means the code of West Virginia, one  
22 thousand nine hundred thirty-one, as heretofore and  
23 hereafter amended; and

24 (5) "Secretary" means the administrative head of one  
25 of the departments created in section two of this article.

26 (b) Although each term defined in subsection (a) of  
27 this section is in the singular, the plural of any term  
28 shall have the same meaning.

## ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

§5F-2-2. Power and authority of secretary of each department.

§5F-2-3. Administrators; appointment; oath; bond; compensation.

§5F-2-4. Transfer of records, property and personnel.

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

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

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

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

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

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

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

- 21 (6) Employee suggestion award board provided for in  
22 article one-a, chapter five-a of this code;
- 23 (7) Governor's mansion advisory committee provided  
24 for in article four-a, chapter five-a of this code;
- 25 (8) Advisory commission to the information system  
26 services division in the department of finance and  
27 administration provided for in article seven, chapter  
28 five-a of this code;
- 29 (9) Teachers retirement system and teachers' retire-  
30 ment board provided for in article seven-a, chapter  
31 eighteen of this code;
- 32 (10) Commission on uniform state laws provided for  
33 in article one-a, chapter twenty-nine of this code;
- 34 (11) Department of personnel of the civil service  
35 system and the civil service commission provided for in  
36 article six, chapter twenty-nine of this code;
- 37 (12) Education and state employees grievance board  
38 provided for in article twenty-nine, chapter eighteen  
39 and article six-a, chapter twenty-nine of this code;
- 40 (13) Board of risk and insurance management pro-  
41 vided for in article twelve, chapter twenty-nine of this  
42 code;
- 43 (14) Boundary commission provided for in article  
44 twenty-three, chapter twenty-nine of this code;
- 45 (15) Public legal services council provided for in  
46 article twenty-one, chapter twenty-nine of this code;
- 47 (16) Division of personnel which may be hereafter  
48 created by the Legislature; and
- 49 (17) The West Virginia ethics commission which may  
50 be hereafter created by the Legislature.
- 51 (b) The following agencies and boards, including all  
52 of the allied, advisory, affiliated or related entities and  
53 funds associated with any such agency or board, are  
54 hereby transferred to and incorporated in and shall be  
55 administered as a part of the department of commerce,  
56 labor and environmental resources:

- 57 (1) Forest management review commission provided  
58 for in article twenty-four, chapter five of this code;
- 59 (2) Department of commerce provided for in article  
60 one, chapter five-b of this code;
- 61 (3) Office of community and industrial development  
62 provided for in article two, chapter five-b of this code;
- 63 (4) Enterprise zone authority provided for in article  
64 two-b, chapter five-b of this code;
- 65 (5) Office of federal procurement assistance provided  
66 for in article two-c, chapter five-b of this code;
- 67 (6) Export development authority provided for in  
68 article three, chapter five-b of this code;
- 69 (7) Labor-management council provided for in article  
70 four, chapter five-b of this code;
- 71 (8) Industry and jobs development corporation pro-  
72 vided for in article one, chapter five-c of this code;
- 73 (9) Public energy authority and board provided for in  
74 chapter five-d of this code;
- 75 (10) Air pollution control commission provided for in  
76 article twenty, chapter sixteen of this code;
- 77 (11) Resource recovery—solid waste disposal author-  
78 ity provided for in article twenty-six, chapter sixteen of  
79 this code;
- 80 (12) Division of forestry and forestry commission  
81 provided for in article one-a, chapter nineteen of this  
82 code;
- 83 (13) Department of natural resources and natural  
84 resources commission provided for in article one,  
85 chapter twenty of this code;
- 86 (14) Water resources board provided for in article  
87 five, chapter twenty of this code;
- 88 (15) Water development authority and board provided  
89 for in article five-c, chapter twenty of this code;
- 90 (16) Department of labor provided for in article one,  
91 chapter twenty-one of this code;



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

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

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

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

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

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

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

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

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

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

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

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

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

159 (d) The following agencies and boards, including all  
160 of the allied, advisory, affiliated or related entities and  
161 funds associated with any such agency or board, are  
162 hereby transferred to and incorporated in and shall be

- 163 administered as a part of the department of health and  
164 human resources:
- 165 (1) Human rights commission provided for in article  
166 eleven, chapter five of this code;
- 167 (2) Department of human services provided for in  
168 article two, chapter nine of this code;
- 169 (3) Department of veterans' affairs and veterans'  
170 council provided for in article one, chapter nine-a of this  
171 code;
- 172 (4) Department of health and board of health pro-  
173 vided for in article one, chapter sixteen of this code;
- 174 (5) Health care planning council provided for in  
175 article two-d, chapter sixteen of this code;
- 176 (6) Office of emergency medical services and advisory  
177 council thereto provided for in article four-c, chapter  
178 sixteen of this code;
- 179 (7) Continuum of care board for the elderly, disabled  
180 and terminally ill provided for in article five-d, chapter  
181 sixteen of this code;
- 182 (8) Hospital finance authority provided for in article  
183 twenty-nine-a, chapter sixteen of this code;
- 184 (9) Health care cost review authority provided for in  
185 article twenty-nine-b, chapter sixteen of this code;
- 186 (10) Structural barriers compliance board provided  
187 for in article ten-f, chapter eighteen of this code;
- 188 (11) Department of employment security, state advi-  
189 sory council thereto and board of review provided for  
190 in chapter twenty-one-a of this code;
- 191 (12) Office of workers' compensation commissioner,  
192 advisory board thereto and workers' compensation  
193 appeal board provided for in chapter twenty-three of  
194 this code;
- 195 (13) Commission on aging provided for in article  
196 fourteen, chapter twenty-nine of this code;
- 197 (14) Commission on mental retardation and advisory

198 committee thereto provided for in article fifteen,  
199 chapter twenty-nine of this code;

200 (15) Women's commission provided for in article  
201 twenty, chapter twenty-nine of this code; and

202 (16) Commission on children and youth provided for  
203 in article six-c, chapter forty-nine of this code.

204 (e) The following agencies and boards, including all  
205 of the allied, advisory, affiliated or related entities and  
206 funds associated with any such agency or board, are  
207 hereby transferred to and incorporated in and shall be  
208 administered as a part of the department of public  
209 safety:

210 (1) Crime victims compensation fund provided for in  
211 article two-a, chapter fourteen of this code;

212 (2) Adjutant general's department provided for in  
213 article one-a, chapter fifteen of this code;

214 (3) Armory board provided for in article six, chapter  
215 fifteen of this code;

216 (4) Military awards board provided for in article one-  
217 g, chapter fifteen of this code;

218 (5) Department of public safety and commission on  
219 drunk driving prevention provided for in article two,  
220 chapter fifteen of this code;

221 (6) Office of emergency services and emergency  
222 services advisory council provided for in article five,  
223 chapter fifteen of this code;

224 (7) Sheriffs' bureau provided for in article eight,  
225 chapter fifteen of this code;

226 (8) Department of corrections provided for in chapter  
227 twenty-five of this code;

228 (9) Fire commission and state fire administrator  
229 provided for in article three, chapter twenty-nine of this  
230 code;

231 (10) Regional jail and prison authority provided for in  
232 article twenty, chapter thirty-one of this code; and

233 (11) Board of probation and parole provided for in  
234 article twelve, chapter sixty-two of this code.

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

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

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

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

248 (4) Board of investments provided for in article six,  
249 chapter twelve of this code;

250 (5) Municipal bond commission provided for in article  
251 three, chapter thirteen of this code;

252 (6) Racing commission provided for in article twenty-  
253 three, chapter nineteen of this code;

254 (7) Lottery commission and position of lottery director  
255 provided for in article twenty-two, chapter twenty-nine  
256 of this code;

257 (8) Agency of insurance commissioner provided for in  
258 article two, chapter thirty-three of this code;

259 (9) Office of alcohol beverage control commissioner  
260 provided for in article two, chapter sixty of this code;  
261 and

262 (10) Division of professional and occupational licenses  
263 which may be hereafter created by the Legislature.

264 (g) The following agencies and boards, including all  
265 of the allied, advisory, affiliated or related entities and  
266 funds associated with any such agency or board, are  
267 hereby transferred to and incorporated in and shall be  
268 administered as a part of the department of transpor-  
269 tation:

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

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

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

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

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

280 (6) Motorcycle safety standards and specifications  
281 board provided for in article fifteen, chapter seventeen-  
282 c of this code;

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

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

287 (9) Port authority which may be hereafter created by  
288 the Legislature.

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

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

307 (j) Wherever elsewhere in this code, in any act, in  
308 general or other law, in any rule or regulation, or in any  
309 ordinance, resolution or order, reference is made to any  
310 department transferred to and incorporated in a  
311 department created in section two, article one of this  
312 chapter, such reference shall henceforth be read,  
313 construed and understood to mean a division of the  
314 appropriate department so created, and any such  
315 reference elsewhere to a division of a department so  
316 transferred and incorporated shall henceforth be read,  
317 construed and understood to mean a section of the  
318 appropriate division of the department so created.

**§5F-2-2. Power and authority of secretary of each department.**

1 (a) Notwithstanding any other provision of this code  
2 to the contrary, the secretary of each department shall  
3 have plenary power and authority within and for the  
4 department to:

5 (1) Employ and discharge within the office of the  
6 secretary such employees as may be necessary to carry  
7 out the functions of the secretary, which employees shall  
8 serve at the will and pleasure of the secretary;

9 (2) Cause the various agencies and boards to be  
10 operated effectively, efficiently and economically, and  
11 develop goals, objectives, policies and plans that are  
12 necessary or desirable for the effective, efficient and  
13 economical operation of the department;

14 (3) Eliminate or consolidate positions, other than  
15 positions of administrators or positions of board  
16 members, and name a person to fill more than one  
17 position;

18 (4) Delegate, assign, transfer or combine responsibil-  
19 ities or duties to or among employees, other than  
20 administrators or board members;

21 (5) Reorganize internal functions or operations;

22 (6) Formulate comprehensive budgets for considera-  
23 tion by the governor, and transfer within the depart-

24 ment funds appropriated to the various agencies of the  
25 department which are not expended due to cost savings  
26 resulting from the implementation of the provisions of  
27 this chapter: *Provided*, That no more than twenty-five  
28 percent of the funds appropriated to any one agency or  
29 board may be transferred to other agencies or boards  
30 within the department: *Provided, however*, That no  
31 funds may be transferred from a special revenue  
32 account, dedicated account, capital expenditure account  
33 or any other account or funds specifically exempted by  
34 the Legislature from transfer, except that the use of  
35 appropriations from the state road fund transferred to  
36 the office of the secretary of the department of trans-  
37 portation is not a use other than the purpose for which  
38 such funds were dedicated and is permitted: *Provided*  
39 *further*, That if the Legislature by subsequent enactment  
40 consolidates agencies, boards or functions, the secretary  
41 may transfer the funds formerly appropriated to such  
42 agency, board or function in order to implement such  
43 consolidation. The authority to transfer funds under this  
44 section shall expire on the thirtieth day of June, one  
45 thousand nine hundred eighty-nine;

46 (7) Enter into contracts or agreements requiring the  
47 expenditure of public funds, and authorize the expen-  
48 diture or obligating of public funds as authorized by  
49 law: *Provided*, That the powers granted to the secretary  
50 to enter into contracts or agreements and to make  
51 expenditures or obligations of public funds under this  
52 provision shall not exceed or be interpreted as authority  
53 to exceed the powers heretofore granted by the Legis-  
54 lature to the various commissioners, directors or board  
55 members of the various departments, agencies or boards  
56 that comprise and are incorporated into each secretary's  
57 department under this chapter;

58 (8) Acquire by lease or purchase property of whatever  
59 kind or character, and convey or dispose of any property  
60 of whatever kind or character as authorized by law:  
61 *Provided*, That the powers granted to the secretary to  
62 lease, purchase, convey or dispose of such property shall  
63 not exceed or be interpreted as authority to exceed the  
64 powers heretofore granted by the Legislature to the



65 various commissioners, directors or board members of  
66 the various departments, agencies or boards that  
67 comprise and are incorporated into each secretary's  
68 department under this chapter;

69 (9) Conduct internal audits;

70 (10) Supervise internal management;

71 (11) Promulgate rules, as defined in section two,  
72 article one, chapter twenty-nine-a of this code, to  
73 implement and make effective the powers, authority and  
74 duties granted and imposed by the provisions of this  
75 chapter, such promulgation to be in accordance with the  
76 provisions of chapter twenty-nine-a of this code;

77 (12) Grant or withhold written consent to the proposal  
78 of any rule, as defined in section two, article one,  
79 chapter twenty-nine-a of this code, by any administra-  
80 tor, agency or board within the department, without  
81 which written consent no proposal of a rule shall have  
82 any force or effect;

83 (13) Delegate to administrators such duties of the  
84 secretary as the secretary may deem appropriate from  
85 time to time to facilitate execution of the powers,  
86 authority and duties delegated to the secretary; and

87 (14) Take any other action involving or relating to  
88 internal management not otherwise prohibited by law.

89 (b) The secretaries of the departments hereby created  
90 shall engage in a comprehensive review of the practices,  
91 policies, and operations of the agencies and boards  
92 within their departments to determine the feasibility of  
93 cost reductions and increased efficiency which may be  
94 achieved therein, including, but not limited to, the  
95 following:

96 (1) The elimination, reduction and restrictions in the  
97 use of the state's vehicle or other transportation fleet;

98 (2) The elimination, reduction and restrictions in the  
99 preparation of state government publications, including  
100 annual reports, informational materials, and promo-  
101 tional materials;

102 (3) The termination or renegotiation of terms con-  
103 tained in lease agreements between the state and private  
104 sector for offices, equipment and services;

105 (4) The adoption of appropriate systems for account-  
106 ing, including consideration of an accrual basis financial  
107 accounting and reporting system;

108 (5) The adoption of revised procurement practices to  
109 facilitate cost effective purchasing procedures, includ-  
110 ing consideration of means by which domestic busi-  
111 nesses may be assisted to compete for state government  
112 purchases; and

113 (6) The computerization of the functions of the state  
114 agencies and boards.

115 (c) Notwithstanding the provisions of subsections  
116 (a) and (b) of this section, none of the powers granted  
117 to the secretaries herein shall be exercised by the  
118 secretary if to do so would violate or be inconsistent with  
119 the provisions of any federal law or regulation, any  
120 federal-state program or federally delegated program or  
121 jeopardize the approval, existence or funding of any  
122 such program, and the powers granted to the secretary  
123 shall be so construed.

124 (d) The layoff and recall rights of employees within  
125 the classified service of the state as provided in  
126 subsections five and six, section ten, article six, chapter  
127 twenty-nine of this code shall be limited to the organ-  
128 izational unit within the agency or board and within the  
129 promotional series of the agency or board in which the  
130 employee was employed prior to the agency or board's  
131 transfer or incorporation into the department. The  
132 duration of recall rights provided in this subsection shall  
133 be limited to two years or the length of tenure,  
134 whichever is less. Except as provided in this subsection,  
135 nothing contained in this section shall be construed to  
136 abridge the rights of employees within the classified  
137 service of the state as provided in sections ten and ten-  
138 a, article six, chapter twenty-nine of this code or the  
139 right of classified employees of the board of regents to  
140 the procedures and protections set forth in article  
141 twenty-six-b, chapter eighteen of this code.

**§5F-2-3. Administrators; appointment; oath; bond; compensation.**

1 (a) Notwithstanding any other provision of this code  
2 (including subsections (h) and (i), section one of this  
3 article) to the contrary, each administrator required by  
4 other provisions of this code to be appointed by the  
5 governor shall:

6 (1) Continue to be appointed by the governor by and  
7 with the advice and consent of the Senate and each such  
8 administrator shall serve at the will and pleasure of the  
9 governor, and the governor may appoint a person to fill  
10 more than one such position of administrator and may  
11 appoint a secretary to fill one or more positions of such  
12 administrator, but each person appointed as such an  
13 administrator must possess whatever qualifications are  
14 elsewhere specified in this code as being required for  
15 appointment to such position;

16 (2) Take the oath of office or affirmation prescribed  
17 by section five, article four of the constitution, and such  
18 oath shall be certified by the person who administers the  
19 same and filed in the office of the secretary of state;

20 (3) Give bond in the penalty of fifteen thousand  
21 dollars conditioned for the faithful performance of the  
22 duties of the office, which bond shall be approved by the  
23 attorney general as to form and by the secretary as to  
24 sufficiency. The surety of such bond may be a bonding  
25 or surety company, in which case the premium shall be  
26 paid out of the appropriation made for the administra-  
27 tion of the department; and

28 (4) Receive an annual salary as shall be fixed from  
29 time to time by the governor and secretary within the  
30 limit of funds appropriated to the department and  
31 available for such purpose.

32 (b) Each administrator required by other provisions  
33 of this code to be appointed in any manner other than  
34 by the governor shall continue to be appointed, shall  
35 take such oath of office, give such bond and receive such  
36 salary as shall be so specified by such other provisions  
37 of this code.

**§5F-2-4. Transfer of records, property and personnel.**

1 All records, assets and property, of whatever kind or  
2 character, owned by or utilized in the administration of  
3 the agencies and boards and all of the personnel utilized  
4 in the administration of such agencies and boards,  
5 including the administrators, are hereby transferred to  
6 the respective department to and in which such agencies  
7 and boards are transferred and incorporated.

**ARTICLE 3. FUTURE REORGANIZATION; SEVERABILITY.**

§5F-3-1. Recommendations for further reorganization.

§5F-3-2. Operative dates.

§5F-3-3. Severability.

**§5F-3-1. Recommendations for further reorganization.**

1 The governor shall submit to the Legislature on or  
2 before the first day of January, one thousand nine  
3 hundred ninety-one, a report setting forth the reorgan-  
4 ization implemented by executive action pursuant to this  
5 chapter and resulting cost savings as determined by the  
6 governor, any recommendations for further reorganiza-  
7 tion requiring legislative action and drafts of recom-  
8 mended legislation to implement the reorganization  
9 requiring legislative action.

**§5F-3-2. Operative dates.**

1 The provisions of this chapter shall become operative  
2 as to any department created in section two, article one  
3 of this chapter upon the appointment of the secretary  
4 of such department.

**§5F-3-3. Severability.**

1 If any provision of this chapter or the application  
2 thereof to any person or circumstance is held unconsti-  
3 tutional or invalid, such unconstitutionality or invalidity  
4 shall not affect other provisions or applications of the  
5 chapter, and to this end the provisions of this chapter  
6 are declared to be severable.

## CHAPTER 4

(Com. Sub. for H. B. 102—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,  
By Request of the Executive)

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[Passed January 31, 1989; in effect from passage. Approved by the Governor.]

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AN ACT to repeal section seven-a, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and fifteen, article fourteen of said chapter eleven; to further amend said article fourteen by adding thereto a new section, designated section five-a; to amend and reenact sections five and seven of said article fourteen-a; and to further amend said article fourteen-a by adding thereto two new sections, designated sections three-a and twenty-eight, all relating generally to gasoline and motor fuel excise taxes; increasing the rate of tax to fifteen and one-half cents per gallon of gasoline or special fuel beginning the first day of April, one thousand nine hundred eighty-nine; exempting from gasoline and special fuel excise tax and from consumers sales tax bulk sales of gasoline or special fuel to interstate motor carriers provided the motor carrier road tax and the use tax are paid on such gallons used in this state; providing administrative procedures for this exemption and its effective date; repealing the motor carrier road tax surtax as of the first day of April, one thousand nine hundred eighty-nine; establishing primary liability for payment of registration fees and motor carrier road tax when motor carrier is leased or rented; requiring annual reports from motor carriers operating solely in this state in lieu of quarterly reports; providing for issuance of temporary trip permits and issuance of annual transporters permits, and setting fees therefor; imposing criminal penalties; authorizing exchange of motor carrier information between certain agencies when purpose of exchange is to administer a combined trip permit program; authorizing issuance of combined trip permits and specifying fee therefor; dedicating the sum of twenty-five million dollars to bridge replacement or

repair; authorizing the use of the proceeds to be used to match federal amounts available for expenditure on the Appalachian Highway System, providing that amounts remaining after funding the foregoing priorities shall be used for the maintenance, construction, repair and reconstruction of state highways; and specifying effective dates.

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

That section seven-a, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three and fifteen, article fourteen of said chapter eleven be amended and reenacted; that said article fourteen be further amended by adding thereto a new section, designated section five-a; that sections five and seven of said article fourteen-a be amended and reenacted; and that said article fourteen-a be further amended by adding thereto two new sections, designated sections three-a and twenty-eight, all to read as follows:

**Article**

**14. Gasoline and Special Fuel Excise Tax.**

**14A. Motor Carrier Road Tax.**

**ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.**

§11-14-3. Imposition of tax.

§11-14-5a. Exemption for bulk sales to interstate motor carriers.

§11-14-15. Disposition of tax collected.

**§11-14-3. Imposition of tax.**

1       There is hereby levied an excise tax of ten and one  
2       half cents per gallon on all gasoline or special fuel,  
3       which tax shall be computed in accordance with the  
4       appropriate measure of tax as hereinafter prescribed in  
5       this article: *Provided*, That beginning the first day of  
6       April, one thousand nine hundred eighty-nine, the tax  
7       levied by this article shall be fifteen and one-half cents  
8       per gallon.

**§11-14-5a. Exemption for bulk sales to interstate motor carriers.**

1       (a) In general.—There shall be exempt from the taxes  
2       imposed by this article and by article fifteen of this code

3 all gallons of gasoline or special fuel sold by a distrib-  
4 utor to an interstate motor carrier having fuel storage  
5 tanks in this state which are used solely for the purpose  
6 of fueling motor carriers owned, leased or operated by  
7 the motor carrier, when the purchase is delivered in  
8 bulk quantities of one thousand gallons or more into  
9 such fuel storage tanks and is purchased for the motor  
10 carrier's exclusive use: *Provided*, That this exemption  
11 shall not relieve the person owning or operating a motor  
12 carrier from payment of any taxes imposed by article  
13 fourteen-a or fifteen-a of this chapter on gasoline or  
14 special fuel used or consumed in this state by the motor  
15 carrier.

16 (b) Surety bond; release of surety; new bond.—The  
17 commissioner may in his discretion require an interstate  
18 motor carrier having fuel storage tanks in this state to  
19 file a continuous surety bond in an amount to be fixed  
20 by the commissioner, except that the amount thereof  
21 shall not be less than one thousand dollars. Upon  
22 completion of the filing of such surety bond an annual  
23 notice of renewal, only, shall be required thereafter. The  
24 surety must be authorized to engage in business within  
25 this state. This bond shall be conditioned upon the motor  
26 carrier's faithful compliance with the provisions of this  
27 article and articles fourteen-a and fifteen-a of this  
28 chapter with respect to such gasoline or special fuel,  
29 including the filing of the returns and payment of all  
30 tax due with respect to such gasoline or special fuel.  
31 Such bond shall be approved by the commissioner as to  
32 sufficiency and by the attorney general as to form, and  
33 shall indemnify the state against any loss arising from  
34 the failure of the taxpayer for whatever reason to pay  
35 any tax imposed by article fourteen-a or fifteen-a of this  
36 chapter on gasoline or special fuel purchased as  
37 provided in this section which was used or consumed in  
38 operation of the motor carrier in this state: *Provided*,  
39 That a noninterest bearing cash deposit may be accepted  
40 by the commissioner in lieu of such bond. The cash  
41 deposit shall be in an amount to be fixed by the  
42 commissioner, except the amount thereof may not be  
43 less than one thousand dollars.

44 (c) Revocation of suspension of exemption.

45 (1) The tax commissioner may revoke or suspend  
46 application of this exemption to a motor carrier if:

47 (A) The motor carrier filed a false or fraudulent  
48 return for the tax imposed by article fourteen-a or  
49 fifteen-a of this chapter on gasoline or special fuel it  
50 used or consumed in this state.

51 (B) The motor carrier willfully refused or willfully  
52 neglected to file a tax return or willfully failed to report  
53 information required by the tax commissioner, concern-  
54 ing gasoline or special fuel which it used or consumed  
55 in this state, on or before the date specified for filing  
56 the return or report.

57 (C) The motor carrier willfully refused or willfully  
58 neglected to pay any tax, additions to tax, penalties or  
59 interest, or any part thereof, with respect to gasoline or  
60 special fuel used or consumed in this state when they  
61 became due and payable under this chapter, determined  
62 with regard to any authorized extension of time for  
63 payment.

64 (2) Before cancelling or suspending this exemption,  
65 the tax commissioner shall give written notice to the  
66 motor carrier of his intent to suspend or cancel this  
67 exemption, the reason for the suspension or cancellation,  
68 the effective date of the suspension or cancellation, and  
69 the date, time and place where the taxpayer may appear  
70 at an informal hearing and show cause why this  
71 exemption should not be suspended or canceled. This  
72 written notice shall be served on the taxpayer in the  
73 same manner as a notice of assessment is served under  
74 article ten of this chapter, not less than twenty days  
75 prior to the date of such informal hearing. The taxpayer  
76 may appeal suspension or cancellation of its exemption  
77 under this section in the same manner as a notice of  
78 assessment is appealed under article ten of this chapter:  
79 *Provided*, That the filing of a petition for appeal shall  
80 not stay the effective date of the suspension or cancel-  
81 lation. A stay may be granted only after a hearing is  
82 held on a motion to stay filed by the motor carrier, upon  
83 finding that state revenues will not be jeopardized by



84 the granting of the stay. The tax commissioner may, in  
85 his discretion and upon such terms as he may specify,  
86 agree to stay the effective date of the suspension or  
87 cancellation until another date certain.

88 (3) The tax commissioner shall promptly give notice  
89 to distributors in this state of the name and mailing  
90 address of every motor carrier whose exemption under  
91 this section is suspended or cancelled. The effective date  
92 of such suspension or cancellation shall be included, and  
93 if this exemption is suspended, the date the suspension  
94 expires shall also be provided. The affected motor  
95 carrier shall promptly give similar written notice to all  
96 distributors from whom he purchases gasoline or special  
97 fuel exempt from tax as provided in subsection (a) of  
98 this section.

99 (4) A motor carrier whose exemption under this  
100 section is cancelled may, after the cancellation has been  
101 in effect for twelve months, petition the tax commis-  
102 sioner for reinstatement of exemption under this section.  
103 The tax commissioner may, in his discretion, and upon  
104 such terms as he may require reinstate this exemption,  
105 but only if he reasonably believes that the motor carrier  
106 will fully and timely comply with this article and the  
107 provisions of articles fourteen-a and fifteen-a of this  
108 chapter. Upon reinstatement, the motor carrier shall  
109 provide his distributor with a true copy of the tax  
110 commissioner's order reinstating the exemption.

111 (d) Effective date.—The provisions of this section  
112 shall apply to gasoline or special fuel delivered after the  
113 thirty-first day of March, one thousand nine hundred  
114 eighty-nine.

#### §11-14-15. Disposition of tax collected.

'1 All tax collected under the provisions of this article  
2 shall be paid into the state treasury and shall be used  
3 only for the purpose of construction, reconstruction,  
4 maintenance and repair of highways, matching of  
5 federal moneys available for highway purposes and  
6 payment of the interest and sinking fund obligations on  
7 state bonds issued for highway purposes: *Provided*, that  
8 for fiscal year one thousand nine hundred eighty-nine-

9 ninety, twenty-five million dollars shall be used only for  
10 bridge repair and replacement and all amounts remain-  
11 ing shall next be used for payment of the interest and  
12 sinking fund obligations on state bonds issued for  
13 highway purposes: *Provided, however*, that any amounts  
14 remaining after funding these priorities shall next be  
15 used in matching any federal amounts available for  
16 expenditure on the Appalachian highway system in this  
17 State: *Provided further*, that any amounts remaining  
18 after funding these priorities shall be used for the  
19 maintenance, reconstruction and construction of state  
20 highways.

21 Unless necessary for such bond requirements, five  
22 fourteenths of the tax collected under the provisions of  
23 this article shall be used for feeder and state local  
24 service highway purposes.

#### ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-3a. Leased motor carriers.

§11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.

§11-14A-7. Identification markers; fees; criminal penalty.

§11-14A-28. Effective date.

#### §11-14A-3a. Leased motor carriers.

1 (a) Motor carriers leased for less than thirty days.—  
2 A lessor of motor carriers who is regularly engaged in  
3 the business of leasing or renting motor carriers with  
4 or without drivers to licensees or other lessees for a  
5 period of less than thirty days is primarily liable for  
6 payment of the taxes and fees imposed by this article.

7 (b) Motor carriers leased for thirty days or more.—A  
8 licensee or other lessee who leases or rents a motor  
9 carrier with or without drivers for a period of thirty  
10 days or more is primarily liable for payment of the taxes  
11 and fees imposed by this article.

12 (c) The provision of subsections (a) and (b) of this  
13 section shall govern the primary liability of lessors and  
14 licensees or other lessees of motor carriers. If a lessor  
15 or licensee or other lessee primarily liable fails, in whole  
16 or in part, to discharge his liability, such failing party  
17 and other party to the transaction, whether denominated

18 as a lessor, licensee or other lessee, shall be jointly and  
19 severally responsible and liable for compliance with the  
20 provisions of this article and for payment of any tax or  
21 fees due under this article: *Provided*, That the aggregate  
22 of taxes and fees collected by the commissioner shall not  
23 exceed the total amount or amounts of taxes and fees  
24 due under this article on account of the transactions in  
25 question plus such interest, additions to tax, other  
26 penalties and costs, if any, that may be imposed:  
27 *Provided, however*, That no person, other than the person  
28 primarily responsible for the taxes and fees under this  
29 article, may be assessed penalties or additions to tax  
30 resulting from the failure of the party primarily liable  
31 for such taxes and fees to pay: *Provided further*, That  
32 once such other party to the transaction who is not  
33 primarily liable for the taxes under this article but who  
34 is made jointly and severally liable under this subsection  
35 for such taxes is assessed for those taxes and fees and  
36 fails to discharge such assessment within the time  
37 prescribed therefor, or within thirty days after receiv-  
38 ing such assessment if no time is so prescribed, nothing  
39 herein shall prohibit the commissioner from imposing  
40 additions to tax or penalties upon that person for failing  
41 to pay the assessment issued in his name.

**§11-14A-5. Reports of carriers; joint reports; records;  
examination of records; subpoenas and  
witnesses.**

1 (a) Every taxpayer subject to the tax imposed by this  
2 article, except as provided in subsections (b) and (c) of  
3 this section, shall on or before the twenty-fifth day of  
4 January, April, July and October of every calendar year  
5 make to the commissioner such reports of its operations  
6 during the quarter ending the last day of the preceding  
7 month as the commissioner may require and such other  
8 reports from time to time as the commissioner may  
9 deem necessary. For good cause shown, the commis-  
10 sioner may extend the time for filing said reports for  
11 a period not exceeding thirty days.

12 (b) Every motor carrier which operates exclusively in  
13 this state during a fiscal year that begins on the first  
14 day of July of one calendar year and ends on the  
15 thirtieth day of June of the next succeeding calendar

16 year and during such fiscal year consumes in its  
17 operation only gasoline or special fuel upon which the  
18 tax imposed by article fourteen of this chapter has been  
19 paid shall, in lieu of filing the quarterly reports  
20 required by subsection (a), file an annual report for such  
21 fiscal year on or before the last day of July each  
22 calendar year. For good cause shown, the commissioner  
23 may extend the time for filing such report for a period  
24 of thirty days.

25 (c) Two or more taxpayers regularly engaged in the  
26 transportation of passengers on through buses on  
27 through tickets in pool operation may, at their option  
28 and upon proper notice to the commissioner, make joint  
29 reports of their entire operations in this state in lieu of  
30 the separate reports required by subsection (a) of this  
31 section. The taxes imposed by this article shall be  
32 calculated on the basis of such joint reports as though  
33 such taxpayers were a single taxpayer; and the taxpay-  
34 ers making such reports shall be jointly and severally  
35 liable for the taxes shown thereon to be due. Such joint  
36 reports shall show the total number of highway miles  
37 traveled in this state and the total number of gallons of  
38 gasoline or special fuel purchased in this state by the  
39 reporting taxpayers. Credits to which the taxpayers  
40 making a joint return are entitled shall not be allowed  
41 as credits to any other taxpayer; but taxpayers filing  
42 joint reports shall permit all taxpayers engaged in this  
43 state in pool operations with them to join in filing joint  
44 reports.

45 (d) A taxpayer shall keep such records necessary to  
46 verify the highway miles traveled within and without  
47 the state of West Virginia, the number of gallons of  
48 gasoline and special fuel used and purchased within and  
49 without West Virginia and any other records which the  
50 commissioner by regulation may prescribe.

51 (e) In addition to the tax commissioner's powers set  
52 forth in sections five-a and five-b, article ten of this  
53 chapter, the commissioner may inspect or examine the  
54 records, books, papers, storage tanks, meters and any  
55 equipment records or records of highway miles traveled  
56 within and without West Virginia and the records of any

57 other person to verify the truth and accuracy of any  
58 statement or report to ascertain whether the tax  
59 imposed by this article has been properly paid.

60 (f) In addition to the tax commissioner's powers set  
61 forth in sections five-a and five-b, article ten of this  
62 chapter, and as a further means of obtaining the  
63 records, books and papers of a taxpayer or any other  
64 person and ascertaining the amount of taxes and reports  
65 due under this article, the commissioner shall have the  
66 power to examine witnesses under oath; and if any  
67 witness shall fail or refuse at the request of the  
68 commissioner to grant access to the books, records and  
69 papers, the commissioner shall certify the facts and  
70 names to the circuit court of the county having jurisdic-  
71 tion of the party and such court shall thereupon issue  
72 a subpoena duces tecum to such party to appear before  
73 the commissioner, at a place designated within the  
74 jurisdiction of such court, on a day fixed.

**§11-14A-7. Identification markers; fees; criminal penalty.**

1 (a) Registration of motor carriers.—No person may  
2 operate, or cause to be operated, in this state any motor  
3 carrier subject to this article without first securing from  
4 the commissioner an identification marker for each such  
5 motor carrier, except as provided in subsection (b) or (c)  
6 of this section. Each identification marker for a  
7 particular motor carrier shall bear a number. This  
8 identification marker shall be displayed on the driver's  
9 side of the motor carrier as required by the commis-  
10 sioner. The commissioner, after issuance of any identi-  
11 fication marker to a motor carrier, shall cause an  
12 internal cross-check to be made in his office as to any  
13 state tax which he administers, to aid in determination  
14 of any noncompliance in respect to failure to file returns  
15 or payment of tax liabilities. The identification markers  
16 herein provided for shall be valid for the period of one  
17 year, ending June thirtieth of each year. A fee of five  
18 dollars shall be paid to the commissioner for issuing  
19 each identification marker which is reasonably related  
20 to the commissioner's costs of issuing such identification.  
21 All tax or reports due under this article shall be paid  
22 or reports filed before the issuance of a new identifica-

23 tion marker. Failure by a taxpayer to file the returns  
24 or pay the taxes imposed by this article shall give cause  
25 to the commissioner to revoke or refuse to renew the  
26 identification marker previously issued.

27 (b) Trip permit.—A motor carrier that does not have  
28 a motor carrier identification marker issued under  
29 subsection (a) of this section may obtain a trip permit  
30 which authorizes the motor carrier specified therein to  
31 be operated in this state without an identification  
32 marker for a period of not more than ten consecutive  
33 days beginning and ending on the dates specified on the  
34 face of the permit. The fee for this permit shall be  
35 twenty-four dollars.

36 (1) Fees for trip permits shall be in lieu of the tax  
37 otherwise due under this article on account of the  
38 vehicles specified in the permit operating in this state  
39 during the period of the permit, and no reports of  
40 mileage shall be required with respect to that vehicle.

41 (2) A trip permit shall be issued if, in the course of  
42 the motor carrier's operations, it operates on the public  
43 roads or highways in this state no more than three times  
44 in any one fiscal year of this state, and a motor carrier  
45 may obtain no more than three such trip permits in any  
46 fiscal year of this state.

47 (3) A trip permit shall be carried in the cab of the  
48 motor vehicle for which it was issued at all times while  
49 it is in this state.

50 (4) A trip permit may be obtained from the commis-  
51 sioner or from wire services authorized by the commis-  
52 sioner to issue such permits. The cost of the telegram  
53 or similar transmissions shall be the responsibility of the  
54 motor carrier requesting the trip permit.

55 (c) Transportation permit.—The commissioner is  
56 hereby authorized to grant, in his discretion, a special  
57 permit to a new motor vehicle dealer for use on new  
58 motor vehicles driven under their own power from the  
59 factory or distributing place of a manufacturer, or other  
60 dealer, to a place of business of the new vehicle dealer,  
61 or from the place of business of a new vehicle dealer to

62 a place of business of another dealer, or when delivered  
63 from the place of business of the new vehicle dealer to  
64 the place of business of a purchaser to whom title passes  
65 on delivery. A transporter's permit must be carried in  
66 the cab of the motor vehicle being transported. A person  
67 to whom a transporter's permit is issued shall file the  
68 reports required by section five of this article and pay  
69 any tax due. The fee for such transporter's permit shall  
70 be fifteen dollars and a transporter's permit is valid for  
71 the fiscal year for which it is issued unless surrendered  
72 or revoked by the tax commissioner.

73 (d) Criminal penalty.—Any person, whether such  
74 person be the owner, licensee or lessee, or the employee,  
75 servant or agent thereof, who operates or causes to be  
76 operated in this state, a motor carrier in violation of this  
77 section, is guilty of a misdemeanor, and, upon conviction  
78 thereof, shall be fined not less than fifty nor more than  
79 five hundred dollars; and each day such violation  
80 continues or reoccurs shall constitute a separate offense.

81 (e) Notwithstanding the provisions of section five-d,  
82 article ten of this chapter, the commissioner shall  
83 deliver to or receive from the commissioner of the  
84 department of motor vehicles and the commissioner of  
85 the public service commission, the information con-  
86 tained in the application filed by a motor carrier for a  
87 trip permit under this section, when the information is  
88 used to administer a combined trip permit registration  
89 program for motor carriers operating in this state,  
90 which program may be administered by one agency or  
91 any combination of the three agencies, as embodied in  
92 a written agreement executed by the head of each  
93 agency participating in the program. Such agencies  
94 have authority to enter into such an agreement notwith-  
95 standing any provision of this code to the contrary; and  
96 the fee for such combined trip permit shall be twenty-  
97 four dollars, which shall be in lieu of the fee set forth  
98 in subsection (b) of this section.

**§11-14A-28. Effective date.**

1 The provisions of this act shall take effect on the first  
2 day of April, one thousand nine hundred eighty-nine.

## DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

**Regular Session, 1989**

### HOUSE BILLS

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2026	8	2257	121	2636	88
2028	73	2258	37	2642	123
2029	63	2275	163	2663	214
2030	3	2280	56	2665	29
2031	23	2286	105	2672	208
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2036	50	2293	67	2674	18
2037	76	2296	127	2676	149
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2050	132	2325	62	2695	157
2051	186	2326	55	2696	150
2052	189	2327	187	2697	65
2053	190	2333	80	2700	21
2054	191	2345	122	2703	193
2070	128	2354	141	2705	137
2089	46	2357	143	2709	199
2095	140	2382	171	2710	4
2101	79	2389	125	2711	196
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